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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No.: FAA-2019-0343; Amdt. No. 25-149]

RIN 2120-AL11

Decompression Criteria for Interior Compartments

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is amending its standards for pressurized compartment loads such that partitions located adjacent to a decompression hole need not be designed to withstand a certain decompression condition. This rulemaking is necessary because, in some cases, it is not practical to design partitions in certain airplane compartments to withstand this decompression condition if it occurs within that compartment.

DATES: Effective August 14, 2023.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see “How to Obtain Additional Information” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Todd Martin, Airframe Section, AIR-622, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax (206) 231-3210; email Todd.Martin@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Authority for This Rulemaking

The FAA’s authority to issue rules on aviation safety is found in Title 49 of the

United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the FAA’s authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, “General Requirements.” Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for the design and performance of aircraft that the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority as it prescribes new safety standards for the design and performance of transport category airplanes.

II. Overview of Final Rule

The FAA is amending § 25.365, “Pressurized compartment loads,” in Title 14, Code of Federal Regulations (14 CFR) part 25, “Airworthiness Standards: Transport Category Airplanes.” Specifically, the FAA is revising § 25.365(g) to allow the failure of partitions that are adjacent to the decompression hole. This allowance only applies to the formula decompression hole specified in § 25.365(e)(2). The ability to withstand a hole of this size is typically the most severe decompression load design requirement for small compartments, such as lavatories, private suites, and crew rest areas. With this revision, partition failure is only allowed if (1) failure of the partition would not interfere with continued safe flight and landing, and (2) meeting the decompression condition in paragraph (e)(2) would be impractical.

This final rule codifies current practice and will not result in additional costs or significant benefits to airplane manufacturers, but will relieve applicants of some administrative burden—see Regulatory Evaluation below.

III. Background

A. Statement of the Problem

The airworthiness standards in § 25.365 address the safety effects of decompression. When the fuselage skin or another part of the pressurized boundary of an airplane fails for any reason, a decompression occurs if the cabin pressure is greater than the

outside air pressure. When a decompression occurs, the pressurized air inside the airplane exits the hole, or opening, in the fuselage until equilibrium is reached. This can result in potentially high air loads on floors, partitions, and bulkheads.

Section 25.365(g) requires applicants to design bulkheads, floors, and partitions, in pressurized compartments for occupants, to withstand the sudden decompression conditions specified in paragraph (e). Section 25.365(g) also requires applicants to take reasonable design precautions to minimize the probability of parts becoming detached and injuring seated occupants.

For certain smaller compartments on the airplane, such as lavatories, private suites, and crew rest areas, it has been difficult for applicants to achieve compliance with § 25.365(g), because a large decompression hole, of the size specified in § 25.365(e)(2), occurring in one of these compartments would result in very high air loads on the partitions that form the compartment. Strengthening the partitions to sustain such high loads has been shown to be impractical in many cases for these smaller compartments because doing so could adversely affect the structural integrity of the airplane and its continued safe flight and landing. Further, alternative design strategies may impede the compartment’s intended function.

B. History

Amendment 25-54 to § 25.365 (45 FR 60154, Sept. 11, 1980), introduced the requirement, in revised paragraph (e), that bulkheads, floors, and partitions be designed to withstand the decompression conditions specified in the rule.

In amendment 25-71 to § 25.365 (55 FR 13474, Apr. 10, 1990), the specific references to “bulkheads, floors, and partitions” were moved from paragraph (e) to paragraph (g) to provide the required passenger protection criteria related to failure of these structures in occupied compartments, regardless of whether their failure could interfere with safe flight and landing.

Prior to this final rule, § 25.365 required that the applicant consider partition failure in terms of the effects on occupant safety. However, the FAA has long recognized that structural integrity might not be maintained near the decompression hole. The Notice of

Proposed Rulemaking (NPRM) for amendment 25–71 (53 FR 8742, Mar. 16, 1988) stated that loss of structural integrity at the opening location, or physiological effects on occupants, were not considerations of that rule. Thus, at that time the FAA was aware of and accepted this risk to an occupant next to the opening location.

The FAA has certified numerous airplane designs for which the partition strength criteria in § 25.365(e) at amendment 25–54 or § 25.365(g) at amendment 25–71 were included in the project's certification basis. Since the issuance of amendment 25–54, the FAA has made several equivalent level of safety (ELOS) findings to § 25.365(e) (at amendment 25–54) or § 25.365(g) (at amendment 25–71, as applicable) in accordance with 14 CFR 21.21.¹

C. Summary of the NPRM and Final Rule

The FAA published an NPRM on May 15, 2019 (84 FR 21733), that proposed revisions to the partition failure criteria in § 25.365(g). The NPRM described the decompression criteria in § 25.365 and explained the difficulty of designing certain partitions to withstand a decompression condition. The NPRM proposed changes to § 25.365 that would allow partition failure if it would not interfere with continued safe flight and landing and the applicant shows that designing the partition to meet the decompression load condition of § 25.365(e)(2) would be impractical. This action finalizes the proposal with minor clarifying changes.

D. General Overview of Comments

The FAA received comments from the Boeing Company (Boeing), Airbus, Bombardier Aerospace (Bombardier), the European Union Aviation Safety Agency (EASA), and the General Aviation Manufacturers Association (GAMA). Commenters were generally in favor of the proposal but requested additional flexibility in several aspects of the final rule. All of the commenters requested clarification of terminology used in the proposed rule.

¹ An ELOS finding is made when the design does not comply with the applicable airworthiness provisions, but compensating factors, such as the incorporation of mitigating features (e.g., lanyards to restrain loose parts, or frangible structure to cause structural failure in a direction away from the seated occupant), provide an equivalent level of safety in accordance with 14 CFR 21.21(b)(1). The FAA documents an ELOS finding in an ELOS memorandum that communicates to the public the rationale for the FAA's determination of the design's equivalency to the level of safety intended by the regulations.

IV. Discussion of Comments and the Final Rule

A. Affected Decompression Conditions

The NPRM proposed to revise § 25.365(g) to allow failure of partitions for the decompression condition specified in § 25.365(e)(2). This decompression condition, referred to as the “formula” hole size, is typically the most severe condition required by § 25.365(e).

Airbus and Boeing commented that partition failure should also be allowed for the decompression condition specified in § 25.365(e)(1): penetration of any pressurized compartment by a portion of an engine following engine disintegration. Airbus suggested that partition failure should also be allowed for the decompression condition specified in § 25.365(e)(3): any other opening caused by failures not shown to be extremely improbable. Both commenters noted that the hole size specified in these other subparagraphs may, in some cases, be greater than the formula hole size specified in § 25.365(e)(2); and therefore, their position is that the same impracticality issues exist for these other decompression conditions.

The FAA disagrees with both suggested changes. The FAA has not seen evidence to suggest that designing partitions to withstand the decompression conditions in § 25.365(e)(1) and (e)(3) is impractical. Unlike the decompression condition specified in § 25.365(e)(2), the FAA has not granted exemptions, or issued equivalent level of safety findings, that allow partition failure for these other two conditions.

With regard to the engine rotor burst example presented by Airbus and Boeing in support of their request for relief from § 25.365(e)(1), the FAA finds that partition failure should not be allowed in this instance. Since a decompression that occurs as a result of a rotor burst would be limited to an area of the fuselage near the engines, affected compartments could be placed outside this area if needed. Also, this condition would likely only result in a hole that is larger than the formula hole if the decompression was the result of a tangential strike to the fuselage. That is, the rotor disk penetrates the fuselage laterally at a tangential angle either towards the top or bottom of the fuselage, resulting in a long narrow decompression hole. By its nature, such a hole would not likely be limited to a single compartment.

The decompression condition suggested for addition by Airbus, and specified in § 25.365(e)(3), covers the

maximum opening caused by airplane or equipment failures not shown to be extremely improbable. The FAA concludes that partition failure should not be allowed for this decompression condition. The FAA would not expect any situation in which the size of such an opening would exceed that of the formula hole. If there were such a condition, then the FAA concludes that the rule should require partitions be designed for that condition, or design changes made to reduce the size of the anticipated decompression hole.

B. Use of “Impractical” Standard

The NPRM proposed to allow partition failure only if the applicant could show, in addition to the failure's lack of interference with continued safe flight and landing, that designing the partition to withstand the specified decompression condition (formula hole) of § 25.365(e)(2) is impractical.

GAMA commented that requiring an applicant to show impracticality could lead to inconsistent applications of the regulation, and therefore that this requirement should be removed. GAMA proposed instead that the passenger protection criteria of § 25.365(g), which currently apply to all three of the decompression conditions of paragraph (e), should only apply to the effects of the smaller hole sizes determined under § 25.365(e)(3) (those due to failures not shown to be extremely improbable), and that such partitions would therefore be excepted from (e)(2). The FAA does not agree. To remove the decompression conditions under § 25.365(e)(2) from having to meet the passenger protection criteria of § 25.365(g) would constitute a reduction in safety. To ensure that the required element of impracticality does not lead to inconsistent application of the regulation, the FAA explains the intended meaning of “impractical” later in this discussion.

C. Safety Analysis of Potential Floor Failure

As part of its rationale, the NPRM noted that strengthening a partition, to the extent it would not fail, could increase loads on the floor and thereby the risk of floor failure, thus jeopardizing continued safe flight and landing.

EASA commented that in these cases, reinforcing the floor may be a practical solution, and therefore, partition failure should not be allowed. The FAA partially agrees. To show compliance with the rule, the applicant must show that the floor be designed to withstand the decompression conditions specified in § 25.365(e). If the applicant's analysis shows that the floor could fail if a

partition does not fail after decompression, then, in order to obtain the relief provided by this final rule, the applicant could revise their proposed design to increase venting as far as practical within the affected compartment. If the applicant shows that floor failure would still occur with those design changes in place, then the FAA would likely consider reinforcement of the floor to be impractical.

D. Addressing Potential Skin Bay Failure

Airbus asked the FAA to clarify whether a failure of the standard skin bay (the area between two adjacent stringers and two adjacent frames) would be an “opening” within the meaning of § 25.365(e)(3)—the maximum opening not shown to be extremely improbable—and therefore one that the airplane must be designed to withstand. The FAA currently has no guidance as to whether a standard skin bay failure should be assumed under § 25.365(e)(3). Airbus is requesting guidance on compliance with § 25.365(e)(3), which is outside the scope of this rulemaking.

Airbus also asked whether a skin bay failure should be considered as an opening of the maximum size expected to be confined to a small compartment, in accordance with § 25.365(e)(2), and therefore covered under § 25.365(g)(2). The FAA explains the meaning of “small compartments,” as used in § 25.365(e)(2), later in this discussion. No change was made to the final rule as a result of these comments.

E. Required Design Precautions To Protect Occupants

Section 25.365(g) requires that reasonable design precautions be taken to minimize the probability of parts becoming detached and injuring occupants while in their seats. The FAA did not propose any changes to this language in the NPRM.

Boeing commented that these design precautions should no longer apply to partitions that are allowed to fail. Boeing noted that once a partition is allowed to fail, it is structurally difficult to restrain that partition. GAMA noted that there was no practical design standard for this requirement.

As explained in the NPRM, it may not be practical to design the partitions of certain compartments to withstand the decompression condition specified in § 25.365(e)(2) if it occurs within that compartment. The rule would allow partition failure in these cases, if the applicant also shows that such failure would not interfere with continued safe

flight and landing. However, even in these cases, “reasonable design precautions” must still be made to protect occupants. Also, this is a performance-based design standard. Accordingly, applicants for type certificates have flexibility to satisfy the standard through a variety of means. For example, an applicant may propose lanyards or other devices to reduce the chance that a failed partition or part will impact an occupant, or may design the partition such that it fails in a direction away from seated occupants.

Boeing also proposed that the FAA remove the discussion in the NPRM that indicated that applicants must add venting, as a reasonable design precaution, to the extent practical to reduce the chance the partition will fail as a result of smaller decompression hole sizes.

The discussion in the NPRM regarding the continuing requirement to take reasonable design precautions to protect occupants remains valid. However, the FAA clarifies that § 25.365(e)(2) requires evaluation of decompression hole sizes “up to” the formula hole size, so new § 25.365(g)(2), which references that requirement, also requires evaluation of decompression hole sizes up to the formula hole size. This includes smaller sizes for which the FAA finds that applicants will be able to add venting to the extent practical to reduce the chance the partition will fail.

F. Need for Additional Guidance Material

EASA and GAMA proposed that the FAA issue an advisory circular (AC) or policy statement to accompany the proposed rule change to clarify terminology and application of the rule. The FAA does not find that an AC or policy statement is necessary. The FAA finds that the discussions in the NPRM and this final rule provide sufficient guidance on how an applicant can comply with the new rule.

G. Crew Rest Compartments

EASA proposed that the FAA provide further guidance to that provided in the NPRM on how to maximize the safety of occupants situated under and within crew rest compartments. EASA reasoned that the lower sections of such compartments are a significant contributor to ensuring all masses and occupants within those compartments are retained. The FAA finds that specific guidance is not needed for crew rest areas. The intent of the rule and the rule change are clear, and specific guidance for every conceivable

configuration and compartment type is not possible or necessary.

H. Project-Specific Review

EASA commented that compliance with the proposed requirement should be subject to a project-specific (“case-by-case”) review for each proposed compartment because it may be possible to show compliance without failure of partitions for some larger compartments. The FAA agrees and intends to conduct a project-specific review for each compartment. This final rule does not allow partition failure unless the applicant shows that designing the partition to withstand the condition specified in paragraph (e)(2) of this section is impractical, and that such failure would not interfere with continued safe flight and landing.

I. Clarification of Terms

Several commenters suggested that the FAA clarify terms in § 25.365. Airbus and Bombardier requested clarification of the term “impractical;” Boeing, EASA and GAMA requested clarification of “adjacent;” Bombardier requested clarification of the term “bulkheads;” and Bombardier and EASA requested clarification of “small compartments” as specified in § 25.365(e)(2). Bombardier also requested clarification of the term “seated occupants” as used in the NPRM as compared to “occupants while in their seats” as used in § 25.365(g). The FAA provides the following clarification of these terms:

Impractical. New § 25.365(g)(2) allows partition failure if designing the partition to withstand the specified decompression condition would be “impractical.” As explained in the NPRM, designing a partition to withstand the decompression condition specified in § 25.365(e)(2) would be impractical, in the context of this rule, if (1) doing so would adversely affect the structural integrity of surrounding primary structure, including floors; or (2) the design changes would invalidate the compartment’s intended function. The following is an example of the latter. Having a solid door is a fundamental feature for the intended use of some compartments, such as lavatories. While using a curtain in place of a solid door would greatly improve the decompression capability of such a compartment and is physically practical for the purpose of compliance with § 25.365(g), the FAA accepts that changing the lavatory door to a curtain in such cases would be impractical because the resulting design would invalidate the compartment’s intended function.

As previously noted, § 25.365(e)(2), which has not been revised in this rulemaking, defines a decompression condition as an opening “up to” the formula hole size defined in that paragraph. Therefore, while partition failure may be accepted as impractical for the maximum hole size specified in § 25.365(e)(2), this regulation means that the applicant must evaluate smaller hole sizes, up to the maximum formula hole size, and where practical, design all partitions to withstand those smaller hole sizes.

Adjacent. Section 25.365(g)(2) allows failure of partitions “adjacent” to the opening specified in § 25.365(e)(2). In this context, adjacent partitions are those that form the compartment exposed to the decompression hole.

Partitions, Floors and Bulkheads. This rule only applies to partitions—meaning, in the context of this rule, any non-structural wall, non-structural floor, or non-structural ceiling panel—the failure of which would not compromise the structural integrity of the airplane.

In the context of this rule, the term “floor” means a structural floor, such as a passenger or cargo floor that carries airplane structural loads. The floor of an overhead crew rest area, which is elevated above the main floor, would not be a structural floor unless it carries airplane structural loads. However, if partition failure is allowed to occur in such a compartment, then to protect the safety of the persons in the compartment and below it, only partitions other than the crew rest floor should be designed to fail, rather than the floor itself. As previously stated, § 25.365(g) requires the applicant to take all reasonable design precautions to protect occupants.

The term “bulkhead,” as used in this rulemaking, means a structural pressure bulkhead or other wall that carries airframe structural loads. The FAA considers a non-structural, non-pressure bulkhead to be a partition because it does not carry airplane structural loads. The applicability of this rule is limited to partitions because the integrity of bulkheads and floors must be maintained to ensure continued safe flight and landing.

Small compartments. This final rule revises § 25.365(g) to allow failure of partitions for the decompression condition specified in § 25.365(e)(2). Section 25.365(e)(2), which was not changed as a result of this rulemaking, states that small compartments may be combined with an adjacent pressurized compartment and both considered as a single compartment for openings that cannot reasonably be expected to be confined to the small compartment.

This regulation was added at amendment 25–71 to § 25.365 (55 FR 13474, Apr. 10, 1990). The FAA defines “small compartment” as a compartment with an exposed fuselage surface area of two times the formula hole size, or less. Applicants may propose alternative definitions.

As indicated in the final rule preamble for amendment 25–71, if an applicant is using the small-compartment exception, then two conditions must be evaluated: (1) The small compartment is combined with an adjacent pressurized compartment and both considered as a single compartment for the maximum size opening specified by the formula; and (2) An opening of the maximum size expected to remain confined in the small compartment would be considered in the small compartment. In keeping with the definition of “small compartment,” the FAA defines “the maximum size expected to remain confined” in any compartment evaluated under § 25.365(e)(2) to be one-half of the exposed fuselage area of that compartment.

Seated occupant: The FAA considers the term “seated occupants,” as used in the preamble of the NPRM and this final rule, to be synonymous with the regulatory (§ 25.365(g)) term of “occupants while in their seats.”

J. Safety Factors of § 25.365(d)

Airbus commented that the FAA should introduce a discussion of removing the 1.33 safety factor specified in § 25.365(d) in the context of a general update to § 25.365. This comment is unrelated to the change to § 25.365(g), and is outside the scope of this rulemaking.

K. Miscellaneous

This final rule omits the proposed words “The applicant shows that” from § 25.365(g)(2)(ii) because such language is unnecessary given the 14 CFR 21.20(a) requirement for applicants for a type certificate to show compliance with all applicable regulations.

V. Regulatory Notices and Analyses

A. Regulatory Evaluation

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires

agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is \$176 million using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble summarizes the FAA’s analysis of the economic impacts of this rule.

This final rule codifies current practice and will not result in additional costs or significant benefits to airplane manufacturers. As noted previously, in some cases, the FAA accepted the possibility of local partition failure based on a finding of equivalent level of safety. This final rule will relieve the administrative burden for type certification applicants who might otherwise be required to submit requests for an equivalent level of safety under § 21.21(b)(1). However, cost savings for the FAA will be minimal because the FAA received only two such type certification applications in the past 5 years and does not expect numerous similar applications in the future. Cost savings for industry will be minimal because the cost of administration of the FAA’s finding of equivalent safety on each applicable certification project is not high, even though it is applied several times per year. The FAA, therefore, has determined that this final rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA

covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required.

This final rule will only have impact on applicants for type certification of transport category airplanes. All such United States transport category airplane manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, based on the foregoing analysis, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will impose no costs on domestic and international entities and thus has a neutral trade impact.

D. Unfunded Mandates Assessment

Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is \$177 million using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order (E.O.) 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the

distribution of power and responsibilities among the various levels of government, and, therefore, will not have federalism implications.

B. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,⁷⁰ and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,⁷¹ the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on tribes resulting from this proposed rule.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that it is not a “significant energy action” under the executive order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action will have no effect on international regulatory cooperation.

VII. Additional Information

A. Electronic Access and Filing

A copy of the NPRM, all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the docket number listed above. A copy of this final rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded

from the Office of the Federal Register's website at www.federalregister.gov and the Government Publishing Office's website at www.govinfo.gov. A copy may also be found at the FAA's Regulations and Policies website at www.faa.gov/regulations_policies.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this final rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Navigation (air), Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

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

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

- 2. Amend § 25.365 by revising paragraph (g) to read as follows:

§ 25.365 Pressurized compartment loads.

* * * * *

(g)(1) Except as provided in paragraph (g)(2) of this section, bulkheads, floors, and partitions in pressurized compartments for occupants must be designed to withstand the conditions specified in paragraph (e) of this

section. In addition, reasonable design precautions must be taken to minimize the probability of parts becoming detached and injuring occupants while in their seats.

(2) Partitions adjacent to the opening specified in paragraph (e)(2) of this section need not be designed to withstand that condition provided—

(i) Failure of the partition would not interfere with continued safe flight and landing; and

(ii) Designing the partition to withstand the condition specified in paragraph (e)(2) of this section would be impractical.

Issued under authority provided by 49 U.S.C. 106(f) and 44701(a) in Washington, DC, on or about June 6, 2023

Billy Nolen,

Acting Administrator.

[FR Doc. 2023-12416 Filed 6-12-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-0426; Project Identifier MCAI-2022-01324-A; Amendment 39-22451; AD 2023-11-05]

RIN 2120-AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021-10-28, which applied to all Pilatus Aircraft Ltd. (Pilatus) Model PC-24 airplanes. AD 2021-10-28 required incorporating new revisions to the airworthiness limitations section (ALS) of the existing airplane maintenance manual (AMM) or Instructions for Continued Airworthiness (ICA) to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2021-10-28, the FAA determined that new or more restrictive airworthiness limitations are necessary. This AD requires revising the ALS of the existing AMM or ICA for your airplane, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference (IBR). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 18, 2023.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of July 18, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2023-0426; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material that is incorporated by reference in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.eu.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at regulations.gov under Docket No. FAA-2023-0426.

FOR FURTHER INFORMATION CONTACT:

Doug Rudolph, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329-4059; email: doug.rudolph@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021-10-28, Amendment 39-21561 (86 FR 30763, June 10, 2021) (AD 2021-10-28). AD 2021-10-28 applied to all Pilatus Model PC-24 airplanes. AD 2021-10-28 required incorporating new revisions to the ALS of the existing AMM or ICA to incorporate new tasks for the control column sprocket gear assembly and control wheel column assembly, to address the new limit of validity and update the usage assumptions and conditions for operations on unpaved and grass runways, and to correct an error in the horizontal stabilizer primary trim system secondary power source operational test. The FAA issued AD 2021-10-28 to prevent reduction in the structural integrity of the airframe and components, as well as an unrecognized failure of the manual pitch trim, which

could lead to loss of control of the airplane.

The NPRM published in the **Federal Register** on March 8, 2023 (88 FR 14306). The NPRM was prompted by EASA AD 2022–0207, dated October 10, 2022 (EASA AD 2022–0207) (referred to after this as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states new or more restrictive tasks and limitations have been developed. These new or more restrictive airworthiness limitations include introducing new Certification Maintenance Requirement (CMR) Task AL–24–60–004, Emergency Power Contactor 2, by converting the existing Scheduled Maintenance Task SM–24–60–0004, Emergency Contactor 2 Test (EC2 Test) into that CMR task.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0426.

In the NPRM, the FAA proposed to require revising the ALS of the existing AMM or ICA for your airplane, as specified in EASA AD 2022–0207. The FAA is issuing this AD to address failure of certain parts, which could result in loss of control of the airplane. Additionally, the actions required to address the unsafe condition in AD 2021–10–28 are included in “the applicable ALS,” as defined in EASA AD 2022–0207.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 14 CFR Part 51

EASA AD 2022–0207 requires certain actions and associated thresholds and intervals, including life limits and maintenance tasks.

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

Differences Between This AD and EASA AD 2022–0207

Paragraph (2) of EASA AD 2022–0207 requires corrective action in accordance with the applicable Pilatus maintenance documentation or contacting Pilatus for approved instructions and accomplishing those instructions accordingly. Paragraph (3) of EASA AD 2022–0207 requires revising the approved aircraft maintenance program. Paragraph (4) of EASA AD 2022–0207 provides credit for performing actions in accordance with previous revisions of the Pilatus AMM. Paragraph (5) of EASA AD 2022–0207 explains that after revision of the approved aircraft maintenance program, it is not necessary to record accomplishment of individual actions for demonstration of AD compliance. This AD does not require compliance with paragraphs (2) through (5) of EASA AD 2022–0207.

Costs of Compliance

The FAA estimates that this AD affects 73 airplanes of U.S. registry. Labor rates are estimated at \$85 per work-hour. Based on these figures, the FAA estimates that revising the ALS of the existing AMM or ICA for your airplane requires about 1 work-hour for an estimated cost on U.S. operators of \$6,205 or \$85 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA has determined that this AD will not have federalism implications

under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
- a. Removing Airworthiness Directive 2021–10–28, Amendment 39–21561 (86 FR 30763, June 10, 2021); and
 - b. Adding the following new airworthiness directive:

2023–11–05 Pilatus Aircraft Ltd.:

Amendment 39–22451; Docket No. FAA–2023–0426; Project Identifier MCAI–2022–01324–A.

(a) Effective Date

This airworthiness directive (AD) is effective July 18, 2023.

(b) Affected ADs

This AD replaces AD 2021–10–28, Amendment 39–21561 (86 FR 30763, June 10, 2021) (AD 2021–10–28).

(c) Applicability

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

(d) Subject

Joint Aircraft System Component (JASC) Code 2460, DC Power/Distribution System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe

condition on an aviation product. The MCAI states that failure to revise the airworthiness limitations section (ALS) of the existing aircraft maintenance manual (AMM) by introducing new or more restrictive tasks and limitations, which introduces a new certification maintenance requirement (CMR) task to test emergency power contactor 2, could result in an unsafe condition. The FAA is issuing this AD to address failure of certain parts, which could result in loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Before further flight after the effective date of this AD, revise the ALS of the existing AMM or Instructions for Continued Airworthiness for your airplane by incorporating the requirements specified in paragraph (1) of European Union Aviation Safety Agency AD 2022–0207, dated October 10, 2022 (EASA AD 2022–0207).

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

(h) Provisions for Alternative Requirements (Airworthiness Limitations)

After the actions required by paragraph (g) of this AD have been done, no alternative requirements (airworthiness limitations) are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2022–0207.

(i) Alternative Methods of Compliance (AMOCs)

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

(2) Global AMOC AIR–730–22–248, dated July 12, 2022, was approved as an AMOC for the requirements of AD 2021–10–28, and is approved as an AMOC for the requirements of paragraph (g) of this AD. Other AMOCs previously issued for the requirements of AD 2021–10–28 are not approved as an AMOC for the requirements of this AD.

(j) Additional Information

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

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency AD 2022–0207, dated October 10, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0207, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

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

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

Issued on June 2, 2023.

Michael Linegang,

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

[FR Doc. 2023–12491 Filed 6–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0156; Project Identifier MCAI–2022–01511–T; Amendment 39–22454; AD 2023–11–08]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–19–05, which applied to all Airbus SAS Model A330–841 and –941 airplanes. AD 2022–19–05 required maintenance actions, including a high pressure valve (HPV) seal integrity test, repetitive replacement of the HPV clips, revision

of the existing airplane flight manual (AFM), and implementation of updates to the FAA-approved operator’s minimum equipment list (MEL). This AD was prompted by additional instructions and maintenance procedures developed to address failures of the HPV. This AD continues to require certain actions in AD 2022–19–05 and provides additional criteria for the installation of HPV and HPV clips, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 18, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 18, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2023–0156; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find this material on the EASA website: ad.easa.europa.eu.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at regulations.gov under Docket No. FAA–2023–0156.

FOR FURTHER INFORMATION CONTACT:

Vladimir Ulyanov, Aviation Safety Engineer, FAA, International Validation Branch, 2200 South 216th Street, Des Moines, WA 98198; telephone 206–231–3229; email Vladimir.Ulyanov@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 2022, the FAA issued Emergency AD 2022–18–51 for all Airbus SAS Model A330–841 and –941

airplanes. Emergency AD 2022–18–51 corresponded to EASA Emergency AD 2022–0170–E, dated August 17, 2022 (EASA Emergency AD 2022–0170–E). EASA is the Technical Agent for the Member States of the European Union. Emergency AD 2022–18–51 required revising the existing AFM to incorporate additional limitations prohibiting takeoff for certain airplane configurations; specified airplane dispatch restrictions using certain provisions of the A330 MMEL (master minimum equipment list) or amending the existing FAA-approved operator's MEL; and required obtaining and accomplishing instructions following certain maintenance messages. The FAA issued Emergency AD 2022–18–51 to address a leaking HPV, which may expose the pressure regulating valve (PRV), which is installed downstream from the HPV, to high pressure, possibly damaging the PRV itself and preventing its closure. The unsafe condition, if not addressed, could result in high pressure and temperatures in the duct downstream from the PRV, with possible duct burst, damage to several systems, and consequent loss of control of the airplane.

Since the FAA issued Emergency AD 2022–18–51, EASA superseded its Emergency AD 2022–0170–E and issued EASA AD 2022–0181, dated August 29, 2022 (EASA AD 2022–0181), to correct an unsafe condition for all Airbus SAS A330–841 and –941 airplanes. The FAA issued AD 2022–19–05, Amendment 39–22174 (87 FR 54870, September 8, 2022) (AD 2022–19–05), for all Airbus SAS Model A330–841 and –941 airplanes. AD 2022–19–05 was prompted by EASA AD 2022–0181, which was intended to address leaking bleed system HPVs, likely due to HPV clip failure and sealing ring damage.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022–19–05, Amendment 39–22174 (87 FR 54870, September 8, 2022) (AD 2022–19–05). AD 2022–19–05 applied to all Airbus SAS Model A330–841 and –941 airplanes. AD 2022–19–05 required revising the existing AFM to incorporate additional limitations prohibiting takeoff for certain airplane configurations; specifies airplane dispatch restrictions using certain provisions of the A330 MMEL (master minimum equipment list) or amending the existing FAA-approved operator's MEL; requires obtaining and accomplishing instructions following certain maintenance messages; revising the Limitations section of the AFM; updating the A330 MMEL with new provisions and procedures; a seal

integrity test of each HPV; and a detailed inspection of the wing bellows. The FAA issued AD 2022–19–05 to address a leaking HPV, which may expose the PRV, which is installed downstream from the HPV, to high pressure, possibly damaging the PRV itself and preventing its closure.

The NPRM published in the **Federal Register** on February 3, 2023 (88 FR 7370). The NPRM was prompted by AD 2022–0227, dated November 24, 2022, issued by EASA (EASA AD 2022–0227) (also referred to as the MCAI). EASA AD 2022–0227 states that Airbus has since published improved instructions and maintenance procedures to address failures of the HPV and incorporate comments received. You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–0156.

In the NPRM, the FAA proposed to retain certain requirements of AD 2022–19–05 and provide additional criteria for the installation of HPV and HPV clips. Those requirements are referenced in EASA AD 2022–0227, which, in turn, is referenced in paragraph (g) of this AD. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

The FAA received an additional comment from Delta Air Lines (Delta). The following presents the comment received on the NPRM and the FAA's response to that comment.

Request for an Additional Exception for Revised Publication

Delta requested an exception be added to paragraph (h) to use Airbus Alert Operators Transmission (AOT) A36L009–22, original issue, dated August 25, 2022, for compliance with the EASA AD 2022–0227, instead of Airbus AOT A36L009–22, Revision 01, dated October 3, 2022.

The FAA disagrees that updating this final rule is necessary because EASA AD 2022–0227, which is required by this AD, allows credit for the original issue in paragraph (16) of EASA AD 2022–0227.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the

FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0227 specifies procedures for the following actions:

- Revision of the Limitations section of the existing AFM and removal of the previously required limitations.

- Implementation of the instructions of the MMEL update on the basis of which the operator's MEL must be amended with new provisions and procedures for the following items: Air Conditioning Pack, Engine Bleed Air Supply System, Engine Bleed IP (Intermediate Pressure) Check Valve, and Engine Bleed HP (High Pressure) Valve, and cancel the dispatch restrictions.

- A seal integrity test of each HPV, and corrective actions (including replacement of the HPV, and a detailed inspection of the wing bellow on engine 1(2) and replacement of any damaged or deformed wing bellow).

EASA AD 2022–0227 also describes the following maintenance instructions, among other actions, to be accomplished following certain faults or failures:

- HPV troubleshooting procedure and additional maintenance actions after any Class 1 maintenance message associated to an HPV fault, and corrective actions (including replacement of the HPV or wing bellow).

- HPV seal integrity test and the additional maintenance actions after any Class 1 or Class 2 maintenance message associated to a PRV fault, and corrective actions (including replacement of the HPV and PRV, and a detailed inspection of the wing bellow on engine 1(2) and replacement of any damaged or deformed wing bellow).

- A visual (borescope) inspection of the engine bleed air system (EBAS) to detect signs of foreign object debris (FOD), including metallic debris in the butterfly valve and dents or damage of the flaps of the intermediate pressure check valve (IPCV), and dents and missing segments in the PRV, the header of the HP/IP duct, the y-duct, and the pylon ducts after any failure of an HPV

clip and/or any of the HPV butterfly sealing rings, and corrective actions (including removing FOD and replacing the IPCV or PRV).

- A seal integrity test of each HPV after any take-off or go-around accomplished with “packs OFF” or “APU bleed ON” or “engine bleed OFF,” and corrective actions (including replacement of the HPV, and a detailed inspection of the wing bellow on engine 1(2) and replacement of any damaged or deformed wing bellow).

- Additional actions to be performed for any Class 1 maintenance message associated with an HPV fault.

- Initial and repetitive replacement of each HPV clip with a new HPV clip. EASA AD 2022–0227 also specifies that HPV clips may be installed provided they are new and serviceable, and replaced before exceeding 4,000 hours time-in-service.

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

Interim Action

The FAA considers that this AD is an interim action. The FAA anticipates that further AD action may follow.

Costs of Compliance

The FAA estimates that this AD affects 19 airplanes of U.S. registry. The new requirements of this AD add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$1,615
MEL update	1 work-hour × \$85 per hour = \$85	0	85	1,615
HPV Seal Integrity Test	1 work-hour × \$85 per hour = \$85	0	85	1,615
HPV clip replacement (both engines)	11 work-hours × \$85 per hour = \$935	28	963	18,297

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on

the results of any required actions. The FAA has no way of determining the

number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
HPV replacement (each)	4 work-hours × \$85 per hour = \$340	\$6,459	\$6,799
Wing bellow replacement (each wing)	6 work-hours × \$85 per hour = \$510	663	1,173
PRV replacement (both engines)	9 work-hours × \$85 per hour = \$765	107,620	108,385

The FAA has received no definitive data on which to base the cost estimates for the maintenance actions or additional actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:

- a. Removing Airworthiness Directive 2022–19–05, Amendment 39–22174 (87 FR 54870, dated September 8, 2022); and

- b. Adding the following new AD:

2023–11–08 Airbus SAS: Amendment 39–22454; Docket No. FAA–2023–0156; Project Identifier MCAI–2022–01511–T.

(a) Effective Date

This airworthiness directive (AD) is effective July 18, 2023.

(b) Affected ADs

This AD replaces AD 2022–19–05, Amendment 39–22174 (87 FR 54870, September 8, 2022) (AD 2022–19–05).

(c) Applicability

This AD applies to all Airbus SAS Model A330–841 and –941 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code: 36, Pneumatic; 75, Air.

(e) Unsafe Condition

This AD was prompted by reports of leaking bleed system high pressure valves (HPVs), likely due to HPV clip failure and sealing ring damage, and by the development of additional instructions and maintenance procedures to address HPV failures. The FAA is issuing this AD to address a leaking HPV, which may expose the pressure regulating valve (PRV), which is installed downstream from the HPV, to high pressure, possibly damaging the PRV itself and preventing its closure. The unsafe condition, if not addressed, could result in high pressure and temperatures in the duct downstream from the PRV, with possible duct burst, damage to several systems, and consequent loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0227, dated November 24, 2022 (EASA AD 2022–0227).

(h) Exceptions to EASA AD 2022–0227

(1) Where EASA AD 2022–0227 refers to “05 September 2022 [the effective date of EASA AD 2022–0181],” this AD requires using September 15, 2022 (the effective date of AD 2022–19–05).

(2) Where EASA AD 2022–0227 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraphs (1) and (4) of EASA AD 2022–0227 specify to inform all flightcrews of airplane flight manual (AFM) revisions and dispatch limitations, and thereafter to operate the airplane accordingly, this AD does not require those actions, as those actions are already required by existing FAA regulations (see 14 CFR 91.9, 91.505, and 121.137).

(4) This AD does not adopt the reporting requirements of paragraph (17) of EASA AD 2022–0227.

(5) This AD does not adopt the “Remarks” section of EASA AD 2022–0227.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested

using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(ii) AMOCs approved previously for AD 2022–19–05 are approved as AMOCs for the corresponding provisions of EASA AD 2022–0227 that are required by paragraph (g) of this AD.

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

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

(j) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aviation Safety Engineer, FAA, International Validation Branch, 2200 South 216th Street, Des Moines, WA 98198; telephone 206–231–3229; email Vladimir.Ulyanov@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0227, dated November 24, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0227, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find this EASA AD on the EASA website: ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des

Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on June 2, 2023.

Michael Linegang,

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

[FR Doc. 2023–12441 Filed 6–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. **FAA–2022–1055**; Project Identifier **AD–2022–00573–T**; Amendment **39–22455**; AD 2023–11–09]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Gulfstream Aerospace Corporation Model GVII–G500 and GVII–G600 airplanes. This AD was prompted by reports of two landing incidents in which the alpha limiter engaged in the landing flare in unstable air, resulting in high rate of descent landings and damage to the airplanes. This AD requires updating the flight control computer (FCC) software. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 18, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 18, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. **FAA–2022–1055**; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200

New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402-2206; telephone 800-810-4853; email pubs@gulfstream.com; website gulfstream.com/en/customer-support.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2022-1055.

FOR FURTHER INFORMATION CONTACT:

Myles Jalalian, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404-474-5572; email: 9-ASO-ATLACO-ADS@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Gulfstream Aerospace Corporation Model GVII-G500 and GVII-G600 airplanes. The NPRM published in the **Federal Register** on September 8, 2022 (87 FR 54925). The NPRM was prompted by reports of two landing incidents in which the alpha limiter engaged in the landing flare in unstable air, resulting in high rate of descent landings and damage to the airplane. In the NPRM, the FAA proposed to require updating the FCC software. The FAA is issuing this AD to address inappropriate alpha limiter engagement during the landing flare, which can limit pilot pitch authority during a critical phase of flight near the ground, and result in a high rate of descent landing with possible consequent loss of control of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from two commenters, Disney Aviation Group (Disney) and Gulfstream Aerospace Corporation (Gulfstream). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Add Service Information

Disney noted that the proposed AD does not reference Gulfstream Technical

Bulletins Aircraft Service Change (ASC) No. 039A (for GVII-G500) or ASC No. 029A (for GVII-G600). Disney suggested referring to those documents, rather than requiring using a method approved by the FAA, would be logical and easy. Gulfstream added that these ASCs provide corrective actions to address the unsafe condition and should be incorporated by reference in the proposed AD. Gulfstream added that including the ASCs would provide a less ambiguous path to AD compliance and alleviate the need for operators to obtain an alternative method of compliance (AMOC).

The FAA agrees. Gulfstream GVII-G500 ASC No. 039, Revision A, dated September 13, 2022, including Thales Service Bulletin C13204J-27-002, Revision 01, dated September 13, 2022, and Thales Service Bulletin C13212J-27-002, Revision 01, dated September 13, 2022; and Gulfstream GVII-G600 ASC No. 029, Revision A, dated September 12, 2022, including Thales Service Bulletin C13204K-27-002, Revision 01, dated September 13, 2022, and Thales Service Bulletin C13212K-27-002, Revision 01, dated September 13, 2022; which provide procedures for updating the FCC software, were not available when the NPRM was issued. However, the FAA has now reviewed this service information and determined that it addresses the unsafe condition. The FAA has revised paragraph (g) of this AD to include updating the FCC software in accordance with the service information as an optional method of compliance. The FAA has also revised this AD to add paragraph (i) of this AD to specify that this AD does not require reporting, added paragraph (j) of this AD to provide credit for certain previous versions of the service information, and redesignated subsequent paragraphs accordingly.

Request To Terminate Additional AD

Disney stated that paragraph (h) of the proposed AD, which states that accomplishing the software update terminates all requirements of AD 2022-10-05, Amendment 39-22043 (87 FR 27494, May 9, 2022) (AD 2022-10-05), is not true. The commenter suggested that the software update would terminate the requirements of both AD 2020-02-18, Amendment 39-21026 (85 FR 8153, February 13, 2020) (AD 2020-02-18) and AD 2022-10-05.

The FAA agrees. Accomplishing the software update required by paragraph (g) of this AD on an airplane terminates all requirements of AD 2020-02-18 and AD 2022-10-05, for that airplane only. The FAA has revised the terminating action language in paragraph (h) of this

AD to also refer to AD 2020-02-18. The FAA also revised paragraph (b) of this AD to refer to AD 2020-02-18 as an affected AD. The FAA notes that this AD does not supersede AD 2020-02-18 and AD 2022-10-05 because airplanes that are operated without the FCC software update required by this AD will continue to be subject to the operating restrictions in AD 2020-02-18 and AD 2022-10-05.

Request Change to Applicability

Gulfstream commented that FCC software version 9.5 or equivalent will be installed in production on GVII-G500 aircraft with serial numbers (S/Ns) 72112 and subsequent, and GVII-G600 aircraft with S/Ns 73107 and subsequent. The commenter requested that the FAA revise paragraph (c) to specify that this AD "applies to Gulfstream Aerospace Corporation Model GVII-G500 airplanes, certificated in any category, serial numbers 72001-72111 and GVII-G600 airplanes, certificated in any category, serial numbers 73001-73106."

Gulfstream also commented that airplanes on which the software has already been updated to the version required by the proposed AD should be excluded from the applicability of proposed AD.

The FAA partially agrees. The FAA has revised paragraph (c) of this AD to include terminating serial numbers to exclude production airplanes that have FCC software version 9.5 or equivalent. Regarding the request to exclude airplanes on which the software has already been updated, the FAA notes that this change is unnecessary. Paragraph (f) of this AD mandates compliance with the required actions, unless already done. Therefore, if the actions required by this AD have already been accomplished on an airplane, that airplane is already in compliance with this AD.

Request To Correct Software Revision Level and Part Number

Both Disney and Gulfstream noted a typographical error in the FCC software level identified in figure 1 to paragraph (c) of the proposed AD. They requested the FAA revise the FCC software level for the GVII-G600 Module B identified in figure 1 to paragraph (c) of the proposed AD from "72P2700001Z200-SW6.3," to "72P2700001Z200-SW8.1."

Disney also stated the part number changes referenced in Gulfstream ASC No. 039A and ASC No. 029A, paragraph D, Re-identified Parts, are different from the part numbers referenced in figure 1 to paragraph (c) of the proposed AD.

The FAA agrees to correct the typographical error and has revised figure 1 to paragraph (c) of this AD as requested. Regarding the different part numbers, the FAA notes that the part numbers referenced in figure 1 to paragraph (c) of this AD are the existing part numbers that need to be revised.

Request To Withdraw the NPRM

Disney stated that there is 100 percent U.S. fleet participation in FCC software version 9.5, and they suggested that all of the requirements have been satisfied via FAA AMOCs. The commenter did not believe that this AD action is necessary, and the FAA infers the commenter is requesting that the FAA withdraw the NPRM.

The FAA disagrees. The worldwide fleet does not have 100 percent compliance with the proposed AD; there are still airplanes that have not been updated to FCC software version 9.5. The FAA, as the State of Design civil aviation authority, has an obligation under international bilateral agreements to issue an AD if an unsafe condition exists. Further, under 14 CFR 39.7 and 39.9, there is a continuing obligation by operators to not reintroduce the unsafe condition mandated by an AD. Therefore, the FAA has determined this AD is necessary to address the unsafe condition.

Request To Clarify Action in a Note

Disney stated that note 1 to paragraph (c) of the proposed AD suggests that removing the covers of the FCC module

is necessary to verify the software label. The commenter questioned why the software update cannot be verified by referring to the log entry for the ASC update.

The FAA agrees to clarify. Note 1 to paragraph (c) of this AD is informational in nature and does not require verification of the software update using any particular method. Operators may use other means to determine which software revision they have, provided they can conclusively determine the software revision. The FAA has not changed this AD regarding this issue.

Additional Changes Made to This Final Rule

Since the NPRM published, the FAA evaluated the compliance time and determined that extending the compliance time from “no later than April 30, 2023,” to “within 90 days after the effective date of this AD,” will not adversely affect safety. The FAA has revised the compliance time in paragraph (g) of this AD accordingly.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM.

None of the changes will increase the economic burden on any operator.

Related Service Information Under 14 CFR Part 51

The FAA reviewed Gulfstream GVII–G500 ASC No. 039, Revision A, dated September 13, 2022, including Thales Service Bulletin C13204J–27–002, Revision 01, dated September 13, 2022, and Thales Service Bulletin C13212J–27–002, Revision 01, dated September 13, 2022; and Gulfstream GVII–G600 ASC No. 029, Revision A, dated September 13, 2022, including Thales Service Bulletin C13204K–27–002, Revision 01, dated September 13, 2022, and Thales Service Bulletin C13212K–27–002, Revision 01, dated September 13, 2022. This service information specifies procedures for updating the FCC software (which includes loading new software to the FCC modules, re-identifying each module with a new part number, and conducting return-to-service functional checks post-modification). These documents are distinct since they apply to different airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in ADDRESSES.

Costs of Compliance

The FAA estimates that this AD affects 120 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Software update	6 work-hours × \$85 per hour = \$510	\$0	\$510	\$61,200

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that this AD:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–11–09 Gulfstream Aerospace Corporation: Amendment 39–22455; Docket No. FAA–2022–1055; Project Identifier AD–2022–00573–T.

(a) Effective Date

This airworthiness directive (AD) is effective July 18, 2023.

(b) Affected ADs

This AD affects AD 2020–02–18, Amendment 39–21026 (85 FR 8153, February 13, 2020) (AD 2020–02–18); and AD 2022–

10–05, Amendment 39–22043 (87 FR 27494, May 9, 2022) (AD 2022–10–05).

(c) Applicability

This AD applies to Gulfstream Aerospace Corporation Model GVII–G500 airplanes having serial numbers (S/Ns) 72001 through 72111 inclusive; and GVII–G600 airplanes having S/Ns 73001 through 73106 inclusive; certificated in any category, with flight control computer (FCC) software revisions installed as specified in figure 1 to paragraph (c) of this AD.

FIGURE 1 TO PARAGRAPH (c) OF THIS AD—FCC SOFTWARE REVISION INSTALLED

Model	Nomenclature	Gulfstream Aerospace Corporation part No. (P/N)	Thales P/N
GVII–G500 airplanes	FCC COM–MON Module A	72P2700001Z100–SW6.3	C13204JB01
	FCC COM–MON Module B	72P2700001Z200–SW6.3	C13212JB01
GVII–G600 airplanes	FCC COM–MON Module A	72P2700001Z100–SW8.1	C13204KB01
	FCC COM–MON Module B	72P2700001Z200–SW8.1	C13212KB01

Note 1 to paragraph (c): The FCC software label, which identifies the software revision installed, can be found on the face of the FCC module. The FCC modules are installed within the left and right electronic equipment racks. The labels may be viewed by opening the rack doors and removing 4 screws per FCC (8 screws total per airplane) from the FCC cover.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by reports of two landing incidents where the alpha limiter engaged in the landing flare in unstable air while on the approach and caused high rate of descent landings and damage to the airplane. The FAA is issuing this AD to address inappropriate alpha limiter engagement during the landing flare, which can limit pilot pitch authority during a critical phase of flight near the ground, and result in a high rate of descent landing with possible consequent loss of control of the airplane.

(f) Compliance

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

(g) Software Update

Within 90 days after the effective date of this AD, update the FCC software in accordance with either:

(1) Gulfstream GVII–G500 Aircraft Service Change No. 039, Revision A, dated September 13, 2022, including Thales Service Bulletin C13204J–27–002, Revision 01, dated September 13, 2022, and Thales Service Bulletin C13212J–27–002, Revision 01, dated September 13, 2022; or Gulfstream GVII–G600 Aircraft Service Change No. 029, Revision A, dated September 13, 2022, including Thales Service Bulletin C13204K–27–002, Revision 01, dated September 13, 2022, and Thales Service Bulletin C13212K–

27–002, Revision 01, dated September 13, 2022; as applicable; or

(2) A method approved by the Manager, East Certification Branch, FAA.

(h) Terminating Action for AD 2020–02–18 and AD 2022–10–05

Accomplishing the software update required by paragraph (g) of this AD on an airplane terminates all requirements of AD 2020–02–18 and AD 2022–10–05, for that airplane only.

(i) No Reporting Requirement

Although Gulfstream GVII–G500 Aircraft Service Change No. 039, Revision A, dated September 13, 2022, including Thales Service Bulletin C13204J–27–002, Revision 01, dated September 13, 2022, and Thales Service Bulletin C13212J–27–002, Revision 01, dated September 13, 2022; and Gulfstream GVII–G600 Aircraft Service Change No. 029, Revision A, dated September 13, 2022, including Thales Service Bulletin C13204K–27–002, Revision 01, dated September 13, 2022, and Thales Service Bulletin C13212K–27–002, Revision 01, dated September 13, 2022; specify to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using Gulfstream GVII–G500 Aircraft Service Change No. 039, dated September 12, 2022, including Thales Service Bulletin C13204J–27–002, dated September 9, 2022, and Thales Service Bulletin C13212J–27–002, dated September 9, 2022.

(2) This paragraph provides credit for the actions specified in paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using Gulfstream GVII–G600 Aircraft Service Change No. 029, dated September 12, 2022, including Thales Service Bulletin C13204K–27–002, dated

September 9, 2022, and Thales Service Bulletin C13212K–27–002, dated September 9, 2022.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, East Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l)(1) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(l) Related Information

(1) For more information about this AD, contact Myles Jalalian, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5572; email: 9-ASO-ATLACO-ADS@faa.gov.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (4) of this AD.

(m) Material Incorporated by Reference

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

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

(i) Gulfstream GVII–G500 Aircraft Service Change No. 039, Revision A, dated September 13, 2022, including Thales Service Bulletin C13204J–27–002, Revision 01, dated September 13, 2022, and Thales Service Bulletin C13212J–27–002, Revision 01, dated September 13, 2022.

(ii) Gulfstream GVII–G600 Aircraft Service Change No. 029, Revision A, dated September 13, 2022, including Thales Service Bulletin C13204K–27–002, Revision 01, dated September 13, 2022, and Thales Service Bulletin C13212K–27–002, Revision 01, dated September 13, 2022.

(3) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; email pubs@gulfstream.com; website gulfstream.com/en/customer-support.

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

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

Issued on June 2, 2023.

Michael Linegang,

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

[FR Doc. 2023–12442 Filed 6–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 65, and 147

[Docket No.: FAA–2021–0237; Amdt. No. 43–52A, 65–63A, 147–9A]

RIN 2120–AL67

Aviation Maintenance Technician Schools

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The interim final rule (IFR), “Aviation Maintenance Technician Schools,” published on May 24, 2022, and established new regulations for issuing aviation maintenance technician school (AMTS) certificates and associated ratings and the general operating rules for the holders of those certificates and ratings. The IFR was issued pursuant to the Aircraft Certification, Safety, and Accountability Act. In this final rule, the FAA responds to comments to the IFR without making further modifications to the requirements.

DATES: Effective June 13, 2023.

ADDRESSES: For information on where to obtain copies of rulemaking documents

and other information related to this final rule, see “Additional Information” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Tanya Glines, Aircraft Maintenance Division, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 380–5896; email Tanya.Glines@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Authority for This Rulemaking

The FAA’s authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the FAA’s authority.

This rulemaking is issued under the authority described in Title 49, subtitle VII, part A, subpart I, chapter 401, section 40113 (prescribing general authority of the Administrator of the FAA, with respect to aviation safety duties and powers, to prescribe regulations); and Subpart III, Chapter 447, Sections 44701 (general authority of the Administrator to prescribe regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft, engines, propellers, and appliances, including for other practices, methods, and procedures necessary for safety in air commerce); 44702 (authority of the Administrator to issue air agency certificates); 44703 (authority of the Administrator to issue airman certificates); 44707 (authority of the Administrator to examine and rate air agencies, including civilian schools giving instruction in repairing, altering, and maintaining aircraft, aircraft engines, propellers, and appliances, on the adequacy of instruction, the suitability and airworthiness of equipment, and the competency of instructors); and 44709 (authority of the Administrator to amend, modify, suspend, and revoke air agency and other FAA-issued certificates).

This rule is further issued under Section 135 of the Aircraft Certification, Safety, and Accountability Act in Public Law 116–260, the Consolidated Appropriations Act of 2021. Section 135, titled “Promoting Aviation Regulations for Technical Training,” provides the requirements and terms of this rule.

II. Background

On December 27, 2020, President Donald Trump signed the Consolidated

Appropriations Act (Pub. L. 116–260) into law, which includes the Aircraft Certification, Safety, and Accountability Act (the “Act”). Section 135 of the Act, titled “Promoting Aviation Regulations for Technician Training,” directed the FAA to issue interim final regulations to establish requirements for issuing aviation maintenance technician school (AMTS) certificates and associated ratings and the general operating rules for the holders of those certificates and ratings, in accordance with the requirements set forth within Section 135. In accordance with this direction, the FAA published an IFR titled “Aviation Maintenance Technician Schools” on May 24, 2022 (“the IFR”).¹ In the IFR, the FAA replaced the regulations in part 147, which prescribe the requirements for the certification and operation of FAA-certificated AMTS, with new regulations that conform to the Act.

Pursuant to the Act, the FAA issued the IFR, including requirements addressing:

- When an AMTS certificate is required;
- Application requirements for AMTS certificates and associated ratings, additional ratings, and changes to certificates;
- Operations specifications and their contents;
- The duration of a certificate or rating issued under part 147;
- The ratings that an AMTS may obtain under part 147;
- AMTS facilities, equipment, and material;
- Training provided at another location;
- AMTS training and curricula;
- Instructors;
- Certificates of completion;
- Quality control systems;
- The minimum passage rate each school must maintain;
- FAA inspections;
- The display of part 147 certificates; and
- A student’s ability to take the FAA’s general written test prior to satisfying the experience requirements of § 65.77, provided certain conditions are met.

The FAA also made conforming amendments to parts 43 and 65 to effectuate the legislation. Specifically, the FAA amended Appendix A to part 43 to remove a cross-reference to previous § 147.21 referring to certificates of competency for the affected aircraft. An AMTS that requests an approval, or an AMTS that currently holds an approval originally issued

¹ Interim Final Rule, Aviation Maintenance Technician Schools, 87 FR 31391 (May 24, 2022).

under previous § 147.21(e), of special courses in the performance of special inspection and preventive maintenance programs for a primary category aircraft may issue a certificate of competency as “another entity that has a course approved by the Administrator” in accordance with new paragraph (c)(30)(i)(2) in Appendix A to part 43. Additionally, § 65.80 was amended to remove reference to an AMTS’s “approved” curriculum as it existed prior to the IFR, thereby allowing AMTS students to continue testing under § 65.80. Finally, the FAA’s implementation of § 147.17 and incorporation by reference of the Mechanic ACS into part 147 necessitated conforming revisions to §§ 65.23, 65.75, and 65.79.

Section 135 of the Act stated that part 147 as it existed at the time of the legislation would have no force or effect on or after the effective date of the IFR. Therefore, as of the effective date of the IFR, which was September 21, 2022, all AMTSs that were certificated under prior part 147 were required to comply with part 147 as established by the IFR. Additionally, the FAA terminated all AMTS-related exemptions in existence prior to the effective date of the AMTS IFR since the majority of the grounds for the requested relief were cured by the IFR.

III. Discussion of Comments and the Final Rule

The FAA received six comments in response to the IFR and one comment in response to the regulatory impact analysis (RIA).² Six comments were submitted by individuals. One comment was submitted by the Middle Georgia State University, Aviation Maintenance and Structural Technology Department (“Middle Georgia State University”). Commenters questioned the compliance timeline and how the requirements should or will be implemented by an individual AMTS. In addition, three comments fall outside of the scope of the IFR. Because the FAA was statutorily directed to implement the provisions set forth by the Act, this final rule retains the requirements published in the IFR without any further modification. However, the FAA responds to the comments in the following sections.

² After the IFR published, the FAA became aware that the regulatory evaluation (also referred to as the regulatory impact analysis) for the IFR was not made available at the time the IFR published. On March 15, 2023, the FAA published a notice in the *Federal Register* reopening the comment period on the IFR for 30 days specifically to receive comments on the RIA (88 FR 15905). The comment period closed on April 14, 2023.

a. Effective Date

One individual expressed confusion on the relationship between the effective date of the IFR and the testing effectivity dates in the regulations. Specifically, the commenter asked whether the effective date for written exam requirements is September 2022 or 2023.

The IFR was published on May 24, 2022, and set forth an effective date of September 21, 2022, to implement the new requirements in the rule, except for certain testing standards under part 65 that are effective on August 1, 2023. Specifically, the Mechanic Practical Test Standards (Mechanic PTS)³ is the testing standard until July 31, 2023, pursuant to §§ 65.75(a) and 65.79. This means that up until July 31, 2023, an applicant for a mechanic certificate or rating will be tested on the areas in the Mechanic PTS for the written, oral, and practical tests. After July 31, 2023, pursuant to §§ 65.75(a) and 65.79, the FAA will use the Aviation Mechanic General, Airframe, and Powerplant Airman Certification Standards (Mechanic ACS)⁴ as the standards for conducting mechanic tests. As explained in the preamble to the IFR, the FAA finds that a one-year delay in using the Mechanic ACS as the testing standard allows each AMTS to train its students under the curriculum aligned with the Mechanic ACS, as required by § 147.17(a)(1), and prepare students to take a knowledge, practical, and oral test based on such.

In sum, the effective dates for the IFR are as follows:

- September 21, 2022, general IFR effective date;
- August 1, 2023, the Mechanic ACS becomes the testing standard for the written test, pursuant to § 65.75(a); and
- August 1, 2023, the Mechanic ACS becomes the testing standard for the oral test and practical test, pursuant to § 65.79.

b. Implementation

Middle Georgia State University generally supported the IFR but expressed concern that the rule did not set forth a provision for students to finish under the curriculum they started. The institution described that, within its university system, it generally allows students a period in which to finish under the academic catalog in

which they started, termed a “teach out” period. The institution stated that it currently has four cohorts of students at various points in its part 147 curriculum, and the transition to the new regulations would be less temporally and economically burdensome if there existed a regulatory “teach out” period or an exemption or process to allow such. Two individual commenters questioned whether students already within programs would have to retake certain courses or enroll in additional classes to meet the requirements of the new part 147 curriculum. These commenters recommended that part 147 be amended to impact only new students entering the program, specifically those students entering after August 2022. One of the commenters also inquired whether the FAA 8083 AMT textbooks⁵ would be updated to parallel the implementation timeline of the IFR.

The Act that set forth the new part 147 regulations did not provide for any type of transition period for AMTSs to implement the new regulations, including the use of an ACS-based curriculum. In fact, the Act specifically stated that upon the effective date of the new regulations, part 147 as in effect on the enactment of the Act would have no force or effect.⁶ Because the Act did not provide for a transition period, retroactive training requirements, or exclusion provisions to account for a curriculum change, the FAA was unable to provide for a curriculum transition period between the old and new requirements. Therefore, AMTSs were required to use and maintain a curriculum aligning with the Mechanic ACS beginning September 21, 2022. Training previously conducted under the FAA-approved curriculum may have aligned with the Mechanic ACS and would be considered valid training that does not have to be retrained by the AMTS or retaken by the student.

In other words, the prior FAA-approved curriculums were based on current part 147 appendices A, B, C, and D (Curriculum Requirements, General Curriculum Subjects, Airframe Curriculum Subjects, Powerplant Curriculum Subjects, respectively). The curriculum elements in those appendices were broad, and it is likely that many elements defined in the ACS were substantively taught by an AMTS via its FAA-approved curriculum, even if they may not be explicitly defined (e.g., a curriculum lesson plan may have

³ FAA-S-8081-26B, Aviation Mechanic General, Airframe, and Powerplant Practical Test Standards dated November 1, 2021; incorporated by reference in § 65.23.

⁴ FAA-S-ACS-1, Aviation Mechanic General, Airframe, and Powerplant Airman Certification Standards dated November 1, 2021; incorporated by reference in § 65.23.

⁵ The commenter uses the term “textbook”; however, the FAA-H-8083s are properly categorized as handbooks.

⁶ See Section 135(a)(2).

more detailed content information). The specific AMTS is best situated to know what course content is taught for each subject, whether it does or does not align with the mechanic ACS, and if additional training is required.

In sum, the FAA does not have the statutory authority to revise the IFR to provide for a transition period in this final rule. As discussed in the IFR,⁷ the exemption process set forth in part 11 of Title 14 of the Code of Federal Regulations (CFR) remains an option for an AMTS who seeks relief from the requirements of a current regulation.

The FAA continually works to ensure FAA published handbooks represent accurate and current information and is currently working on updates to the five maintenance technician handbooks⁸ to align with the Mechanic ACS. However, the FAA notes that handbooks are not the primary source for testing standards. Rather, the handbooks are intended to be a supplemental resource to prepare for FAA certification tests and improve knowledge.

c. Out of Scope Comments

The FAA received three comments to the IFR that are outside the scope created by the Act.

One commenter suggested three amendments to the IFR. First, the commenter recommended that AMTS be required to issue a certificate of completion within a reasonable time after a student completes a program in order to meet the 60-day window to take the written test. Second, the commenter stated that the subject areas incorporated by reference into part 147 (*i.e.*, the subject areas in the Mechanic ACS that an AMTS must align their curriculum with) can be mastered in half of the required hours and, therefore, the Airframe and Powerplant hour requirement should be reduced by 20 percent. Finally, the commenter recommended that part 147 should encourage remote learning methods.

These recommendations lie outside the scope of this rulemaking, as the FAA was required to set forth requirements that conformed only to the Act,

resulting in the IFR. The FAA notes that the IFR is not prescriptive in any of the areas addressed by the commenter and, therefore, each AMTS has the flexibility to define its policy and procedures regarding areas such as timeframes for certificate issuance, curriculum hour requirements, and the use of remote learning methods.

Another commenter questioned the usage of the term “satisfactory to the Administrator,” stating that use of the phrase implies the regulation is governed by a person instead of the law. The commenter refers specifically to the phrase set forth in § 65.77(b), stating that documentary evidence, satisfactory to the Administrator, is required to demonstrate an applicant has met the applicable experience requirements.

Title 49 of the United States Code grants the Administrator of the FAA the authority to conduct investigation to ensure an individual is qualified for the duties related to the position authorized by an FAA airman certificate and prescribe regulations and minimum standards in the interest of safety.⁹ This authority is extrapolated to require documentary evidence that a person is sufficiently qualified before being issued an FAA certificate, as is the case in § 65.77. Section 65.77, as referenced by the commenter, actually functions to provide flexibility to an applicant by declining to restrict documentary evidence to a degree of specificity. For example, On-the-Job (OJT) training records, a letter from an employer or A&P mechanic, or a statement from a Civil Aviation Authority attesting to experience are regularly accepted by the FAA as evidence of practical experience, among other documentary evidence.¹⁰ The FAA recognizes that there are various ways in which an individual’s experience could be documented, and, therefore, it is unrealistic to require a prescriptive method of documentation within the regulation.

Finally, the FAA received one comment during the re-opening of the comment period that sought comments on the RIA, specifically. The comment detailed challenges that non-part 147 certificated technician schools may face and is considered outside the scope of this rulemaking.

IV. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other

requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 (“Modernizing Regulatory Review”), direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is \$177,000,000, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. The FAA has provided a detailed Regulatory Impact Analysis (RIA) in the docket for this rulemaking that was published with the IFR. This portion of the preamble summarizes the FAA’s analysis of the economic impacts of this rule.

In conducting these analyses, the FAA has determined that this rule: will result in benefits that justify costs; is not significant as defined in section 3(f)(1) of Executive Order 12866; will not have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Regulatory Impact Analysis

This final rule makes no changes to the Regulatory Impact Analysis (RIA) that was prepared for the IFR. The RIA may be found in the docket.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever an agency is required by 5 U.S.C. 553, or any other law, to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory

⁷ See 87 FR 31394, which explains that the contemplation of regulatory exemptions in the Act demonstrates that Congress intended that the FAA retain the authority to issue exemptions from part 147, as warranted under the Administrator’s statutory authority and 14 CFR part 11.

⁸ (1) FAA–H–8083–30, Aviation Maintenance Technician Handbook—General; (2) FAA–H–8083–31, Aviation Maintenance Technician Handbook—Airframe Volume 1; (3) FAA–H–8083–31, Aviation Maintenance Technician Handbook—Airframe Volume 2; (4) FAA–H–8083–32, Aviation Maintenance Technician Handbook—Powerplant Volume 1; (5) FAA–H–8083–32, Aviation Maintenance Technician Handbook—Powerplant Volume 2.

⁹ 49 U.S.C. 44703. See also Section I of this preamble.

¹⁰ FAA Order 8900.1, Volume 5, Chapter 5, Section 2.

flexibility analysis when an agency issues a final rule under 5 U.S.C. 553, after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA notes that this final rule has no additional requirements from the IFR that would add a cost or a cost savings to small entities. In the IFR, the FAA found good cause for not publishing a notice of proposed rulemaking. As prior notice and comment under 5 U.S.C. 553 are not required to be provided in this situation, the analyses in 5 U.S.C. 603 and 604 are also not required.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that it has legitimate domestic safety objectives and does not operate in a manner that excludes imports to meet such objectives. Therefore, this final rule complies with the Trade Agreements Act.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. The FAA determined that this final rule will not result in the expenditure of \$177,000,000 or more by State, local, or tribal governments, in the aggregate, or the private sector, in any one year.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA) requires that the FAA consider the impact of

paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

The FAA has determined that there are new information collections associated with this final rule. The new information collections were described in detail in the IFR.¹¹ Approval to collect such information has been granted by the Office of Management and Budget (OMB) under the provisions of the PRA and the assigned OMB Control Number 2120–0040.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARP) to the maximum extent practicable. The FAA has reviewed the corresponding ICAO SARPs and has determined that there are no ICAO SARPs that correspond to this final rule.

However, the FAA identified a filing is required for an ICAO Annex 1 SARP found in Chapter 4 pertaining to certification of maintenance technicians that is unrelated to this rulemaking. Therefore, the FAA has modified an existing difference to reflect that mechanic applicants are not required to have two years of experience in the inspection, servicing, and maintenance of aircraft following the completion of an approved training course to qualify to take the written examination for a mechanic airframe or powerplant license.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6 and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

B. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,¹² and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,¹³ the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to 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; or to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on tribes resulting from this final rule.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the Executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent

¹² 65 FR 67249 (Nov. 6, 2000).

¹³ FAA Order No. 1210.20 (Jan. 28, 2004), available at www.faa.gov/documentLibrary/media/1210.pdf.

¹¹ See 87 FR 31391 at 31412.

unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

VI. Additional Information

A. Electronic Access and Filing

A copy of the NPRM, all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the docket number listed above. A copy of this final rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at www.federalregister.gov and the Government Publishing Office's website at www.govinfo.gov. A copy may also be found at the FAA's Regulations and Policies website at www.faa.gov/regulations_policies.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this final rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit www.faa.gov/regulations_policies/rulemaking/sbre_act/.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703, and Sec. 135 of the Aircraft Certification, Safety, and Accountability Act within Public Law 116-

260, in Washington, DC, on or about June 7, 2023.

Billy Nolen,

Acting Administrator.

The Amendment

■ Accordingly, the interim rule amending 14 CFR parts 43, 65, and 147, which was published at 87 FR 31391 on May 24, 2022, is adopted as final without change.

[FR Doc. 2023-12382 Filed 6-12-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. **FAA-2023-0588**; **Airspace Docket No. 23-ASO-10**]

RIN 2120-AA66

Amendment of Class D and Class E Airspace; Lakeland, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface for Lakeland Linder International Airport, Lakeland, FL. This action updates this airport's name and geographic coordinates, as well as the names of Bartow Executive Airport, Plant City Airport, and Winter Haven Regional Airport. In addition, this action removes the Lakeland VORTAC from the Class E airspace designated as an extension to a Class D surface area description.

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

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

FAA Order JO 7400.11G Airspace Designations and Reporting Points and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of

Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305-6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it amends Class D and E airspace in Lakeland, FL. An airspace evaluation determined that this update is necessary to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023-0588 in the **Federal Register** (88 FR 21132; April 10, 2023), proposing to amend Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface for Lakeland Linder International Airport (formerly Lakeland Linder Regional Airport), Lakeland, FL. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class D and E airspace designations are published in Paragraphs 5000, 6004, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1 annually. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next FAA Order JO 7400.11 update.

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

The Rule

This action amends 14 CFR part 71 by amending Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface for Lakeland Linder International Airport (formerly Lakeland Linder Regional Airport), Lakeland, FL, as an airspace evaluation determined an update for this airport necessary. This action increases the Class D radius of the airport to 4.6-miles (previously 4.2-miles). This action also updates this airport's name and geographic coordinates, as well as the names of Bartow Executive Airport (formerly Bartow Municipal Airport), Plant City Airport (formerly Plant City Municipal Airport), and Winter Haven Regional Airport (formerly Winter Haven's Gilbert Airport). In addition, this action removes the Lakeland VORTAC from the Class E airspace designated as an extension to a Class D surface area description, as it is not needed to describe the airspace. Finally, this action replaces Notice to Airmen with Notice to Air Missions and Airport/Facility Directory with Chart Supplement in the appropriate airspace descriptions. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental

Impacts: Policies and Procedures," paragraph 5–6.5a.

This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances warrant the preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Lakeland, FL [Amended]

Lakeland Linder International Airport, FL
(Lat. 27°59'16" N, long. 82°01'08" W)
South Lakeland Airport
(Lat. 27°56'00" N, long. 82°02'38" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.6-mile radius of the Lakeland Linder International Airport, excluding that airspace within a 1.5-mile radius of South Lakeland Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6004 Class E Airspace Is Designated as an Extension to Class D or E Surface Area.

* * * * *

ASO FL E4 Lakeland, FL [Amended]

Lakeland Linder International Airport, FL
(Lat. 27°59'16" N, long. 82°01'08" W)

That airspace extending upward from the surface within 1.5 miles on each side of the 090° bearing from Lakeland Linder International Airport extending from the 4.6-mile radius to 7 miles east of the airport. This Class E airspace area is effective during the

specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Lakeland, FL [Amended]

Lakeland Linder International Airport, FL
(Lat. 27°59'16" N, long. 82°01'08" W)
Bartow Executive Airport
(Lat. 27°56'36" N, long. 81°47'00" W)
Plant City Airport
(Lat. 28°00'01" N, long. 82°09'48" W)
Winter Haven Regional Airport
(Lat. 28°03'47" N, long. 81°45'12" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Lakeland Linder International Airport, and within a 6.7-mile radius of Bartow Executive Airport, a 6.6-mile radius of Plant City Airport, and within 3.5 miles on each side of the 266° bearing from the Plant City Airport extending from the 6.6-mile radius to 7.5 miles west of the airport, and within a 6.5-mile radius of Winter Haven Regional Airport.

* * * * *

Issued in College Park, Georgia, on May 26, 2023

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–12610 Filed 6–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0642; Airspace Docket No. 23–ASW–8]

RIN 2120–AA66

Amendment of Class E Airspace; Van Horn, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Van Horn, TX. This action is the result of an airspace review caused by the decommissioning of the Van Horn non-directional beacon (NDB). The name and geographic coordinates of Culberson County Airport, Van Horn, TX, will also be updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, October 5, 2023. The Director of the Federal

Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Culberson County Airport, Van Horn, TX, to support instrument flight rule operations at this airport.

History

The FAA published an NPRM for Docket No. FAA-2023-0642 in the **Federal Register** (88 FR 21129; April 10, 2023) amending the Class E airspace at Van Horn, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace extending upward from 700 feet above the surface to within a 6.6-mile (decreased from a 6.7-mile) radius of Culberson County Airport, Van Horn, TX; removes the city associated with the airport in the airspace legal description to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; and updating geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Van Horn NDB which provided navigation information for the instrument procedures at this airport.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental

Impacts: Policies and Procedures," paragraph 5-6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW TX E5 Van Horn, TX [Amended]

Culberson County Airport, TX

(Lat. 31°03'28" N, long. 104°47'02" W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Culberson County Airport.

* * * * *

Issued in Fort Worth, Texas, on June 7, 2023.

Martin A. Skinner,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2023-12582 Filed 6-12-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Parts 100 and 165****[Docket Number USCG–2023–0001]****RIN 1625–AA08 and 1625–AA00****Special Local Regulations and Safety Zones; Recurring Marine Events, Fireworks Displays, and Swim Events Held in the Coast Guard Sector Long Island Sound Zone****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

SUMMARY: The Coast Guard is amending the special local regulations and annual recurring marine events requiring safety zones for fireworks displays and swim events along the Coast Guard Sector Long Island Sound Captain of the Port Zone. When enforced, these special local regulations and safety zones restrict vessels from transiting regulated areas during certain annually recurring events. These amendments to the special local regulations and safety zones are intended to expedite public notification and ensure the protection of the maritime public and event participants from the hazards associated with certain marine events. This revision to both tables will consist of adding six events and removing 53.

DATES: This rule is effective July 13, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0001 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email If you have questions about this rulemaking, call or email MST1 Mark Paget, Waterways Management Division, Sector Long Island Sound; telephone: (203) 468–4583; email: Mark.A.Paget@uscg.mil.

SUPPLEMENTARY INFORMATION:**I. Table of Abbreviations**

CFR Code of Federal Regulations
COTP Captain of the Port Long Island Sound
DHS Department of Homeland Security
FR Federal Register
NOAA National Oceanic and Atmospheric Administration
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On March 23, 2023 the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** titled “Special Local Regulations and Safety Zones; Recurring Marine Events, Fireworks Displays, and Swim Events held in the Coast Guard Sector Long Island Sound Zone” (88 FR 17474), proposing to update special local regulations and safety zones. There we stated why we issued the NPRM and invited comments on our proposed regulatory action. The comment period ended April 23, 2023. We received no comments. Swim events, fireworks displays, and marine events are held on an annual recurring basis on the navigable waters within the Coast Guard Sector Long Island Sound COTP Zone. The Coast Guard has established special local regulations and safety zones for some of these annually recurring events to ensure the protection of the maritime public and event participants from potential hazards. There are no changes to the rule from what was proposed.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters before, during, and after a scheduled event. The Coast Guard is issuing this rulemaking under authority in 46 U.S.C. 70034 and 70041.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Long Island Sound (COTP) has determined that amending the 33 CFR 100.100 Table and the 33 CFR 165.151 Table is necessary to accurately reflect the recurring safety zones and Special Local Regulations to restrict vessel transit into and through specified areas. This will protect spectators, mariners, and other persons and property from potential hazards during events.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published March 23, 2023. The Coast Guard will amend regulations in 33 CFR 100.100 Special Local Regulations; Regattas and Boat Races in the Coast Guard Sector Long Island Sound Captain of the Port Zone, by revising § 100.100(a) to note that that exact dates and times of the enforcement period of marine events listed in Table 1 to § 100.100 will be made by means such as Local Notice to Mariners and Broadcast Notice to Mariners in advance of the events. Our revision of § 100.100(a) and Table 1 to

§ 100.100 appear at the end of this document and will consist of adding five events and removing three. The events removed no longer occur.

Section 165.151, table 1, establishes recurring safety zones to restrict vessel transit into and through specified areas to protect spectators, mariners, and other persons and property from potential hazards during events taking place in Sector Long Island Sound’s COTP zone. This section will sometimes require amendments to properly reflect the recurring safety zones in Table 1. This rule reduces the number of events listed in table 1 to § 165.151 from 74 to 28. Most of those removed are events that no longer occur or do not require a safety zone.

The Coast Guard amends 33 CFR 165.151 Safety Zones; Fireworks Displays, Air Shows, and Swim Events in the Captain of the Port Long Island Sound Zone, by revising § 165.151(a)(2) to note we will use Local Notice to Mariners and Broadcast Notice to Mariners to announce the exact dates and times of the enforcement period of marine events listed in table 1 to § 165.151. These notifications will be made in advance of the events. Our revision of § 165.151(a)(2) and table 1 to § 165.151 appear in the regulatory text at the end of this document. There is one event added and 46 events have been removed based on no longer occurring or do not require a safety zone. The purpose of this rule is the same as for the existing regulation, to restrict general navigation in the safety zones during these events. Vessels intending to transit the designated waterway through the safety zones will only be allowed to transit the area when the COTP or a designated representative has deemed it safe to do so or at the completion of the events. The annually recurring safety zones are necessary to provide for the safety of life on navigable waters of the U.S. during the events.

V. Regulatory Analyses

We developed this final rule after considering numerous statutes and Executive Orders related to rulemaking. A summary of our analyses based on these statutes and Executive Orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under

Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the special local regulations and safety zones. These regulated areas are limited in size and duration and are usually positioned away from high vessel traffic areas. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zones and the rule would allow vessels to seek permission to enter the zones. Vessel traffic would also be able to request permission from the COTP or a designated representative to enter the restricted area.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit these regulated areas may be small entities, for the reasons stated in section IV.A above this final rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this final rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this final rule. If the final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this final rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have Tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. If you believe this final rule has implications for federalism or Indian Tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this final rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This final rule

involves revising the tables to 33 CFR 100.100 and 33 CFR 165.151. Normally such actions are categorically excluded from further review under paragraph L60a, L60b, and L61 of appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR parts 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

- 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

- 2. Amend § 100.100 by revising paragraph (a) and table 1 to § 100.100 to read as follows:

§ 100.100 Special Local Regulations; Regattas and Boat Races in the Coast Guard Sector Long Island Sound Captain of the Port Zone.

(a) The following regulations apply to the marine events listed in the Table 1 to § 100.100. These regulations will be enforced for the duration of each event, on or about the dates indicated in table 1 to § 100.100. Notification of the exact dates and times of the enforcement period would be made to the local maritime community through all appropriate means, such as Local Notice to Mariners and Broadcast Notice to Mariners, in advance of the marine events. The First Coast Guard District

Local Notice to Mariners can be found
at: <http://www.navcen.uscg.gov>.

* * * * *

TABLE 1 TO § 100.100

5	May
5.1 Harvard-Yale Regatta	• Date: A single day in May or June. • Time: 8 a.m. to 6 p.m. • Location: All waters of the Thames River at New London, Connecticut between the Penn Central Draw Bridge at position 41°21'46.94" N, 072°05'14.46" W to Bartlett Cove at position 41°25'35.9" N, 072°05'42.89" W (NAD 83). All positions are approximate.
5.2 Bethpage Air Show at Jones Beach	• Date: The Thursday through Sunday before Memorial Day each May. • Time: (1) "No Entry Area" will be enforced each day from the start of the air show until 30 minutes after it concludes. Exact time will be determined annually. (2) The "Slow/No Wake Area" and the "No Southbound Traffic Area" will be enforced each day for six hours after the air show concludes. Exact time will be determined annually. • Locations: (1) "No Entry Area": All waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY within a 1,000-foot radius of the launch platform in approximate position 40°53'42.50" N, 073°30'04.30" W (NAD 83). (2) "Slow/No Wake Area": All navigable waters between Meadowbrook State Parkway and Wantagh State Parkway and contained within the following area. Beginning in position 40°35'49.01" N, 73°32'33.63" W; then north along the Meadowbrook State Parkway to its intersection with Merrick Road in position 40°39'14" N, 73°34'0.76" W; then east along Merrick Road to its intersection with Wantagh State Parkway in position 40°39'51.32" N, 73°30'43.36" W; then south along the Wantagh State Parkway to its intersection with Ocean Parkway in position 40°35'47.30" N, 073°30'29.17" W; then west along Ocean Parkway to its intersection with Meadowbrook State Parkway at the point of origin (NAD 83). All positions are approximate. (3) "No Southbound Traffic Area": All navigable waters of Zach's Bay south of the line connecting a point near the western entrance to Zach's Bay at position 40°36'29.20" N, 073°29'22.88" W and a point near the eastern entrance of Zach's Bay at position 40°36'16.53" N, 073°28'57.26" W (NAD 83). All positions are approximate.
6	June
6.1 Swim Across America Greenwich	• Date: A single day in June. • Time: 5:30 a.m. to 12 p.m. • Location: All navigable waters of Stamford Harbor within an area starting at a point in position 41°01'32.03" N, 073°33'8.93" W, then southeast to a point in position 41°01'15.01" N, 073°32'55.58" W; then southwest to a point in position 41°0'49.25" N, 073°33'20.36" W; then northwest to a point in position 41°0'58" N, 073°33'27" W; then northeast to a point in position 41°1'15.8" N, 073°33'9.85" W, then heading north and ending at point of origin (NAD 83). All positions are approximate.
7	July
7.1 Connecticut River Raft Race, Middletown, CT	• Date: A single day between the last Saturday in July through first Saturday of August. • Time: 10 a.m. to 2 p.m. • Location: All waters of the Connecticut River near Middletown, CT, between Gildersleeve Island (Marker no. 99) at position 41°36'02.13" N, 072°37'22.71" W; and Portland Riverside Marina (Marker no. 88) at position 41°33'38.3" N, 072°37'36.53" W (NAD 83). All positions are approximate. • Additional Stipulations: Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas unless authorized by COTP or designated representative.
7.2 Dolan Family July 4th Fireworks	• Date: A single day in July. • Time: To be determined annually. • Locations: (1) "No Entry Area": All waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY, within a 1,000-foot radius of the launch platform in approximate position 40°53'42.50" N, 073°30'04.30" W (NAD 83).

TABLE 1 TO § 100.100—Continued

	(2) “Slow/No Wake Area”: All waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY, contained within the following area; beginning at a point on land in position at 40°53′12.43″ N, 073°31′13.05″ W near Moses Point; then east across Oyster Bay Harbor to a point on land in position at 40°53′15.12″ N, 073°30′38.45″ W; then north along the shoreline to a point on land in position at 40°53′34.43″ N, 073°30′33.42″ W near Cove Point; then east along the shoreline to a point on land in position at 40°53′41.67″ N, 073°29′40.74″ W near Cooper Bluff; then south along the shoreline to a point on land in position 40°53′05.09″ N, 073°29′23.32″ W near Eel Creek; then east across Cold Spring Harbor to a point on land in position 40°53′06.69″ N, 073°28′19.9″ W; then north along the shoreline to a point on land in position 40°55′24.09″ N, 073°29′49.09″ W near Whitewood Point; then west across Oyster Bay to a point on land in position 40°55′5.29″ N, 073°31′19.47″ W near Rocky Point; then south along the shoreline to a point on land in position 40°54′04.11″ N, 073°30′29.18″ W near Plum Point; then northwest along the shoreline to a point on land in position 40°54′09.06″ N, 073°30′45.71″ W; then southwest along the shoreline to a point on land in position 40°54′03.2″ N, 073°31′01.29″ W; and then south along the shoreline back to point of origin (NAD 83). All positions are approximate. • Date: A single day in July. • Time: To be determined annually. • Locations:
7.3 Jones Beach State Park Fireworks	(1) “No Entry Area”: All waters off of Jones Beach State Park, Wantagh, NY, within a 1,000-foot radius of the launch platform in approximate position 40°34′56.68″ N, 073°30′31.19″ W (NAD 83). (2) “Slow/No Wake Area”: All navigable waters between Meadowbrook State Parkway and Wantagh State Parkway and contained within the following area. Beginning in position at 40°35′49.01″ N, 073°32′33.63″ W; then north along the Meadowbrook State Parkway to its intersection with Merrick Road in position at 40°39′14″ N, 073°34′0.76″ W; then east along Merrick Road to its intersection with Wantagh State Parkway in position at 40°39′51.32″ N, 073°30′43.36″ W; then south along the Wantagh State Parkway to its intersection with Ocean Parkway in position at 40°35′47.30″ N, 073°30′29.17″ W; then west along Ocean Parkway to its intersection with Meadowbrook State Parkway at the point of origin (NAD 83). All positions are approximate. (3) “No Southbound Traffic Area”: All navigable waters of Zach’s Bay south of the line connecting a point near the western entrance to Zach’s Bay in position at 40°36′29.20″ N, 073°29′22.88″ W and a point near the eastern entrance of Zach’s Bay in position at 40°36′16.53″ N, 073°28′57.26″ W (NAD 83). All positions are approximate. • Date: A single day in July. • Time: 5 a.m. to noon. • Location: Waters of the Great South Bay, NY, within 100 yards of the race course. Starting Point at the Fire Island Lighthouse Dock in position at 40°38′01″ N, 073°13′07″ W; then north-by-northwest to a point in position at 40°38′52″ N, 073°13′09″ W; then north-by-northwest to a point in position at 40°39′40″ N, 073°13′30″ W; then north-by-northwest to a point in position at 40°40′30″ N, 073°14′00″ W; and then north-by-northwest, finishing at Gilbert Park, Brightwaters, NY at position 40°42′25″ N, 073°14′52″ W (NAD 83). All positions are approximate.
7.4 Maggie Fischer Cross Bay Swim	• Date: A single day in July. • Time: 8 a.m. to 9:30 a.m. • Location: All waters of the Mystic River in Mystic, CT from Mystic Seaport, down the Mystic River, under the Bascule Drawbridge at 41°21′17.046″ N, 071° 58′8.742″ W, to finish at the boat launch ramp at the north end of Seaport Marine.
7.5 Mystic Sharkfest Swim	• Date: A single day in July. • Time: 11 a.m. to 6 p.m. • Location: Waters of The Gulf, Milford, CT. (1) “Non-Motorized Craft Loitering Area”. Beginning directly in front of the concert barge in position approximately at 41°11′47.2″ N, 073°3′30.6″ W; will cover a 25-yard width by 33-yard length rectangle.
7.6 Bands on the Barge (Charles Island Music Festival)	

TABLE 1 TO § 100.100—Continued

	(2) “The No Anchoring or Loitering Area”. A 25-yard width section surrounding the sides of the non-motorized craft loitering area and the sides and back of the concert barge located in a position approximately at 41°11’47.2” N, 073°3’30.6” W; then a 25 yard width extending from the south side of the concert barge in a direction north-east for approximately 750 yards. (3) “Slow-No Wake Area”. Beginning at the point northeast of Charles Island at position 41°11’33.4” N, 073°03’12.7” W; then northwest, parallel to The Bar towards Silver Sands State Beach to a point at position 41°11’56.3” N, 073°03’54.1” W; then northeast along the coast to Milford Harbor Buoy “10” at position 41°12’36.9” N, 073°02’54.4” W; then south along the coast of Gulf Beach to Welches Point at position 41°12’06.8” N, 073°02’16.6” W; then west-southwest to point of origin on Charles Island at position 41°11’33.4” N, 073°03’12.7” W. (4) “Prohibited Area”. A 10-yard radius surrounding Charles Island. <i>Regulations.</i> All persons and vessels are prohibited from anchoring, mooring, or loitering inside the “No Anchoring and Loitering Area” described in paragraph (2) of this section and the prohibited area described in paragraph (4) of this section and are subject to a “Slow-No Wake” speed limit. Vessels within the regulated area described in paragraph (3) of this section may not produce more than a minimum wake and may not attain speeds greater than five knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. In no case may the wake produced by a vessel within the “Slow-No Wake” area be such that it creates a danger of injury to persons or damage to vessels or structures unless specified by the COTP or their designated representative.
7.7 Jamesport Triathlon	• Date: A single day in July. • Time: 5:30 a.m. to 10 a.m. • Location: Waters of the Great Peconic Bay, NY, 1,000 feet east of South Jamesport Beach and South Jamesport Park.
8	August
8.1 Riverfront Dragon Boat and Asian Festival	• Dates: A 2-day event in August. • Time: 8 a.m. to 4:30 p.m. each day. • Location: All waters of the Connecticut River in Hartford, CT, between the Bulkeley Bridge at 41°46’10.10” N, 072°39’56.13” W and the Wilbur Cross Bridge at 41°45’11.67” N, 072°39’13.64” W (NAD 83). All positions are approximate.
8.2 Swim Across the Sound	• Date: A single day in July or August. • Time: To be determined annually. • Location: Waters of Long Island Sound from Port Jefferson, NY, in approximate position 40°58’11.71” N, 073°05’51.12” W; then northwest to Captain’s Cove Seaport, Bridgeport, CT, in approximate position 41°09’25.07” N, 073°12’47.82” W (NAD 83).
8.3 Island Beach Two Mile Swim	• Date: A single day in August. • Time: To be determined annually. • Location: All waters of Captain Harbor between Little Captain’s Island and Bower’s Island that are located within the box formed by connecting four points in the following positions. Beginning at 40°59’23.35” N, 073°36’42.05” W; then northwest to 40°59’51.04” N, 073°37’57.32” W; then southwest to 40°59’45.17” N, 073°38’01.18” W; then southeast to 40°59’17.38” N, 073°36’45.9” W; then northeast to the point of origin (NAD 83). All positions are approximate.
8.4 Smith Point Triathlon	• Date: A single day in August. • Time: 6 a.m. to 9 a.m. • Location: All waters of Narrow Bay near Smith Point Park in Mastic Beach, NY, within the area bounded by land along its southern edge and points in position at 40°44’14.28” N, 072°51’40.68” W; then north to a point at position 40°44’20.83” N, 072°51’40.68” W; then east to a point at position 40°44’20.83” N, 072°51’19.73” W; then south to a point at position 40°44’14.85” N, 072°51’19.73” W; and then southwest along the shoreline back to the point of origin (NAD 83). All positions are approximate.
8.5 Moriches Bay Swim	• Date: A single day in August. • Time: To be determined annually. • Location: Waters of Moriches Bay in Westhampton, NY; 100-yard width beginning from Speonk Point, NY to Gunning Point, NY.
9	September
9.1 Head of the Tomahawk	• Date: A single day in September. • Time: To be determined annually.

TABLE 1 TO § 100.100—Continued

9.2 Huntington Lighthouse Music Festival	• Location: All navigable waters of the Connecticut River off South Glastonbury, CT. Beginning at position 41°41'18.88" N; 072°37'16.26" W; then downriver along the west bank to a point at position 41°38'49.12" N, 072°37'32.73" W; then across the Connecticut River to a point at position 41°38'49.5" N, 072°37'19.55" W; then upriver along the east bank to a point at position 41°41'25.82" N, 072°37'9.08" W; then across the Connecticut River to the point of origin (NAD 83). • Date: Saturday or Sunday during the first week of September. • Time: 10 a.m. to 8 p.m. • Location: Waters of Huntington Bay, Long Island, NY. (1) "The Lloyd Harbor Mooring Area". Beginning at the Huntington Lighthouse, NY in position at 40°54'38" N, 073°25'52" W; then southwest to a point in position at 40°54'28.47" N, 073°26'17.59" W; then west along the coast of West Neck to a point in position at 40°54'46.32" N, 073°26'56.25" W; then north to a point in position at 40°54'56.24" N, 073°26'56.24" W; then east along Lloyd Neck to a point in position at 40°54'49.78" N, 073°26'8.51" W; then north-northeast along the coast of Lloyd Neck to a point in position at 40°55'5.58" N, 073°25'50.22" W; and then to point of origin at Huntington Lighthouse, NY in position at 40°54'38" N, 073°25'52" W. (2) "The East of Channel Mooring Area". Beginning at the point in position at 40°54'23.21" N, 073°25'35.55" W; then west along the coast of Wincoma, NY to a point in position at 40°54'23" N, 073°25'55.7" W; then northeast to a point in position at 40°54'37.7" N, 073°25'42.4" W; then southeast to a point in position at 40°54'34.4" N, 073°25'29.4" W; and then to point of origin in position at 40°54'23.21" N, 073°25'35.55" W. (3) "Slow-No Wake Area". All waters of Lloyd Harbor and waters of Huntington Bay south of a line from Target Rock National Wildlife Refuge at a point in position at 40°55'38.77" N, 073°25'45.96" and the south tip of Eaton's Neck at a point in position 40°54'51.44" N, 073°24'17.76" W. All coordinates are approximate and are based on datum NAD 1983.
9.3 Dolan Family Labor Day Fireworks	<i>Regulations.</i> All persons and vessels are prohibited from anchoring, mooring, or loitering outside the designated mooring areas and are subject to a "Slow-No Wake" speed limit. Vessels within the regulated area described in paragraph (3) of this section may not produce more than a minimum wake and may not attain speeds greater than five knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. In no case may the wake produced by a vessel within the "Slow-No Wake" area be such that it creates a danger of injury to persons or damage to vessels or structures unless specified by the COTP or their designated representative. • Date: A single day in September. • Time: To be determined annually. • Locations: (1) "No Entry Area": All waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY, within a 1,000-foot radius of the launch platform in approximate position 40°53'42.50" N, 073°30'04.30" W (NAD 83). (2) "Slow/No Wake Area": All waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY, contained within the following area; beginning at a point on land in position at 40°53'12.43" N, 073°31'13.05" W near Moses Point; then east across Oyster Bay Harbor to a point on land in position at 40°53'15.12" N, 073°30'38.45" W; then north along the shoreline to a point on land in position at 40°53'34.43" N, 073°30'33.42" W near Cove Point; then east along the shoreline to a point on land in position at 40°53'41.67" N, 073°29'40.74" W near Cooper Bluff; then south along the shoreline to a point on land in position 40°53'05.09" N, 073°29'23.32" W near Eel Creek; then east across Cold Spring Harbor to a point on land in position 40°53'06.69" N, 073°28'19.9" W; then north along the shoreline to a point on land in position 40°55'24.09" N, 073°29'49.09" W near Whitewood Point; then west across Oyster Bay to a point on land in position 40°55'5.29" N, 073°31'19.47" W near Rocky Point; then south along the shoreline to a point on land in position 40°54'04.11" N, 073°30'29.18" W near Plum Point; then northwest along the shoreline to a point on land in position 40°54'09.06" N, 073°30'45.71" W; then southwest along the shoreline to a point on land in position 40°54'03.2" N, 073°31'01.29" W; and then south along the shoreline back to point of origin (NAD 83). All positions are approximate.

TABLE 1 TO § 100.100—Continued

10.1 Head of the Riverfront Rowing Regatta	Date: A single day in October. Time: 5:30 a.m. to 5:30 p.m. Location: All waters of the Connecticut River, Hartford, CT between at point North of Wethersfield Cove at 41°43'52.17" N, 072°38'40.38" W and the Riverside Boat House 41°46'30.98" N, 072°39'54.35" W (NAD 83).

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 4. Amend § 165.151 by revising paragraph (a)(2) and table 1 to § 165.151 to read as follows:

§ 165.151 Safety Zones; Fireworks Displays, Air Shows and Swim Events in the Captain of the Port Long Island Sound Zone.

(a) * * *

(2) These regulations will be enforced for the duration of each event, on or about the dates indicated. In advance of

the event, notifications will be made to the local maritime community through all appropriate means such as Local Notice to Mariners and Broadcast Notice to Mariners as to the exact dates and times of the enforcement period for an event. The First Coast Guard District Local Notice to Mariners can be found at: <http://www.navcen.uscg.gov>.

* * * * *

TABLE 1 TO § 165.151

4	April
4.1 Bridgeport Bluefish April Fireworks	• Date: A single day in April. • Time: To be determined annually.
6	June
6.1 Barnum Festival Fireworks	• Date: A single day in June or July. • Time: To be determined annually. • Location: Waters of Bridgeport Harbor, Bridgeport, CT in approximate position 41°9'04" N, 073°12'49" W (NAD 83). • Date: A single day in June. • Location: Waters of Reynolds Channel off Hempstead, NY in approximate position 40°35'36.62" N, 073°35'20.72" W (NAD 83).
6.2 Salute to Veterans Fireworks	July
7	July
7.1 Point O'Woods Fire Company Summer Fireworks	• Date: A single day in July. • Time: 9 p.m. to 11 p.m. • Location: Waters of the Great South Bay, Point O'Woods, NY, in approximate position 40°39'18.57" N, 073°08'5.73" W (NAD 83). • Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off Calf Pasture Beach, Norwalk, CT, in approximate position, 41°04'50" N, 073°23'22" W (NAD 83). • Date: A single day in July. • Time: 9 p.m. to 10 p.m. • Location: Waters of Sag Harbor Bay off Havens Beach, Sag Harbor, NY, in approximate position 41°00'26" N, 072°17'9" W (NAD 83). • Location: Waters of the Thames River, Norwich, CT in approximate position, 41°31'16.835" N, 072°04'43.327" W (NAD 83). • Date: A single day in July. • Time: 9 p.m. to 10:30 p.m. • Location: Waters of Shinnecock Bay, Southampton, NY, in approximate position, 40°51'48" N, 072°26'30" W (NAD 83). • Date: A single day in July. • Time: 8:30 p.m. to 11:30 p.m. • Location: Waters of the Connecticut River, Middletown Harbor, Middletown, CT, in approximate position 41°33'44.47" N, 072°38'37.88" W (NAD 83). • Date: A single day in July. • Time: 9 p.m. to 11 p.m. • Location: Waters of the Thames River, Norwich, CT, in approximate position, 41°31'16.835" N, 072°04'43.327" W (NAD 83). • Date: A single day in June or July. • Time: 9 p.m. to 11 p.m. • Location: Waters of Fisher's Westcott Cove, Stamford, CT, in approximate position 41°02'09.56" N, 073°30'57.76" W (NAD 83). • Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off Cedar Beach Town Park, Mount Sinai, NY, in approximate position 40°57'59.58" N, 073°01'57.87" W (NAD 83). • Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m.
7.2 City of Norwalk Fireworks	
7.3 Sag Harbor Fireworks	
7.4 Southampton Fresh Air Home Fireworks	
7.5 City of Middletown Fireworks	
7.6 City of Norwich Fireworks	
7.7 City of Stamford Independence Day Celebration	
7.8 CDM Chamber of Commerce Annual Music Fest Fireworks	
7.9 Riverfest Fireworks	

TABLE 1 TO § 165.151—Continued

7.10 Village of Asharoken Fireworks	• Location: Waters of the Connecticut River, Hartford, CT, in approximate positions, 41°45'39.93" N, 072°39'49.14" W (NAD 83). • Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m.
7.11 Village of Port Jefferson Fireworks	• Location: Waters of Northport Bay, Asharoken, NY, in approximate position, 41°55'54.04" N, 073°21'27.97" W (NAD 83). • Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m.
7.12 Village of Quoque Foundering Anniversary Fireworks	• Location: Waters of Port Jefferson Harbor, Port Jefferson, NY, in approximate position 40°57'10.11" N, 073°04'28.01" W (NAD 83). • Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m.
7.13 Mashantucket Pequot Fireworks (Sailfest)	• Location: Waters of Quantuck Bay, Quoque, NY, in approximate position 40°48'42.99" N, 072°37'20.20" W (NAD 83). • Date: A single day in July. • Time: 8:30 p.m. to 11 p.m.
7.14 Shelter Island Fireworks	• Location: Waters of the Thames River, New London, CT, in approximate positions Barge 1, 41°21'03.03" N, 072°5'24.5" W, Barge 2, 41°20'51.75" N, 072°5'18.90" W (NAD 83). • Date: A single day in July. • Time: 9 p.m. to 11 p.m.
7.15 Town of North Hempstead Bar Beach Fireworks	• Location: Waters of Gardiner Bay, Shelter Island, NY, in approximate position 41°04'39.11" N, 072°22'01.07" W (NAD 83). • Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m.
7.16 City of Rowayton Fireworks	• Location: Waters of Hempstead Harbor, North Hempstead, NY, in approximate position 40°49'54" N, 073°39'14" W (NAD 83). • Date: A single day in July. • Time: 9 p.m. to 11 p.m.
7.17 Connetquot River Summer Fireworks	• Location: Waters of Long Island Sound south of Bayley Beach Park, Rowayton, CT, in approximate position 41°03'11" N, 073°26'41" W (NAD 83). • Date: A single day in July. • Time: 8:30 p.m. to 10:30 p.m.
7.18 Town of Hempstead "Salute to Veterans" Concert and Fireworks Display.	• Location: Waters of the Connetquot River off Snapper Inn Restaurant, Oakdale, NY, in approximate position 40°43'32.38" N, 073°9'02.64" W (NAD 83). • Date: A single day in June or July.
8	August
8.1 Taste of Italy Fireworks	• Time: 7:30 p.m. to 11:59 p.m. • Location: Waters of Reynolds Channel at Lido Beach in Town of Hempstead, NY, in approximate position 40°35'36.81" N, 073°35'20.37" W (NAD 83).
8.2 City of Stamford Fireworks	• Date: A single day in August. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Norwich Harbor, off Norwich Marina, Norwich, CT, in approximate position 41°31'17.72" N, 072°04'43.41" W (NAD 83).
9	September
9.1 Village of Island Park Labor Day Celebration Fireworks	• Date: A single day in August. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Stamford Harbor, off Kosciuszco Park, Stamford, CT, in approximate position 41°01'48.46" N, 073°32'15.32" W (NAD 83).
9.2 Archangel Michael Greek Orthodox Church Fireworks	• Date: A single day in September. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off Village of Island Park Fishing Pier, Village Beach, NY, in approximate position 40°36'30.95" N, 073°39'22.23" W (NAD 83).
9.3 Port Washington Sons of Italy Fireworks	• Date: A single day in September or October. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Hempstead Harbor off Bar Beach Town Park, Port Washington, NY, in approximate position 40°49'42" N, 073°39'07" W (NAD 83).
9.4 Town of Hempstead "Big Shot" Concert and Fireworks Display	• Date: A single day in September. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Hempstead Harbor off Bar Beach, North Hempstead, NY, in approximate position 40°49'48.04" N, 073°39'24.32" W (NAD 83).

TABLE 1 TO § 165.151—Continued

11	Location: Waters of Reynolds Channel at Lido Beach in Town of Hempstead, NY, in approximate position 40°35'36.81" N, 073°35'20.37" W (NAD 83).
11.1 Charles W. Morgan Anniversary Fireworks	November - Date: A single day in November. - Time: 8 p.m. to 11 p.m. - Location: Waters of the Mystic River, north of the Mystic Seaport Light, Mystic, CT, in approximate position 41°21'56.455" N, 071°57'58.32" W (NAD 83).
11.2 Connetquot River Fall Fireworks	- Date: A single day in November. - Time: 8 p.m. to 11 p.m. - Location: Waters of the Connetquot River off Snapper Inn Restaurant, Oakdale, NY, in approximate position 40°43'32.38" N, 073°09'02.64" W (NAD 83).

Dated: June 7, 2023.

E.J. Van Camp,
Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 2023–12558 Filed 6–12–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0468]

Safety Zones; Annual Events in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone that encompasses certain navigable waters in Vermilion, OH, for the Festival of the Fish at the Vermilion Harbor entrance, Lake Erie. This action is necessary and intended for the safety of life and property on navigable waters during this event. During the enforcement period, no person or vessel may enter the respective safety zone

without the permission of the Captain of the Port Buffalo or a designated representative.

DATES: The regulations in 33 CFR 165.939, Table (a)(1) will be enforced from 9:15 p.m. through 11:15 p.m. on June 16, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT Jared Stevens, Waterways Management Division, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–0124, email *D09-SMB-MSUCLEVELAND-WWM@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce Safety Zones; Annual Events in the Captain of the Port Buffalo Zone, as listed in 33 CFR 165.939, Table 165.939(a)(1) in Vermilion, OH, on all U.S. waters within a 420 foot radius of the fireworks launch site located at position 41°25'45" N and 082°21'54" W, (NAD 83) for the Festival of the Fish at the Vermilion Harbor entrance, Lake Erie.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within the safety zone during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or a designated representative. Those

seeking permission to enter the safety zone may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Buffalo or his designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Buffalo determines that the safety zone need not be enforced for the full duration stated in this notice, they may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: June 5, 2023.

Jeff B. Bybee,
Commander, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2023–12624 Filed 6–12–23; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register

Vol. 88, No. 113

Tuesday, June 13, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[NRC-2023-0086]

Draft Regulatory Guide: Release of Patients Administered Radioactive Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guide; extension of comment period.

SUMMARY: On April 21, 2023, the U.S. Nuclear Regulatory Commission (NRC) solicited comments on draft regulatory guide (DG), DG-8061, "Release of Patients Administered Radioactive Material." The public comment period was originally scheduled to close on June 20, 2023. The NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments.

DATES: The due date for comments requested in the document published on April 21, 2023 (88 FR 24495) is extended. Comments should be submitted no later than August 20, 2023. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0086. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN-7-

A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Katherine Tapp, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-0236, email: Katherine.Tapp@nrc.gov, or Brian Allen, Office of Nuclear Regulatory Research, telephone: 301-415-8402, email: Brian.Allen@nrc.gov, or Rigel Flora, Office of Nuclear Regulatory Research, telephone: 301-415-3890, email: Rigel.Flora@nrc.gov, or Harriet Karagiannis, Office of Nuclear Regulatory Research, telephone: 301-415-2493, email: Harriet.Karagiannis@nrc.gov. All are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

1. Obtaining Information

Please refer to Docket ID NRC-2023-0086 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0086.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov.

- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov

or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2023-0086 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

On April 21, 2023, the NRC published a document in the **Federal Register** (88 FR 24495) requesting comments on DG-8061, "Release of Patients Administered Radioactive Material." This DG is proposed Revision 2 to Regulatory Guide (RG) 8.39 of the same title. This proposed revision provides licensees with methods that are acceptable to the NRC for the release of patients after a medical procedure involving the administration of unsealed byproduct material, such as radiopharmaceuticals, or implants that contain radioactive material. The comment period was originally scheduled to close on June 20, 2023. Upon the request of the medical community, the NRC has decided to extend the public comment period on this document until August 20, 2023, to allow more time for members of the public to submit their comments.

III. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at <https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html>. Suggestions will be considered in future updates and enhancements to the "Regulatory Guide" series.

Dated: June 7, 2023.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2023-12589 Filed 6-12-23; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 51, 52, 100

[NRC-2023-0097]

Draft Regulatory Guide: Damping Values for Seismic Design of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide (DG), DG-1364, "Damping Values for Seismic Design of Nuclear Power Plants." This DG is proposed Revision 2 of Regulatory Guide (RG) 1.61. This DG describes an approach on damping values that is acceptable to the NRC staff for use in meeting regulatory requirements for the seismic response analysis of seismic Category I nuclear power plant structures, systems, and components.

DATES: Submit comments by July 13, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0097. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email:

Stacy.Schumann@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Edward O'Donnell, telephone: 301-415-3317; email: *Edward.O'Donnell@nrc.gov* and Marcos Rolon Acevedo, telephone: 301-415-2208; email:

Marcos.RolonAcevedo@nrc.gov. Both are staff of the Office of Nuclear Regulatory Research at the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2023-0097 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0097.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to *PDR.Resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern

time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2023-0097 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's "Regulatory Guide" series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The DG, entitled "Damping Values for Seismic Design of Nuclear Power Plants," (ADAMS Accession No. ML22273A040) is temporarily identified by its task number, DG-1364.

The proposed guide provides guidance for applicants and licensees on damping values that the NRC staff finds acceptable for use in the seismic response analysis of seismic Category I nuclear power plant structures, systems, and components. The specified damping values are intended for elastic dynamic seismic analysis where energy dissipation is accounted for by viscous damping. Since the issuance of revision 1 of RG 1.61 in 2007, updated criteria related to the concrete properties and damping values for use in the development of in-structure response spectra has become available.

DG-1364 addresses the updated criteria for concrete properties and new damping criteria for use in seismic analysis and design of nuclear power plants structures.

The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML22273A041). The staff developed a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as determine courses of action.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the “Proposed Rules” section of the **Federal Register** to comply with publication requirements under chapter I of title 1 of the *Code of Federal Regulations* (CFR).

III. Backfitting, Forward Fitting, and Issue Finality

Issuance of DG-1364 as a final RG would not constitute backfitting as that term is defined in 10 CFR 50.109, “Backfitting,” and as described in NRC Management Directive (MD) 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,” to affect the issue finality of an approval issued under 10 CFR part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants;” or constitutes forward fitting as that term is defined and described in MD 8.4 because, as explained in DG-1364, licensees would not be required to comply with the positions set forth in the DG.

IV. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC’s public website at <https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html>. Suggestions will be considered in future updates and enhancements to the “Regulatory Guide” series.

Dated: June 8, 2023.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2023-12631 Filed 6-12-23; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-1210; Project Identifier MCAI-2022-01530-E]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd & Co KG (RRD) Model RB211-535C-37 engines. This proposed AD was prompted by the manufacturer revising the existing engine time limits manual (TLM) to introduce new or more restrictive airworthiness limitations and associated thresholds and intervals for life-limited parts. This proposed AD would require revising the airworthiness limitations section (ALS) of the operator’s existing approved engine maintenance or inspection program, as applicable, to incorporate new or more restrictive instructions and associated thresholds and intervals for life-limited parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 28, 2023.

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

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1210; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information

(MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADS@easa.europa.eu; website: easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1210.

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

FOR FURTHER INFORMATION CONTACT:

Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238-7241; email: Sungmo.D.Cho@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2023-1210; Project Identifier MCAI-2022-01530-E” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

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

responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0236, dated December 1, 2022 (EASA AD 2022–0236) (referred to after this as the MCAI), to address an unsafe condition for all RRD Model RB211–535C–37 engines. The MCAI states that the ALS for RB211–535C–37 engines, which is approved by EASA, is defined and published in TLM T–211(535)–5RR, and that these airworthiness limitations have been identified as mandatory for continued airworthiness. The MCAI also states that the manufacturer published a revised engine TLM to introduce new or more restrictive instructions and associated thresholds and intervals for life-limited parts.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1210.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0236, which specifies procedures for operators to revise the ALS of their existing approved engine maintenance or inspection program to incorporate new or more restrictive instructions and associated thresholds and intervals for life-limited parts described in the revised engine TLM, as applicable to each engine model. EASA AD 2022–0236 also describes actions for replacing life-limited parts, performing

maintenance tasks, and performing corrective actions for any finding of discrepancy as referenced in the engine TLM.

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

FAA’s Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require revising the ALS of the operator’s existing approved engine maintenance or inspection program, as applicable, to incorporate new or more restrictive instructions and associated thresholds and intervals for life-limited parts, which are specified in EASA AD 2022–0236, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD and as discussed under “Differences Between this Proposed AD and the EASA AD.”

Differences Between This Proposed AD and the EASA AD

Where paragraph (3) of EASA AD 2022–0236 specifies revising the approved Aircraft Maintenance Programme within 12 months after the effective date of EASA AD 2022–0236, this proposed AD would require revising the ALS of the existing approved engine maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

This proposed AD would not require compliance with paragraphs (1), (2), (4), and (5) of EASA AD 2022–0236.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and CAAs to use this process. As a result, the FAA proposes to incorporate by reference EASA AD 2022–0236 in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0236 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2022–0236. Service information required by the EASA AD for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–1210 after the FAA final rule is published. Service information required by the EASA AD for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–1210 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 2 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS				
Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise ALS of the operator’s existing approved engine maintenance or inspection program.	1 work-hour × \$85 per hour = \$85.	\$0	\$85	\$170

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more

detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce Deutschland Ltd & Co KG:
Docket No. FAA–2023–1210; Project Identifier MCAI–2022–01530–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 28, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG Model RB211–535C–37 engines.

(d) Subject

Joint Aircraft Service Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the engine time limits manual (TLM) to introduce new or more restrictive instructions and associated thresholds and intervals for life-limited parts. The FAA is issuing this AD to prevent failure of life-limited parts. The unsafe condition, if not addressed, could result in uncontained release of a critical part, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0236, dated December 1, 2022 (EASA AD 2022–0236).

(h) Exceptions to EASA AD 2022–0236

(1) Where EASA AD 2022–0236 defines the AMP as the approved Aircraft Maintenance Programme containing the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated engine, this AD defines the AMP as the aircraft maintenance program containing the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated airplane.

(2) Where EASA AD 2022–0236 refers to its effective date, this AD requires using the effective date of this AD.

(3) This AD does not require compliance with paragraphs (1), (2), (4), and (5) of EASA AD 2022–0236.

(4) Where paragraph (3) of EASA AD 2022–0236 specifies revising the approved AMP within 12 months after the effective date of EASA AD 2022–0236, this AD requires revising the airworthiness limitations section of the existing approved engine maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(5) This AD does not adopt the “Remarks” paragraph of EASA AD 2022–0236.

(i) Provisions for Alternative Actions and Intervals

After performing the actions required by paragraph (g) of this AD, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2022–0236.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: ANE-AD-AMOC@faa.gov.

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

(k) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: Sungmo.D.Cho@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency AD 2022–0236, dated December 1, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0236, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADS@easa.europa.eu; website: easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

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

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

Issued on June 7, 2023.

Michael Linegang,

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

[FR Doc. 2023–12572 Filed 6–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2021–0850; Airspace
Docket No. 21–ANM–26]

RIN 2120–AA66

**Modification of Class E Airspace;
Northeast Wyoming Regional Airport,
Gillette, WY**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: This action proposes to modify the Class E airspace extending upward from 700 feet above the surface at Northeast Wyoming Regional Airport, Gillette, WY. This action would support the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 28, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2021–0850 and Airspace Docket No. 21–ANM–26 using any of the following methods:

* *Federal eRulemaking Portal:* Go to 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, 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 www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to the 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.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation

Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify Class E airspace to support IFR operations at Northeast Wyoming Regional Airport, Gillette, WY.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the

public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

The Class E5 airspace designation is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022 and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

Background

The proposed action within this NPRM was originally to be included as part of the rule-making actions of Docket No. FAA–2020–0800, which revoked the Class D airspace and modified the Class E airspace at Northeast Wyoming Regional Airport, Gillette, WY (85 FR 57807, September 16, 2020) but was unintentionally excluded from the rule. This action fulfills the need for additional Class E airspace within a 5-mile radius of the airport.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to modify the Class E airspace extending upward from 700 feet above the surface at Northeast Wyoming Regional Airport, Gillette, WY. The Class E airspace extending upward from 700 feet above the surface should be modified to include a 5-mile radius of the airport. This area would accommodate arriving IFR operations below 1,500 feet above the surface and departing IFR operations until they reach 1,200 feet above the surface.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM WY E5 Gillette, WY [Amended]

Northeast Wyoming Regional Airport, WY (Lat. 44°20′56″ N., long. 105°32′22″ W.)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the airport, and that airspace within 4 miles each side of the 170° bearing extending from the 5-mile radius to 14 miles south of the airport, and that airspace 4 miles each side of the 350° bearing extending from the 5-mile radius to 11 miles north of the airport.

* * * * *

Issued in Des Moines, Washington, on June 6, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023–12497 Filed 6–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0269]

RIN 1625–AA00

Safety Zone; Heavy Weather and Natural or Other Disasters in San Juan Captain of the Port Zone, San Juan, Puerto Rico

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a safety zone that would restrict vessels from transiting through certain navigable waters in the San Juan Captain of the Port (COTP) zone during periods of experienced or expected gale force winds (of 34 knots/39 mph or greater) and reduced visibility due to anticipated heavy weather periods, *e.g.*, tropical storm, hurricane or due to any natural or other disasters where the restriction of vessel traffic is deemed appropriate by the COTP. This proposed rulemaking would prohibit vessel traffic transiting or remaining in the regulated areas unless authorized by the COTP, San Juan, Puerto Rico, or a designated

representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 28, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0269 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Carlos M. Ortega-Pérez, the Waterways Management Division Chief, Sector San Juan Prevention Department, U.S. Coast Guard; telephone 787–729–2380, email Carlos.M.Ortega-Perez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
MTS Maritime Transportation System
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background, Purpose, and Legal Basis

The purpose of the proposed regulation is to ensure the safety of the port and life on navigable waters of the United States by restricting movement of vessels and barges over 500 gross tons (GT) in the event of heavy weather conditions or any natural or other disasters anticipated to affect the San Juan Captain of the Port (COTP) zone. The COTP has determined that reduced or restricted visibility and gale force winds which may occur during heavy weather periods and other disasters affecting Puerto Rico and the U.S. Virgin Islands, constitutes a safety concern for the navigable waters and waterfront facilities within the San Juan COTP zone. This proposed regulation would ensure safety of vessels and navigable waters within the safety zone before, during, and after heavy weather conditions, *e.g.*, tropical storms, hurricanes and any natural or other disasters to minimize potential danger to the inbound, outbound, and transiting vessels. Additionally, both natural and other disasters may occur that are outside of the scope of the previously mentioned events, that would require the restriction of vessel movements within the COTP zone to protect life, property and the Maritime

Transportation System (MTS) of Puerto Rico and the U.S. Virgin Islands. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone on certain navigable waters within the Sector San Juan COTP zone in response to anticipated heavy weather periods (e.g., tropical storms and hurricanes) and any natural or other disasters that would restrict movement of vessels when the COTP sets specific Port Conditions, or deems such restrictions necessary, if the situation threatens the safety of vessels and mariners entering, departing, and transiting through ports located within the San Juan COTP zone. The movement of vessels and barges over 500 GT within navigable waters of the San Juan COTP zone, i.e., ports of Puerto Rico and the U.S. Virgin Islands would be affected by this rule. Vessel movement restrictions would only apply to ports identified by the COTP forecast to experience gale force winds within an established threshold. The proposed rule would give the COTP flexibility in controlling and reconstituting vessel traffic during periods of heavy weather and allows for expediting resumption of the MTS following disasters and severe weather.

The proposed rule includes safety zones that would have vessel movement limitation determined by each Hurricane Port Condition when established by the COTP while in hurricane season or while anticipating gale force winds, and any natural or other disasters within the San Juan COTP zone. Hurricane Port Conditions (WHISKEY, X-RAY, YANKEE, and ZULU) are standardized states of operation instituted by the COTP and shared with all major ports, facilities, and members of MTS) within the COTP zone. All stakeholders are required to work in unison to safeguard the MTS when faced with the annual challenges posed by tropical storms, hurricanes as well as other unforeseen disasters.

Notice of Port Conditions and their requirements will be given via Marine Safety Information Bulletins, online at <https://homeport.uscg.mil/port-directory/san-juan>, Broadcast Notice to Mariners, and during Port Coordination meetings.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking.

Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be not significant for the following reasons: (1) Vessel traffic and facilities will be impacted by this rule only during limited times while heavy weather or other disaster is expected to impact the Sector San Juan COTP zone; (2) vessel traffic would be secured only during port conditions Yankee and Zulu, and only in port areas potentially affected by gale force winds; and (3) the Coast Guard would issue updates on <https://homeport.uscg.mil/port-directory/san-juan>, Broadcast Notice to Mariners, and during Port Coordination meetings.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone of limited duration implemented during heavy weather events *e.g.*, tropical storms, hurricanes, or other natural disasters where a safety zone implementation is deemed appropriate by the COTP. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A preliminary Record of Environmental Consideration is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2023–0269 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the

Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov>. Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Add § 165.791 to read as follows:

§ 165.791 Safety Zones; Heavy Weather and Natural or Other Disasters in San Juan Captain of the Port Zone.

(a) **Location.** The following area is a safety zone: All navigable waters, as defined in 33 CFR 2.36, within Sector San Juan Captain of the Port (COTP) zone, San Juan, Puerto Rico, as described in 33 CFR 3.35–25, during specified conditions. (b) **Definitions.** (1) As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel

and a Federal, State, and local officer designated by or assisting the COTP San Juan in the enforcement of the safety zone.

(b) Definitions.

(1) *Gale force winds* means sustained surface winds, or frequent gusts, of 34 knots (39 mph) or more usually seen in coastal regions.

(2) *Port Condition WHISKEY* means a condition set by the COTP when gale force winds are expected to make landfall at the port within 72 hours.

(3) *Port Condition X-RAY* means a condition set by the COTP when gale force winds are expected to make landfall at the port within 48 hours.

(4) *Port Condition YANKEE* means a condition set by the COTP when gale force winds are expected to make landfall at the port within 24 hours.

(5) *Port Condition ZULU* means a condition set by the COTP when gale force winds are expected to make landfall at the port within 12 hours.

(c) **Regulations.** (1) *Port Condition WHISKEY.* Open to all commercial traffic. All oceangoing vessels over 500 (GT) to report their intention to depart or remain in port. All oceangoing vessels over 500 GT intending to remain in port must contact the COTP prior to setting port condition X-Ray. All vessel and port facilities must exercise due diligence in preparation for potential storm impacts. Slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm upon the anticipation of the setting of Port Condition X-RAY. Ports and waterfront facilities must begin removing all debris and securing potential flying hazards. Container stacking plans must be implemented. Waterfront facilities that are unable to reduce container-stacking height to no more than four high must submit a container stacking protocol to the COTP.

(2) *Port Condition X-RAY.* Open to all commercial traffic. Remain in port applications will no longer be accepted without a COTP waiver. Vessels remaining in port may be issued COTP Orders to depart immediately. All vessels and port facilities must ensure that potential flying debris is removed or secured. Hazardous materials/pollution hazards must be secured in a safe manner and away from waterfront areas. Facilities must continue to implement container-stacking protocol. Containers must not exceed four tiers, unless previously approved by the COTP. Containers carrying hazardous materials may not be stacked above the second tier. All oceangoing commercial vessels greater than 500-gross tons must prepare to depart ports and anchorages within the affected regulated area. These

vessels must depart immediately upon the setting of Port Condition YANKEE. During this condition, slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm. Vessels that are unable to depart the port must contact the COTP to request and receive permission to remain in the port. Vessels with COTPs permission to remain in the port must implement their pre-approved mooring arrangement. Terminal operators must prepare to terminate all cargo operations. The COTP may require additional precautions to ensure the safety of the ports and waterways.

(3) *Port Condition YANKEE*. The port is closed to all inbound vessel traffic except unless specifically authorized by the COTP. All oceangoing vessels greater than 500-gross tons without approved applications to remain in port shall depart designated ports within the Sector San Juan COTP zone at this time. Final mooring arrangements for vessels remaining in port. Appropriate container stacking protocol must be completed. Terminal operators must terminate all cargo operations not associated with storm preparations. Cargo operations associated with storm preparations include moving cargo within or off the port for securing purposes, crane and other port/facility equipment preparations, and similar activities, but do not include moving cargo onto the port or vessel loading/discharging operations unless specifically authorized by the COTP. All facilities must continue to operate in accordance with approved Facility Security Plans and comply with the requirements of the Maritime Transportation Security Act.

(4) *Port Condition ZULU*. The port is closed to all vessel traffic except unless specifically authorized by the COTP. Cargo operations are suspended, including bunkering and lightering, except final preparations that are expressly permitted by the COTP as necessary to ensure the safety of the ports and facilities. Waivers may be granted unless Cargo of Particular Hazard or Certain Dangerous Cargo is involved. Coast Guard Port Assessment Teams will conduct final port assessments.

(5) *Emergency Regulation for Other Disasters*. Any natural or other disasters that are anticipated to affect the Sector San Juan COTP zone will result in the prohibition of facility operations and vessel traffic transiting or remaining in the affected port.

(6) Persons and vessels desiring to enter, transit through, anchor in, or remain in the regulated area may contact the COTP via telephone at (787)

289–2041, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain in the regulated area is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

(7) Coast Guard Sector San Juan will attempt to notify the maritime community of periods during which these safety zones will be in effect via Broadcast Notice to Mariners or by on-scene designated representatives.

Dated: June 8, 2023.

Robert M. Pirone,

Captain, U.S. Coast Guard, Alternate Captain of the Port, San Juan.

[FR Doc. 2023–12642 Filed 6–12–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

RIN 0596–AD47

Minerals Cost Recovery

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Forest Service proposes regulations to impose new fees to recover the agency's costs for processing proposals related to mineral activity on National Forest System lands. This would include costs for actions such as environmental review and analysis, monitoring authorized activities, and other processing-related costs. The proposed rule would establish a fee schedule based on categories of Federal hours needed to complete processing for most mineral-related actions and charge a fixed fee for low-volume mineral material disposals. This proposal to recover costs is based on statutory authority, which authorizes Federal agencies to charge for work it performs to provide a service or benefit to identifiable entities and on policy guidance from the Office of Management and Budget (OMB) which directs charging these fees. This rulemaking also responds to a Government Accountability Office (GAO) recommendation made in an audit report that the Forest Service recover costs for processing locatable mineral plans of operation. The Forest Service invites written comments on

this proposed rule and its supporting economic analysis of impacts to small businesses.

DATES: Comments concerning this proposed rule must be received by August 14, 2023.

ADDRESSES: Comments, identified by RIN 0596–AD47, should be sent via one of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for sending comments;
2. *Email:* SM.FS.WO_MGMStaff@usda.gov;
3. *Mail:* Director, Minerals and Geology Management Staff, 201 14th Street SW, Washington, DC 20250–1124; or
4. *Hand Delivery/Courier:* Director, Minerals and Geology Management Staff, 1st Floor South East, 201 14th Street SW, Washington, DC 20250–1124.

Please confine written comments to issues pertinent to the proposed rule and the supporting economic analysis; explain the reasons for any recommended changes; and, where possible, reference the specific wording being addressed. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed rule at the Office of the Director, Minerals and Geology Management, 201 14th Street SW, 1st Floor Southeast, Sidney R. Yates Federal Building, Washington, DC, on business days between 8:30 a.m. and 4:00 p.m. Visitors are encouraged to call ahead at 202–205–1680 to facilitate entry into the building. Comments may also be viewed on the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter “RIN 0596–AD47” and click the “Search” button.

FOR FURTHER INFORMATION CONTACT: Tim Abing, Affiliate to the Minerals and Geology Management Staff at timothy.abing@usda.gov. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 between 8 a.m. and 8 p.m., Eastern Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background and Need for Proposed Rule

The Forest Service proposes regulations to recover its costs for processing applications and other proposals related to mineral activity conducted on National Forest System (NFS) lands. The proposed rule would

also recover agency costs for monitoring compliance with construction and reclamation requirements for authorizations issued by the Forest Service pursuant to 36 CFR part 228. Each year the Forest Service processes nearly 3,000 applications and other proposals to use and occupy NFS lands to prospect, explore, develop, and remove mineral resources. NFS lands currently host approximately 138 authorized locatable mineral operations, 47 operations associated with coal and other non-energy solid leasable minerals, 5,490 Federal oil and gas leases, 3,170 active oil and gas wells, 11 geothermal leases, and 4,155 community pits and common use areas for disposal of mineral materials. Each of these activities was subject to a case-specific review, analysis, and decision process before approval and implementation, requiring substantial Forest Service time and expense.

The Forest Service responds to requests from businesses and individuals to prospect, explore, develop, and/or dispose of mineral resources on NFS lands. Depending on the statutory classification of the mineral resource involved, these requests fall into three distinct program areas: locatable minerals, leasable minerals, and mineral materials. The action the Forest Service takes to process these requests varies as does the associated commitment of agency resources to complete their processing. Examples of mineral-related agency actions include approving locatable mineral plans of operation or oil and gas surface use plans of operation, issuing contracts or permits to dispose of mineral materials, and providing surface management agency responses to mineral leases and operating plan proposals that are filed with other government agencies such as the Bureau of Land Management.

Governing statutes related to minerals management on NFS lands include the General Mining Law of 1872; the Mineral Resources on Weeks Act Lands of March 4, 1917; the Mineral Leasing Act of 1920, as amended; the Bankhead-Jones Farm Tenant Act of 1937; the Mineral Leasing Act of 1947 for Acquired Lands; the Materials Act of 1947; the Surface Resources Act of 1955; the Geothermal Steam Act of 1970; the Federal Coal Leasing Amendments Act of 1975; the Surface Mining Control and Reclamation Act of 1977; the Federal Onshore Oil & Gas Leasing Reform Act of 1987; and the Energy Policy Act of 2005. The basic authority of the Secretary of Agriculture to regulate the use and occupancy of NFS lands is the

Organic Administration Act of 1897 (16 U.S.C. 551).

Some of the aforementioned statutes provide the Forest Service with direct authority to authorize certain mineral-related activity (such as approving the surface use plan of operations for oil and gas drilling permits under the Federal Onshore Oil and Gas Leasing Reform Act). Other statutes provide that the Forest Service consent, concur, or make recommendations for mineral leases and operating plans filed with another government agency (such as, consent to the Bureau of Land Management [BLM] for coal leasing under the Federal Coal Leasing Amendments Act, and concurring to Federal mine plan decisions made by the Office of Surface Mining Reclamation and Enforcement [OSMRE]). The BLM, which manages federally owned minerals on all Federal lands, including NFS lands, has existing regulations for cost recovery for its minerals program. However, BLM's regulations do not include provisions for the Forest Service to recover its costs for actions where there are joint processing responsibilities.

Requirements of the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, the Archaeological Resources Protection Act of 1979, and Executive Order Nos. 11998 (Floodplains) and 11990 (Wetlands) also bear directly on costs the Forest Service incurs in processing mineral-related actions. These statutory authorities and directives require the Forest Service to complete varying levels of analysis and document the effects of proposed activities on environmental, cultural, and historical resources. Oftentimes, specific consultation with agencies overseeing the resource protected under these statutes must also occur. The practical effect of these requirements lengthens the time required and increases the cost associated with processing mineral-related actions. The time and cost impacts weigh on Forest Service staff and financial resources, on proponents seeking authorization for new activity, and on holders of existing authorizations. These impacts are a principal factor in the development of this proposed cost recovery rule.

At current levels of appropriated funding, staffing, and other resources to manage its minerals program, the Forest Service finds it increasingly difficult to provide timely reviews and evaluation of mineral-related proposals and to monitor activity to ensure it is conducted in compliance with applicable requirements. Under current

circumstances, the Forest Service is challenged to deliver efficient and effective customer service in its minerals program to meet the needs of proponents and the public.

Some proponents voluntarily fund agency costs and hire third-party contractors to conduct required environmental reviews to help speed the approval process for a particular proposed use. However, without the appropriate regulatory authority, the Forest Service has no means to require a proponent to pay for the agency's costs to process a proposal or monitor compliance with an authorization.

The Independent Offices Appropriations Act of 1952 (IOAA), as amended (31 U.S.C. 9701) authorizes Federal agencies to prescribe regulations to charge fees to recover the government's costs for providing special benefits to recipients beyond those that accrue to the general public.

The IOAA requires agencies to promulgate regulations to charge proponents for the cost of processing documents which the Forest Service is proposing to do through this rulemaking. Charges imposed under the authority of the IOAA must be fair and equitable and take into consideration the costs to the Federal Government, value to the recipient, public interest served, and other pertinent factors. The IOAA acknowledges that other statutes may prohibit or impose limitations on fees that the government may charge.

Government-wide policy for implementing the cost recovery provisions of the IOAA are described in the Office of Management and Budget (OMB) Circular No. A-25 entitled "User Charges." The general Federal policy is that a charge will be assessed against each identifiable recipient for special benefits beyond those received by the general public. Unless prohibited by statute or other authority, the Circular states that agencies must impose a charge against each identifiable recipient that recovers the full cost to the agency of providing the service. Section 7 of the Circular directs that user charges be instituted through promulgation of agency regulations. Adoption of this proposed rule would comply with the requirements of OMB Circular No. A-25.

In 2016, the Government Accountability Office (GAO) completed a review to assess the Forest Service and BLM processing of mine plans of operation for hardrock minerals under the 1872 Mining Law (GAO-16-165). The GAO recommended the Forest Service issue a rule that establishes a fee structure for hardrock mine plan processing activities and request

authority from Congress to retain any fees it collects. Adoption of this proposed rule would implement GAO's recommendation.

Additionally, Section 40206 of the 2021 Bipartisan Infrastructure Law (Pub. L. 117–58) specified that cost recovery is to be among options considered by the Secretaries of Agriculture and Interior to ensure adequate staffing of federal entities responsible for processing authorizations related to critical mineral activities on Federal land.

This rulemaking is needed for the Forest Service to comply with those statutory requirements and Federal policy as well as to implement GAO's recommendation. The proposed rule aims to increase capacity and improve customer service in the Forest Service minerals program.

The Forest Service expects to use the processing and monitoring fees paid by proponents to fund the costs the agency incurs in the review and decision-making process responding to mineral-related proposals to use and occupy NFS lands; to prepare and issue mineral authorizations in those cases where the agency approves the proposed use and occupancy; to provide required responses to mineral proposals filed with other government agencies; and to monitor compliance with the terms and conditions of mineral authorizations. The recovery of costs from applicants and holders would provide the Forest Service with additional resources to deliver more efficient and timely responses to requests for agency action. Similarly, cost recovery also would increase the Forest Service's ability to monitor on-site activities to adequately protect NFS lands and resources, in accordance with the terms and conditions of mineral authorizations. Upon final adoption, this rule would not provide the agency with the authority to retain and spend any of the funds collected. The agency's retention and expenditure of collected fees pursuant to this rule would need to be authorized by Congress. The Forest Service will seek such authority in conjunction with final adoption of this proposed rule. If Congress does not authorize retention authority, the funds received under this rule will be deposited in the General Treasury.

The proposed rule would require a proponent or holder to pay a processing fee and, where applicable, a monitoring fee. The rule creates a schedule of six categories where fees for a submitted proposal would be based on agency work hours involved to complete processing or to monitor an authorization. The proposed rule would

also establish a fixed fee for low-volume mineral material disposals. In determining the appropriate processing fee, the Forest Service will include time needed to collect all data and information needed for the agency to: (1) fully describe the proposed use; (2) identify, evaluate, and prepare documentation of the environmental effects of the proposed use; and (3) make a decision or provide a required response to the proposal. Proponents would be encouraged to fulfill documentation aspects to the extent feasible from sources other than limited agency resources to maintain the agency's ability to process proposals in as efficient and timely a manner as possible. Processing tasks completed by the proponent, or a third party would reduce the amount of time the Forest Service spends on each case, thereby reducing the processing fee assessed to the proponent.

The cost recovery provisions of this proposed rule would apply to requests and applications as specified in the rule and received on or after the effective date of a final rule. The Forest Service may propose future rulemaking to recover other mineral program costs that are recoverable under the IOAA.

The proposed rule would give the authorized Forest Service officer discretion to waive all or part of processing fees in certain circumstances, such as for disposal of mineral materials to a government entity for a public works project.

The proposed rule would specify that a separate monitoring fee would not be charged for proposals subject to the fixed fee. Given the high annual number and minimal impact of these type of disposals, the Forest Service proposes to not collect a monitoring fee in the interest of administrative efficiency.

For authorizations issued by the Forest Service on or after the effective date of a final rule, this rule proposes to charge fees for monitoring compliance during the construction and reclamation phases of the authorization. The agency's experience monitoring over 4,600 mineral operations annually indicates that the cost to process a mineral proposal frequently has no relationship to the cost of monitoring the activity after an authorization is issued. Proposals that can be time consuming to process may require minimal time (or cost) for the agency to monitor. Alternately, an action requiring little time to process may require more time to monitor due to sensitive resource concerns or compliance issues. Therefore, the Forest Service proposes that the processing fee category and amount for each case would be

determined independently of the monitoring fee category and amount; that is, the processing fee charged for non-fixed fee authorizations would not dictate the corresponding monitoring fee category or amount.

The processing fee for the fixed fee proposal must be paid at the time the proposal is submitted to the Forest Service. For category 1 through 4 proposals, the authorized officer would determine the processing fee based on the processing fee schedule. For category 5 and 6 proposals, the processing fee would be estimated on a case-by-case basis. The fee for Category 1 through 6 proposals would be due before the Forest Service begins processing the proposal. If the non-fixed fee proposal is approved by the authorized officer, a monitoring fee for the authorization would be the rate for the category determined appropriate for the activity (or estimated on a case-specific basis for category 5 and 6 authorizations). Payment of the monitoring fee would be due at the time the authorization is issued. Payment of monitoring fees for a multiyear project may be established in an agreement between the Forest Service and the operator.

The Forest Service would publish the cost recovery fees for the fee category schedule in the agency's directive system in Forest Service Handbook (FSH), Minerals and Geology Handbook 2809.15 (which can be accessed via the internet at the agency's directives home page: <https://www.fs.usda.gov/im/directives/>). Fees would be adjusted annually for inflation.

The fees collected by the Forest Service under this rule would be in addition to fees that may be due to another government agency for a specific proposal.

Description of Proposed Rule by Section

A section-by-section discussion of the proposed cost recovery rule follows.

New Subpart F

Proposed § 228.200 Authority. This section identifies the IOAA as the statutory authority for the cost recovery rule.

Proposed § 228.201 Definitions. This section defines terms that have a unique meaning within the context of the proposed rule. The terms defined in this section allow for simplifying references to the variety of terms used throughout mineral regulations associated with the proposed rule.

Proposed § 228.202 Cost recovery. This section implements the authority provided for in the IOAA and OMB

Circular No. A–25 that directs Federal agencies to recover costs for services provided to identifiable recipients beyond those accruing to the general public. This section specifies requirements for the agency to recover costs to process mineral-related proposals and to monitor authorized mineral activities. The proposed rule would not apply to agency costs associated with administering reserved and outstanding mineral rights activities that may be exercised as a property right without an authorization from the Forest Service or under the rules found at 36 CFR 251.15.

Paragraph (a) directs the Forest Service to assess fees to recover the agency's processing and monitoring costs for mineral proposals pursuant to the regulations of Part 228. Fees may either be fixed or determined from one of six processing categories. By definition, a proposal would include applications, plans, or other requests associated with mineral resources on NFS lands, including those proposals filed with another government entity which require input from the Forest Service. It would establish that cost recovery fees payable to the Forest Service under the rule would be separate from fees charged by other government entities. An example would be the fee charged by the Forest Service to process a surface use plan of operations for an oil and gas drilling permit would be separate from, and in addition to, the permit fee the BLM collects for processing the associated Application for Permit to Drill. The provisions of the rule do not apply to or supersede written agreements to recover processing costs executed by the Forest Service and a proponent prior to the effective date of the rule.

Paragraph (b) states that cost recovery requirements of Part 228 would apply to processing proposals received on or after the effective date of the rule (paragraph (b)(1)) and to monitoring of authorizations issued or amended under Part 228 on or after the effective date of the rule (paragraph (b)(2)).

Paragraph (c) outlines processing fee requirements in paragraphs (1) through (7). The introductory paragraph would require a fee for each proposal identified in paragraph (b) processed by the Forest Service and states that processing fees would not include costs incurred by the proponent to prepare information and documentation needed by the authorized officer to take action. The paragraph would also describe the basis for fixed fee proposals as well as for processing category proposals. Six processing categories would be established in this section and are based

on the agency work hours needed to process the proposal, as shown in Table 1 below.

TABLE 1—PROPOSED PROCESSING CATEGORIES

Processing category	Federal work hours
1	Up to 8.
2	Over 8 up to 24.
3	Over 24 up to 40.
4	Over 40 up to 64.
5 (Master Agreements)	Varies.
6	Over 64.

Paragraphs (c)(3)(ii)(A) through (F) establish that the Forest Service and the proponent could enter into master agreements (category 5) to recover processing costs associated with a single proposal, group of proposals, or similar proposals filed by the same proponent within a specified geographic area. Each proposal covered by a master agreement would be assigned its own processing fee category and rate. Master agreements may be considered an efficient alternative to case-specific estimates of processing time, particularly when a proponent routinely submits proposals or has several authorizations within a defined area or administrative unit.

Processing fees for category 5 (master agreements) and category 6 could be assessed and collected in periodic installments. The authorized officer would estimate the processing fees for category 5 and 6 proposals on a case-specific basis and would reconcile the fees based on the ultimate full cost to process. Upon the agency's completion of all processing tasks for category 5 and 6 proposals, any remaining balance of the processing fee would be either refunded to the proponent or credited towards monitoring fee assessments. When the estimated processing fee for category 5 and 6 proposals is lower than the agency's costs for processing a proposal, the proponent would be obligated to pay the difference between the estimated costs and the agency's full costs. For all categories, a proponent's payment of the processing fee would neither ensure nor imply agency approval of the proposed use or occupancy. The proponent would be liable for the agency's processing costs regardless of whether the proposal is subsequently denied by the agency or withdrawn by the proponent.

Establishing processing fees are expected to encourage prospective proponents to discuss their proposed use and occupancy with the Forest Service prior to submitting a formal proposal. The agency anticipates that this fee may also provide an incentive

for proponents to better design their proposals to meet the agency's resource management concerns and objectives. The agency would not duplicate processing activities to be conducted by the proponent. Proponents would be encouraged to conduct as many of the necessary processing steps as possible (such as collecting data; performing studies; completing resource surveys, evaluations, and assessments; and conducting and documenting environmental analyses), subject to review and acceptance by the Forest Service. Having the proponent conduct these steps would minimize the time the Forest Service needs to process a proposal and would reduce the impact the proposal may have on limited Forest Service resources. The applicant also would minimize the proposal processing fee charged by the Forest Service and, in many cases, expedite the Forest Service's processing of the proposal.

Paragraph (c)(1) provides the basis for processing fees. Paragraph (c)(1)(i) states that fixed fees are based on a projected cost to process proposals that are identified as being subject to a fixed fee. In its agency directives, the Forest Service would specify that fixed fees would apply to mineral material disposals of 25 cubic yards or less from community pits or common use areas. This action was identified for a fixed fee in the interest of administrative efficiency because the Forest Service processes many of these minimal-impact actions annually. The fixed fee amount was based on an assumed processing cost that the Forest Service believes is a reasonable estimate of agency effort expended on these actions. The agency will continue to collect and analyze cost data to assess the reasonableness of the proposed fixed fee.

Paragraph (c)(1)(ii) states that fees for the six processing categories would be based on costs incurred by the agency to formally acknowledge receipt and initial review of a proposal, conduct environmental reviews and analyses, meet with the proponent, and prepare documentation and permits, as applicable. These costs would be specific to a project and would not include the cost of agency services or benefits that are programmatic in nature or benefit the general public. This paragraph would emphasize that processing work conducted by the proponent, or a third party contracted by the proponent, minimizes the costs the Forest Service will incur and thus would reduce the processing fee.

Paragraph (c)(2) provides the Forest Service Handbook reference where the

amounts for the fixed fee action and categories 1 through 4 would be published. Categories 5 and 6 fees are determined on a case-by-case basis.

Table 2 below displays the fees proposed to be implemented under the rule. The table shows proposed fees for both the fixed fee action and for each of the six processing categories.

TABLE 2—PROPOSED MINERAL PROGRAM COST RECOVERY FEES

Action/category	Proposed fee
Low Volume (≤ 25 cubic yards) Mineral Material Disposal.	\$65.
Category 1	\$271.
Category 2	\$1,084.
Category 3	\$2,168.
Category 4	\$3,522.
Category 5 (Master Agreements).	Case-by-case; Determined by agreement.
Category 6	Case-by-case.

The proposed fee for low-volume mineral material disposals is based on two Federal work hours of processing time multiplied by an hourly rate of \$32.57 per hour. The hourly rate used in the fee calculation includes salary, leave, benefits, and indirect costs. The hourly rate uses the 2019 salary for a Rest-of-US (RUS) General Services (GS) 5, Step 05 Federal employee which is assumed to be representative of the grade level of an employee typically processing low volume mineral material disposals from existing community pits and common use areas.

To determine the proposed cost recovery fee for categories 1 through 4, an average hourly wage was multiplied by the midpoint of the work hour range. The proposed fees are based on an average rate of \$67.74 per hour of federal work time. This is the same average hourly wage (which includes pay additives and indirect costs) that was used in BLM's proposed revised fee rates for its right-of-way program published in the **Federal Register** on November 7, 2022 (87 FR 67306). The BLM's processing and monitoring cost data is presumed to reasonably represent costs incurred by the Forest Service within its minerals program because the work involves the same types of tasks at both agencies and is generally performed by employees at similar GS and experience levels. Given the recurring need for minerals projects to sometimes require a Forest Service special use authorization or a BLM right-of-way grant, it is important to have a consistent fee structure across agencies and programs. For this reason,

the Forest Service proposes cost recovery fee rates for minerals that will mirror BLM's proposed revised fee rates for its right-of-way program published in the **Federal Register** on November 7, 2022 (87 FR 67306).

Paragraph (c)(3) describes criteria specific to processing fee categories for proposals not subject to a fixed fee. Paragraph (c)(3)(i) presents a table of the six processing fee categories and the associated Federal work hours involved. Paragraph (c)(3)(ii) provides for the use of master agreements as an instrument to recover costs associated with a proposal, a group of proposals, or similar proposals for a specified geographic area. Paragraphs (c)(3)(ii)(A) through (F) contain the minimum content requirements for a master agreement. An example of where a master agreement may be used is in recovering costs for processing an oil and gas Master Development Plan (§ 228.105(a)(1)) for multiple proposed wells. Paragraph (c)(3)(iii) describes requirements for category 6 processing actions which include determining fees on a case-by-case basis and the Forest Service and the proponent entering into a written agreement that consists of a work plan and a financial plan.

Paragraph (c)(4) states that processing costs incurred for processing multiple proposals must be paid in equal shares or on a prorated basis, as deemed appropriate by the authorized officer, among the proponents involved.

Paragraph (c)(5) describes procedures for how fees for proposals assigned to a processing category would be billed and revised. Paragraph (c)(5)(i) states that the authorized officer would issue the proponent a bill for the processing fee when the Forest Service is ready to process the action. Paragraph (c)(5)(ii) states that once a proposal is assigned to a processing category, it would not be reclassified into a higher category unless previously undisclosed information is discovered. Should that happen, the authorized officer would notify the proponent in writing before continuing with processing the proposal. The proponent has the option to accept the change, revise the proposal, withdraw the proposal, or invoke the rule's fee dispute procedure at § 220(e).

Paragraph (c)(6) through (6)(iii) provide direction on paying processing fees. The agency would not initiate processing a proposal until the prescribed fee was paid in full. The fee for a proposal subject to a fixed fee is due when the proposal is filed with the Forest Service. For all other proposals, payment of the processing fee is due within 30 days after the Forest Service issues a bill for the fee. When estimated

costs are lower than the final processing costs for category 5 and 6 proposals, paragraphs (c)(6)(ii) and (iii) require proponents to pay the difference.

Paragraph (c)(7) addresses refunds of processing fees. Paragraphs (c)(7)(i) through (7)(iv) would specify that that processing fees for fixed fee proposals and for categories 1 through 4 are nonrefundable and would describe under what conditions the processing fee for category 5 and 6 proposals would be refunded to a proponent or credited towards monitoring fees due. If a proponent withdraws a category 5 or 6 proposal, the proponent is responsible for any costs incurred by the Forest Service in terminating processing of the proposal.

Paragraphs (d) through (5)(iii) establish procedures for the Forest Service to recover costs incurred to monitor compliance for authorizations issued by the Forest Service under the 36 CFR part 228 regulations. Monitoring would be conducted at a frequency commensurate with the work necessary to ensure compliance with the surface use requirements of an authorization.

Paragraph (d)(1) describes the basis for monitoring fees. For monitoring fees in categories 1 through 4, holders of approved operating plans are assessed fees based upon the estimated time needed for Forest Service monitoring to ensure compliance with surface use requirements during the construction or reconstruction phase of the approval and rehabilitation of the construction or reconstruction site. Category 5 and category 6 monitoring fees shall be based upon the agency's estimated costs to ensure compliance with the surface use terms and conditions during all phases of the authorized activity, including but not limited to monitoring to ensure compliance with surface use requirements during the construction or reconstruction phase of the authorization and rehabilitation of the construction or reconstruction site. Monitoring for all categories does not include billings, maintenance of case files, or scheduled inspections to determine compliance generally with the terms and conditions of an authorization.

Paragraph (d)(2) states monitoring fees for authorizations assigned to categories 1 through 4 would be assessed from a fee schedule published in the Forest Service directives. Monitoring fees for category 5 and category 6 authorizations would be determined on a case-by-case basis.

Paragraph (d)(3)(i) displays a table of the six monitoring categories and the range of Federal work hours for each. Paragraph (d)(3)(ii) provides

requirements for the use of master agreements for monitoring and paragraph (d)(3)(iii) provides requirements for category 6 cost recovery cases. The monitoring fee categories use the same categories and Federal work hours as the processing fee categories.

Paragraphs (d)(4)(i) through (iii) contain requirements for billing and paying monitoring fees. Paragraph (d)(4)(i) specifies that monitoring fees for categories 1 through 4 must be paid in full at the time the authorization is issued. Estimated monitoring fees for categories 5 and 6 must also be paid in full when the authorization is issued unless the authorized officer and the proponent agree in writing to a payment schedule. Paragraph (d)(4)(ii) provides guidance for reconciling category 5 cases when the estimated monitoring costs are lower than the final actual monitoring costs and similarly, paragraph (d)(4)(iii) provides guidance for reconciling monitoring costs for category 6 cases.

Paragraphs (d)(5)(i) through (iii) contain requirements for refunds of monitoring fees. Paragraph (d)(5)(i) states that monitoring fees for categories 1 through 4 are nonrefundable. Paragraph (d)(5)(ii) addresses reconciling monitoring fee overpayments for category 5 cases and paragraph (d)(5)(iii) addresses reconciling overpayments for category 6 cases.

Paragraphs (e)(1) through (5) address proponent disputes of processing or monitoring fee assessments. Paragraph (e)(1) states that the assessment for a fixed fee case is not subject to review under this section. The fixed fee assessment would be established as a part of this rulemaking process and would not be subject to adjustment by an administrative review process once the rule is finalized. Paragraph (e)(2) allows proponents who dispute the processing or monitoring fee category assigned by the authorized officer for category 1 through 4 cases or with the estimate of processing or monitoring costs for category 5 and 6 cases. The paragraph states that before the disputed fee is due, the proponent may submit a written request, along with supporting documentation, to the immediate supervisor of the authorized officer who made the determination for the case. Paragraphs (e)(3)(i) and (ii) provide that if the proponent pays the disputed processing fee, processing of the case would continue while the fee is pending the supervisory officer's review; and if the proponent chooses not to pay the disputed fee, the Forest Service will suspend processing the case until the

fee dispute is resolved. Paragraphs (e)(4)(i) and (ii) provide that if the proponent pays a disputed monitoring fee, the authorization shall be issued or use and occupancy allowed to continue while the fee is pending the supervisory officer's review; and if the proponent chooses not to pay the disputed fee, the Forest Service will not issue the authorization in question or suspend the activity until the fee dispute is resolved. Paragraph (e)(5) directs the immediate supervisor of the authorized officer to render a decision on a disputed fee within 30 days of receipt of the proponent's written request, otherwise the dispute will be decided in favor of the proponent.

Paragraphs (f)(1) through (2) identify the circumstances under which the authorized officer may waive all or part of a processing or monitoring fee. Waiving all or any part of a fee pursuant to these criteria would be discretionary on the part of the authorized officer and would not be an entitlement of the proponent or holder.

Paragraph (f)(1)(i) provides for waiving fees for a local, State, Federal or tribal governmental entity that waives similar fees for comparable, like-kind service provided to the Forest Service.

Paragraph (f)(1)(ii) allows the authorized officer to waive part of the processing fee when a major portion of the costs results from issues not related to the actual project being proposed. For example, a proposal for a mineral material sale is requested from a community pit that lacks sufficient material to meet the request. The pit in question is expected to experience continued demand for material from the public and local government, so the Forest Service would like to analyze a larger area for a pit expansion. Although the analysis is triggered by the new proposal, the purpose of the analysis is only minimally attributable to the proponent's proposed use and occupancy. Thus, it is inappropriate to assess that proponent for the total cost of such an analysis.

Paragraph (f)(1)(iii) provides for a waiver or partial waiver of processing or monitoring fees when a proposed project is intended to prevent or mitigate damage to real property or to mitigate hazards to public health and safety resulting from an act of God, an act of war, or negligence of the United States. For example, a storm destroys a culvert crossing of a road that was constructed to provide access to an oil and gas well located within a federal lease on NFS land. The operator offers to replace the culvert and mitigate the associated damages that have resulted from the storm, and the repair work

requires disturbance beyond what was authorized in the original surface use plan of operations. The fee for processing a proposal for this work may be waived by the authorized officer because of the public and/or agency benefits to be realized by the proposed use (that is, mitigating damages to National Forest System lands and resources by repairing the culvert crossing and adjacent lands to standards established by the Forest Service).

Paragraph (f)(1)(iv) provides for a waiver or partial waiver of processing or monitoring fees when a proposed activity is necessary to move a facility or improvement to a new location to comply with public health and safety or environmental requirements that were not in effect at the time the authorization was issued. For example, the discovery of habitat critical to threatened or endangered species requires an authorized officer to relocate a permitted access road for a mineral project. The authorized officer may waive the fee to process the holder's proposal for relocation of the road to avoid its use within the critical habitat.

Paragraph (f)(1)(v) provides for a waiver or partial waiver where an improvement or facility must be relocated because the land is needed by a Federal agency or Federally funded project for an alternative public purpose. For example, the Forest Service decides to construct a recreational trail in a location occupied by an authorized use, such as an access road to an oil and gas well. The new recreational trail requires relocation of a segment of the access road to preclude user conflicts between the operator and the recreating public. The road relocation requires a new or amended authorization. Processing fees associated with the operator's proposal for the authorization may be waived by the authorized officer.

Paragraph (f)(1)(vi) provides for waiving fees for processing a proposal or monitoring an authorization when studies undertaken in processing the proposal have a public benefit or the proposed facility or project would provide a free service to the public or to a USDA program.

Paragraph (f)(2) requires that requests for waivers be in writing and include an analysis of the applicability of the waiver criteria.

Paragraph (g) provides that decisions to assess a processing or monitoring fee or to determine the fee category or amount are not appealable. Paragraph (g) also would provide that a decision in response to a disputed processing or monitoring fee is not subject to administrative appeal.

Paragraph (h)(1) provides that the proposed schedules for processing and monitoring fees applicable to mineral proposals and authorizations would be set out in the Forest Service directive system. This paragraph specifies that the agency will keep fee schedules current with annual adjustments of fee rates in each cost category using the Implicit Price Deflator-Gross Domestic Product (IPD-GDP) index and will round up changes in the rates to the nearest dollar. The Forest Service will strive to update fee schedules on a calendar year basis. Fee schedules will remain in effect until updates are published in agency directives. Because the fee recalculations per the IPD-GPD are simply based on a mathematical formula, the Forest Service will update the fees in the directive without opportunity for notice and comment. In accordance with OMB Circular A-25, the Forest Service will review user charges biennially to assure whether existing charges need adjusting to reflect unanticipated changes in costs or market values.

Proposed § 228.203 Information collection requirements. This section states that information collected under Subpart F is required by law or already approved for use under existing information collection approvals for Part 228.

Proposed Changes to the Authority Listing for Part 228

The authority listing would be expanded to include references to other statutes that mandate action by the Forest Service as surface management agency in responding to mineral proposals as well as a reference to the IOAA.

Proposed Changes to Subpart A—Locatable Minerals

Proposed 228.4 Plan of Operations—Notice of Intent—Requirements

Paragraph (a)(3) would be revised to state that an operator submitting a plan of operations must pay a processing fee determined by the authorized officer in accordance with the cost recovery requirements of Subpart F.

Paragraph (e) would be revised to state that for each proposed modification to an approved plan of operations an operator must pay a processing fee determined by the authorized officer in accordance with the cost recovery requirements of Subpart F.

Proposed 228.5 Plan of Operations—Approval

Paragraph (a)(1) would be revised to state that approval of a plan of

operations is conditioned upon the operator paying a monitoring fee as determined by the authorized officer in accordance with the cost recovery requirements of Subpart F.

Proposed Changes to Subpart B—Leasable Minerals

Proposed 228.20 Cost Recovery Fees.

New paragraphs (a) through (c) would be added to this Subpart to require cost recovery for costs incurred by the Forest Service to provide responses required by law or regulation for leasable mineral proposals. Paragraph (a) would be specific to recovery of agency costs for responding to lease, exploration license, and prospecting permit proposals for coal and other solid leasable minerals which are filed with the BLM.

Paragraphs (a)(1) through (4) would prescribe the process for recovering agency costs when the successful bidder for a competitively bid lease is someone other than the proponent. The process described is like that utilized by the BLM for competitive leasing of these resources. Paragraph (b) would require recovering costs for the Forest Service to review proposals to conduct operations for leasable minerals other than oil and gas. This would include applications required to be filed with the Forest Service under special legislation and those filed with the BLM, OSMRE or a State entity with delegated coal program authority. Oil and gas activity is excluded from this section because it is addressed in proposed changes to Subpart E. Paragraph (c) would direct the authorized officer to charge a monitoring fee for leasable mineral authorizations issued by the Forest Service and required by law, but not addressed elsewhere in Part 228, such as approval of surface use for geothermal activity within the Newberry National Volcanic Monument.

Proposed 228.21 Information Collection. This new section would be added to address information collection requirements of 5 CFR part 1320.

Proposed Changes to Subpart C—Disposal of Mineral Materials

Proposed 228.43 Policy governing disposal. Paragraph (b) would be revised to state that the authorized officer will assess a fee to cover the cost of issuing and administering a contract or permit in accordance with the cost recovery requirements of Subpart F.

Proposed 228.51 Fees and bonding. This section would be retitled to include the topic “fees” and add a new paragraph (a) to include authority for recovery of costs for mineral material permits and contracts in accordance

with the cost recovery requirements of Subpart F.

Proposed 228.58 Competitive Sales. A new paragraph (b) would be added to establish requirements for competitive mineral material sales. The Forest Service proposes to utilize a cost recovery process that mimics that used by the BLM for its competitive mineral material sales to account for situations where the successful bidder for a sale is someone other than the applicant. Existing paragraphs in the section would be redesignated to accommodate the addition of the new paragraph. Paragraph (b)(2) in the existing rule would be redesignated as paragraph (c)(2) and amended to state that the advertisement of sale must specify the applicable processing and monitoring fees that a successful bidder would be responsible for. Paragraph (d)(4) in the existing rule would be redesignated as paragraph (e)(4) and amended to state that a successful bidder would be required to pay the processing and monitoring fees specified in the sale advertisement within 30 days of receiving the sales contract.

Proposed 228.63 Removal under terms of a timber sale contract. This paragraph would be amended to include language for the authorized officer to charge a processing and monitoring fee in accordance with the cost recovery requirements of Subpart F for operating plans associated with timber sales that require the use of mineral materials from NFS lands for various physical improvements.

Proposed Changes to Subpart E—Oil and Gas Resources

Proposed 228.106 Operator's submission of surface use plan of operations. Paragraph (a) would be amended to include language to state that the authorized officer shall charge a processing fee and, as appropriate, a monitoring fee for each surface use plan of operations in accordance with the cost recovery requirements of Subpart F.

Proposed 228.107 Review of surface use plan of operations. Paragraph (d) would be amended to state that for decisions to approve a surface use plan of operations, the authorized Forest officer's notification to BLM and the operator will include the monitoring fee that the operator must pay, in accordance with the cost recovery requirements of Subpart F, before surface use begins if the BLM approves the permit to drill. Paragraph (e) would be amended to state that a supplemental surface use plan of operation shall be subject to cost recovery and reviewed in the same manner as an initial surface use plan of operations.

Regulatory Certifications

Executive Orders 12866 and 13563 Regulatory Planning and Review

This proposed rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866, on regulatory planning and review, and the major rule provisions of the Small Business Regulatory Enforcement and Fairness Act (5 U.S.C. 800).

The Forest Service has determined that the proposed rule will not have an annual effect on the economy of \$100 million or more. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. This determination is based on the Initial Regulatory Flexibility Act (IRFA) analysis the Forest Service prepared in conjunction with this proposed rule. For more detailed information, see the IRFA prepared for this proposed rule. The IRFA has been posted in the docket for the proposed rule on the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter "RIN 0596-AD47," click the "Search" button, open the Docket Folder, and look under Supporting Documents. Comments are invited on the data, methodology, and results of the Forest Service's IRFA analysis completed for the proposed rule per the invitation and directions for public comment provided in the summary at the beginning of this notice.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This proposed rule does not change the relationships of the Forest Service's minerals programs with other agencies' actions. These relationships are based in law, regulation, agreements, and memoranda of understanding that would not change with this proposed rule.

In addition, this proposed rule would not materially affect the budgetary impact of entitlements, grants, loan programs, or the rights and obligations of their recipients. However, this rule does propose to create new fees for processing documents associated with the agency's minerals programs because of the IOAA, 31 U.S.C. 9701 as well as recommendations made by the GAO (Report No. GAO-16-165). As stated earlier in this preamble, the IOAA authorizes the Forest Service to charge proponents the cost of processing documents. In addition, the IOAA states that these charges should cover the agency's costs for these services to the degree practicable. Federal policy per

OMB Circular A-25 directs agencies to assess user charges against identifiable recipients of special benefits derived from Federal activities.

Finally, although this rule does not raise novel legal issues, it is possible that it may raise novel policy issues because the agency would charge processing and monitoring fees that the Forest Service does not currently impose for mineral-related activity.

Regulatory Flexibility Act

For this proposed rule, fee increases for some small businesses in the mineral materials sector are estimated to be in the range of 3 percent to 4 percent of annual receipts. The Forest Service could not conclude that costs to that subset of small businesses are sufficiently low or that net benefits of the proposed rule are sufficiently high to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. Instead, the Forest Service has prepared an initial RFA (IRFA) analysis of the economic impacts of the proposed rule on small entities that seek or hold mineral-related authorizations for use and occupancy of NFS lands.

For the purposes of this section, a small entity is defined by the Small Business Administration (SBA) for mining (broadly inclusive of metal mining, coal mining, oil and gas extraction, and the mining and quarrying of nonmetallic minerals) as an individual, limited partnership, or small company considered to be at arm's length from the control of any parent companies, with fewer than 500 employees. The SBA defines a small entity differently, however, for leasing Federal land for coal mining: a coal lessor is a small entity if it employs not more than 250 people, including people working for its affiliates. The Forest Service notes that this proposed rule does not affect service industries, for which the SBA has a different definition of "small entity."

The proposed rule is expected to have non-significant effects on a substantial number of entities that conduct activity on NFS lands since most fit SBA's "small entity" definition and nearly all of them will face fee increases for activities on NFS lands. As presented in the IRFA analysis prepared by the Forest Service, and available as a supporting document for this proposed rule, except for mineral materials, when the total estimated fees paid by these entities are expressed as a percentage of the sales value of production from NFS land, the relative size and effect of the fees are small and are not expected to

have a significant effect on these small entities.

When the total fee increases for leasable actions were compared to receipt data of production from Federal leases in 2017, the fee increases are 0.06 percent of receipts from NFS lands. Assuming the burden of the fee increases are distributed evenly among all firms operating on NFS lands the fee increases amounted to 0.30 percent of receipts attributable to small entities. Similarly, the total fee increases for locatable actions were 0.30 percent of estimated receipts attributable to NFS lands in 2017. Again, assuming fee increases are distributed evenly by active firms, the fee increases would be 2.11 percent of projected annual receipts from small entities engaged in locatable mineral actions on NFS lands. These fee increases are not expected to cause a significant impact on the small entities engaged in leasable or locatable mineral activity on NFS lands.

Within the mineral materials program, the proposed fee increases were estimated to be 61 percent of the total reported production value for mineral materials disposals from NFS lands in 2017. Assuming the burden of the fee increases is distributed evenly among all firms operating on NFS lands, the fee increases for mineral materials disposals amounted to 125 percent of receipts attributable to small entities in 2017. These percentages would suggest the potential of a significant impact on operators, including small entities, operating on NFS lands. However, the unique nature of mineral material production on NFS lands as being a high volume/low value commodity with involvement of high numbers of individuals and small businesses warranted a more detailed analysis beyond the coarse economic filter of comparing total fee collections to total receipts.

The proposed fees for mineral materials are comprised of a fixed fee for low volume disposals, a fee determined from a fee schedule for moderately complex proposals, and a case-by-case fee for the most complex proposals. For the five-year period 2015 through 2019, low volume disposals (that is, less than 25 cubic yards per disposal) made up approximately 83 percent of total number of mineral material disposals from NFS land, but only 0.2 percent of total disposed volume. Low volume disposals are largely made to entities for non-commercial purposes, and when coupled with the low proposed flat fee for this type of disposal, there is not expected to be a significant impact to

small business or governmental entities as a result of implementing the rule.

Analysis of mineral material disposals for 2019 as a representative year found that 240 entities requesting disposals exceeding 25 cubic yards per disposal accounted for more than 99 percent of the total volume of mineral material disposed from NFS lands during the year. Disposal requests made by these 240 entities are expected to have dominated agency time dedicated to processing mineral material requests in 2019. However, within these 240 entities, disposal volumes, and therefore cost recovery fees, are expected to be highly skewed toward a small number of large operators. For example, 93 percent of the mineral material volume disposed in 2019 was allocated to only 11 of the 240 entities, or 1 percent of all entities requesting disposals for the year. Average disposal volume for these 11 entities ranged from 16,000 to 280,000 cubic yards per disposal request. Most of the time needed to satisfy NEPA, and therefore process disposal requests, are expected to be concentrated in this small subset of entities. Five of these 11 entities are large business or large governments with annual revenues over \$100 million and therefore not classified as small businesses. Three of the entities have annual revenues between \$2.7 million to \$10.7 million for whom the average annual cost of preparing an environmental assessment would be less than 2.5 percent of annual revenues. The remaining three entities in this subgroup are small county governments, where proposed fees could entail significant economic impacts but would be eligible to have fees waived under the proposed rule waiver provisions.

The analysis further showed the 225 entities (16 percent of all entities requesting disposals on NFS land in 2019) that requested disposals between 25 and 16,000 cubic yards during 2019, would experience fees amounting from 1 percent to 4 percent of annual receipts for small businesses. Out of 225 entities, only 63 (less than 5 percent of all entities requesting disposals from NFS land in 2019) that submitted multiple disposal requests during the year are expected to be subject to fees in the range of 3 percent to 4 percent of annual receipts. The Forest Service believes this low number of entities would not constitute a substantial number of small entities experiencing a significant economic impact.

We note that in all areas, the proposed fees are charged only once per proposal and, therefore, generally the impact is spread over several years of industry production. This has the effect of

lessening the impact of fees even further. In addition, bids at lease and competitive mineral material sales reflect fair market value, so we can expect associated bonus bids may decline in response to the increased processing costs.

The estimate of the proposed fees for processing locatable plans of operation did not include costs associated with a Forest Service certified mineral examiner (CME) preparing reports that sometimes are required to inform the authorized officer's decision on operating plans and may have possible effects on small entities. Although the cost for a CME to complete a mineral examination report (such as, validity exam, mineral classification report, or surface use determination) would increase the fee paid by a proponent to process a plan of operations, it would not be significant compared to the capital expenditures associated with many locatable mineral mining ventures, which may range from hundreds of thousands of dollars for small operations to hundreds of millions of dollars for large ventures. The smaller the entity, the more likely the proposed plan of operations will be less complex or involve fewer mining claims, reducing the time needed for the CME to review and document their findings. Because fees for a proposed plan of operations needing CME engagement are more likely to involve a case-by-case tracking of actual agency time and costs, plans that are less complex or involve fewer claims will generally be charged fees at the low end of the possible range. Impacts to small entities is also less likely because plans of operation needing a CME input are a relatively rare occurrence. The Forest Service estimates only around two percent of the locatable plans of operations that are processed in a year will need a mineral examination report.

Energy Effects

The proposed rule was reviewed under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Forest Service finds the proposed rule is not likely to have a significant effect (positive or negative) on energy supply or distribution. The regulation would be administrative in nature and does not impact agency decisions about leasing and subsequent development of energy resources on NFS lands.

The proposed rule is not expected to have a significant adverse effect on the supply, distribution, or use of energy; competition or prices; other agency actions related to energy; or raise novel issues regarding adverse effects on

energy. The proposed rule is therefore not expected to be a significant energy action or require a statement of energy effects, consistent with OMB guidance for implementing E.O. 13211.

Consultation and Coordination With Indian Tribal Governments

Pursuant to E.O. 13175, the agency has assessed the impact of this proposed rule on Indian tribal governments and expects that the proposed rule would not have direct and substantial effects on federally recognized Indian tribes. The proposed rule consists of administrative procedures for recovering costs for processing and monitoring proposals to conduct mineral activity and, as such, has no direct effect on tribal consultation requirements for individual mineral proposals on NFS land.

The Agency has also determined that this proposed rule would not impose substantial direct compliance costs on Indian tribal governments. This proposed rule does not mandate tribal participation in the Forest Service cost recovery process, and allows for waivers of cost recovery for tribal entities under certain circumstances.

Environmental Impact

This proposed rule would establish administrative fee categories and procedures for charging, collecting, and reconciling fees to process notices, requests, and proposals and monitor authorizations on National Forest System lands per the regulations of 36 CFR part 228. The charging of fees would have no bearing on where or how mineral projects are conducted on NFS lands. No environmental impacts are predicted with implementation of the rule. Forest Service National Environmental Policy Act (NEPA) regulations at 36 CFR 220.6(d)(2) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule.

Federalism

The agency has considered this proposed rule under the requirements of E.O. 13132, Federalism, and has made a preliminary assessment that the rule conforms with the Federalism

principles set out in the Executive Order; would not impose any compliance costs on the States; and would 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. Moreover, the cost recovery processing and monitoring fees set out in this proposed rule may be waived or partially waived for State and local government entities that waive similar fees they might otherwise assess the Forest Service. The proposed rule may result in a slight decrease in bonus bids for coal and other solid mineral leases, which are shared with the States. Based on comments received on this proposed rule, the agency will consider if any additional consultation will be needed with State and local governments prior to adopting a final rule.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in E.O. 12630, and it has been determined that the proposed rule does not pose the risk of a taking of constitutionally protected private property. The proposed rule has no bearing on property rights, but only concerns recovery of government processing costs for actions that benefit certain entities that acquire rights and seek use and occupancy of NFS lands to extract publicly owned resources. Therefore, the Forest Service has determined that the rule would not cause a taking of private property or require further discussion of takings implications under the Executive Order.

Civil Justice Reform Act

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. The Forest Service finds that this rule would not unduly burden the judicial system. If this proposed rule were adopted, (1) all State and local laws and regulations that are in conflict with this proposed rule or that would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule

would not compel the expenditure of \$100 million or more in any one year by any State, local, or tribal government or anyone in the private sector. Therefore, a statement containing the information required under section 202 of the Act is not required.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any new record-keeping or reporting requirements, or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. The information that would be collected by the Forest Service as a result of this action have been approved by the Office of Management and Budget (OMB) under existing Control Numbers 0596–0022 (locatable minerals), 0596–0081 (mineral materials), and 0596–0101 (oil and gas). In recovering costs for providing responses required by law or regulation for coal and non-energy solid leasable minerals, the Forest Service will utilize information provided under existing OMB clearances issued to the Bureau of Land Management and the Office of Surface Mining Reclamation and Enforcement. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 228

Mineral resources.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend part 228 of title 36 of the Code of Federal Regulations as follows:

PART 228—MINERALS

- 1. The authority citation for part 228 is revised to read as follows:

Authority: 16 U.S.C. 478, 551; 30 U.S.C. 191, 201, 207, 226, 352, 601, 611, 1014, 1272; 31 U.S.C. 9701; 94 Stat. 2400.

- 2. Amend § 228.4 by revising paragraphs (a)(3) and (e) to read as follows:

§ 228.4 Plan of operations—notice of intent—requirements.

(a) * * *

(3) An operator shall submit a proposed plan of operations to the District Ranger having jurisdiction over the area in which operations will be conducted in lieu of a notice of intent to operate if the proposed operations will likely cause a significant disturbance of surface resources. An operator also shall submit a proposed

plan of operations, or a proposed supplemental plan of operations consistent with § 228.4(d), to the District Ranger having jurisdiction over the area in which operations are being conducted if those operations are causing a significant disturbance of surface resources but are not covered by a current approved plan of operations. The operator must pay a processing fee for each proposed plan of operations as determined by the authorized officer in accordance with the cost recovery requirements of § 228 Subpart F. The requirement to submit a plan of operations shall not apply to the operations listed in paragraphs (a)(1)(i) through (v). The requirement to submit a plan of operations also shall not apply to operations which will not involve the use of mechanized earthmoving equipment, such as bulldozers or backhoes, or the cutting of trees, unless those operations otherwise will likely cause a significant disturbance of surface resources.

* * * * *

(e) At any time during operations under an approved plan of operations, the authorized officer may ask the operator to furnish a proposed modification of the plan detailing the means of minimizing unforeseen significant disturbance of surface resources. The operator must pay a processing fee for each proposed modification to the plan as determined by the authorized officer in accordance with the cost recovery requirements of § 228 Subpart F. If the operator does not furnish a proposed modification within a time deemed reasonable by the authorized officer, the authorized officer may recommend to his immediate superior that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth in detail the supporting facts and reasons for his recommendations. In acting upon such recommendation, the immediate superior of the authorized officer shall determine:

* * * * *

- 3. Amend § 228.5 by revising paragraph (a)(1) to read as follows:

§ 228.5 Plan of operations—approval.

(a) * * *

(1) Notify the operator that he has approved the plan of operations conditioned upon payment of a monitoring fee as determined by the authorized officer in accordance with the cost recovery requirements of § 228 Subpart F; or

* * * * *

■ 4. Add new § 228.20 to Subpart B—Leasable Minerals to read as follows:

Subpart B—Leasable Minerals

§ 228.20 Cost Recovery Fees.

(a) The authorized officer shall charge applicants a fee to recover costs to process competitive and non-competitive lease, exploration license, and prospecting permit applications for coal or other solid leasable minerals on National Forest System lands that are filed with the Bureau of Land Management and require a response from the Forest Service by law or regulation. Fees are subject to the cost recovery requirements of § 228 Subpart F. The cost recovery process for competitive leases under this section follows:

(1) The applicant nominating coal or other solid mineral lands for competitive leasing under this section must pay a processing fee determined by the authorized officer in accordance with the cost recovery requirements of § 228 Subpart F, modified by the provisions of this section. The authorized officer shall request the Bureau of Land Management to include a statement in the notice of lease sale of the cost recovery fee paid to the Forest Service by the applicant up to 30 days before the competitive lease sale.

(2) The applicant nominating the tract for competitive leasing must pay the cost recovery amount before the Forest Service takes action to provide its response to the Bureau of Land Management.

(3) The successful bidder, if someone other than the applicant, must pay the Forest Service the amount of Forest Service cost recovery specified in the sale notice.

(4) If the successful bidder is someone other than the applicant, the Forest Service will refund to the applicant the amount paid under paragraph (b)(1) of this section.

(b) For all leasable minerals other than oil and gas, the authorized officer shall charge proponents a fee to recover the Forest Service's cost to process proposals to conduct operations on leases, permits or licenses when such proposals are filed with another government agency and require a response from the Forest Service by law or regulation. Fees will be determined by the authorized officer in accordance with the cost recovery requirements of § 228 Subpart F.

(c) The authorized officer shall charge holders a fee to recover monitoring costs for authorizations issued by the Forest Service which are required by law and not addressed elsewhere in part 228.

Monitoring fees will be determined in accordance with the cost recovery requirements of § 228 Subpart F.

§ 228.21 Information collection requirements.

The information collection requirements of this subpart are already approved for use through various Office of Management and Budget information collection approvals issued to the Bureau of Land Management for issuing and managing Federal mineral leases and to the Office of Surface Mining Reclamation and Enforcement for managing coal mining operations on Federal lands.

■ 5. Amend § 228.43 by revising paragraph (b) to read as follows:

§ 228.43 Policy governing disposal.

* * * * *

(b) *Price.* Mineral materials may not be sold for less than the appraised value. The authorized officer shall assess a fee to cover costs of issuing and administering a contract or permit in accordance with the cost recovery requirements of § 228 Subpart F.

* * * * *

■ 6. Amend § 228.51 by:

■ a. Revising the section heading; and

■ b. Redesignating paragraphs (a) and (b) as paragraphs (b) and (c) and adding a new paragraph (a).

The revision and addition read as follows:

§ 228.51 Fees and Bonding.

(a) *Processing fees.* Applications for a permit or contract for mineral materials shall be subject to the cost recovery requirements of § 228 Subpart F modified by the provisions of this Subpart. Applicants will be charged a processing fee and, as applicable, a monitoring fee determined by the authorized officer.

* * * * *

■ 7. Amend § 228.58 by:

■ a. Redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e) and adding new paragraph (b); and

■ b. Revising newly designated paragraphs (c)(2) and (e)(4).

The addition and revisions read as follows:

§ 228.58 Competitive sales.

* * * * *

(b) *Fee requirements for competitive sales.* For competitive sales, the applicant requesting a mineral material sale must pay the total processing fee up to 30 days before the sale. The cost recovery process for a competitive mineral material sale follows:

(1) The applicant requesting the sale must pay the cost recovery fee amount

before the authorized officer will publish the invitation for bid required in § 228.58.

(2) Before the contract is issued:

(i) The successful bidder, if someone other than the applicant, must pay to the Forest Service the cost recovery amount specified in the invitation to bid; and

(ii) The successful bidder must pay all processing and monitoring fees the Forest Service incurs after the date of the invitation to bid.

(3) If the successful bidder is someone other than the applicant, the Forest Service will refund to the applicant the amount paid under paragraph (a)(1) of this section.

(c) * * *

(2) *Content of advertising.* The advertisement of sale must specify the location by legal description of the tract or tracts or by any other means identify the location of the mineral material deposit being offered, the kind of material, estimated quantities, the unit of measurement, appraised price (which sets the minimum acceptable bid), applicable processing and monitoring fees, time and place for receiving and opening of bids, minimum deposit required, major special constraints due to environmental considerations, available access, maintenance required over haul routes, traffic controls, required use permits, required qualifications of bidders, the method of bidding, bonding requirement, notice of the right to reject any or all bids, the office where a copy of the contract and additional information may be obtained, and additional information the authorized officer deems necessary.

(e) * * *

(4) Within 30 days after receipt of the contract, the successful bidder must sign and return the contract, pay the processing and monitoring fees specified in the sale advertisement, and provide any required bond, unless the authorized officer has granted an extension for an additional 30 days. The bidder must apply for the extension in writing within the first 30-day period. If the successful bidder fails to return the contract within the first 30-day period or within an approved extension, the bid deposit, less the costs of re-advertising and damages, may be returned without prejudice to any other rights or remedies of the United States.

* * * * *

■ 8. In § 228.63 revise the introductory paragraph to read as follows:

§ 228.63 Removal under terms of a timber sale or other Forest Service contract.

In carrying out programs such as timber sales that involve construction

and maintenance of various physical improvements, the Forest Service may specify that mineral materials be mined, manufactured, and/or processed for incorporation into the improvement. Where the mineral material is located on National Forest lands and is designated in the contract calling for its use, no permit is required as long as an operating plan as described in § 228.56 is required by the contract provisions. The authorized officer shall charge a fee to process the operating plan and monitor activity under the approved operating plan in accordance with the cost recovery requirements of § 228 Subpart F.

* * * * *

■ 9. Amend § 228.106 by revising paragraph (a) to read as follows:

§ 228.106 Operator's submission of surface use plan of operations.

(a) *General.* No permit to drill on a Federal oil and gas lease for National Forest System lands may be granted without the analysis and approval of a surface use plan of operations covering proposed surface disturbing activities. An operator must obtain an approved surface use plan of operations before conducting operations that will cause surface disturbance. The operator shall submit a proposed surface use plan of operations as part of an Application for a Permit to Drill to the appropriate Bureau of Land Management office for forwarding to the Forest Service, unless otherwise directed by the Onshore Oil and Gas Order in effect when the proposed plan of operations is submitted. The authorized Forest officer shall charge the operator a processing fee and, as appropriate, a monitoring fee, for each surface use plan of operations in accordance with the cost recovery requirements of § 228 Subpart F.

* * * * *

■ 10. Amend § 228.107 by revising paragraphs (d) and (e) to read as follows:

§ 228.107 Review of surface use plan of operations.

* * * * *

(d) *Transmittal of decision.* The authorized Forest officer shall immediately forward a decision on a surface use plan of operations to the appropriate Bureau of Land Management office and the operator. If the decision is to approve the plan, this transmittal shall include:

(1) The monitoring fee that would be required of the operator if the Bureau of Land Management approves the application for permit to drill; and

(2) The estimated cost of reclamation and restoration (§ 228.109(a)) if the

authorized forest officer believes that additional bonding is required.

* * * * *

(e) *Supplemental plans.* A supplemental surface use plan of operations (§ 228.106(d)) shall be subject to cost recovery and reviewed in the same manner as an initial surface use plan of operations.

* * * * *

■ 11. Add new Subpart F—General Cost Recovery Requirements for Minerals to read as follows:

■ Subpart F—General Cost Recovery Requirements for Minerals

§ 228.200 Authority.

Authority to charge processing costs is provided by the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701.

§ 228.201 Definitions.

Authorization—an approval, permit, contract, or sale issued by the Forest Service per regulations at 36 CFR part 228.

Holder—an individual or entity that holds a valid authorization issued by the Forest Service to conduct activity under the regulations of this Part.

Monitoring—Actions needed to ensure compliance with the terms and conditions of an authorization issued by the Forest Service under regulations at 36 CFR part 228.

Operating plan—A plan of operations as provided for in 36 CFR 228, subparts A and D, and 36 CFR 292, subparts C and G; a supplemental plan of operations as provided for in 36 CFR part 228, subpart A, and 36 CFR part 292, subpart G; an operating plan as provided for in 36 CFR part 228, subpart C, and 36 CFR 292, subpart G; an amended operating plan and a reclamation plan as provided for in 36 CFR part 292, subpart G, a surface use plan of operations as provided for in 36 CFR part 228, subpart E; a supplemental surface use plan of operations as provided for in 36 CFR part 228, subpart E; an operating plan and a letter of authorization as provided for in 36 CFR part 292, subpart D; a Notice of Intent to Conduct Geothermal Resource Exploration Operations, a geothermal drilling permit, a utilization plan, a site license as provided for in 43 CFR 3273; or a commercial use permit as provided for in 43 CFR part 3200; an exploration plan or a resource recovery and protection plan as provided for in 43 CFR, part 3400; an exploration plan or operating plan as provided for in 43 CFR, part 3500.

Proponent—an individual or entity proposing an action associated with mineral resources on National Forest

System lands governed by the regulations of 36 CFR part 228, 43 CFR 43 CFR part 3000, or 30 CFR Chapter VII.

Proposal—An application, plan, or request to acquire, modify, renew, or readjust the right to conduct activity to prospect, explore, develop, produce, or remove mineral resources from National Forest System lands.

§ 228.202 Cost recovery.

(a) *Assessment of fees to recover agency processing and monitoring costs.* The Forest Service shall assess fees to recover the agency's costs for processing proposals and monitoring authorizations pursuant to the regulations of Part 228. Fees may be either a fixed fee or determined from a fee category. Proponents shall submit sufficient information for the authorized officer to estimate the number of hours required to process their proposals or monitor their authorizations. Cost recovery fees payable to the Forest Service under this subpart are separate from fees that may be charged by other government entities for mineral activity conducted on National Forest System lands such as, but not limited to, fees collected by the Bureau of Land Management for oil and gas Applications for Permits to Drill (APDs). The cost recovery provisions of this section shall not apply to or supersede written agreements providing for recovery of processing costs executed by the agency and proponents prior to *(the effective date of the rule)*.

(b) *Proposals subject to cost recovery requirements.* Cost recovery requirements of this Part apply to:

(1) Processing of proposals received on or after *(the effective date of the rule)*; and

(2) Monitoring of authorizations issued or amended under this Part on or after *(effective date of the rule)*.

(c) *Processing fee requirements.* A processing fee is required for each proposal as identified in paragraph (b)(1) of this section. Processing fees do not include costs incurred by the proponent in providing information, data, and documentation necessary for the authorized officer to take action on a proposal.

(1) *Basis for processing fees.*

(i) *Fixed fee proposals:* A fixed fee is based on a projected cost the Forest Service incurs to process proposals identified as being subject to a fixed fee.

(ii) *Processing category proposals:* Processing category proposals have fees based on an estimate of the total time for all involved Forest Service personnel to process a proposal. The time bands for processing categories 1 through 6 set out

in paragraph (c)(3)(i) of this section are based upon the costs incurred by the Forest Service to meet with the proponent, review the proposal, prepare or cooperate in preparing environmental analyses of the effects of the proposal, review any applicant-generated environmental documents and studies, conduct site visits, coordinate with other government entities, make a determination, recommendation, or decision on the proposal, and prepare documentation of analyses, decisions, and authorizations. The processing fee for a proposal shall be based only on costs necessary for processing that proposal. "Necessary for" means that, but for the proposal, the costs would not have been incurred and that the costs cover only those activities without which the proposal cannot be processed. The processing fee shall not include costs for studies for programmatic planning or analysis or other agency management objectives, unless they are necessary for the proposal being processed. Proportional costs for analyses that are necessary for the proposal, such as one analysis prepared for proposals from multiple proponents, may be included in the processing fee. The costs incurred for processing a proposal and thus the processing fee, depend on the complexity of the proposal; the amount of information that is necessary for the authorized officer's decision or response to the proposal; and the degree to which the proponent can provide this information to the agency. Processing work conducted by the proponent, or a third party contracted by the proponent, minimizes the costs the Forest Service will incur to process the proposal, and thus reduces the processing fee.

(2) *Processing fee determinations.* The applicable fee for processing a proposal with a fixed fee or in categories 1 through 4 shall be assessed from a schedule published in the Forest Service Handbook at 2809.15 (<https://www.fs.usda.gov/im/directives/>). The processing fee for proposals in category 5 shall be established in the master agreement (paragraph (c)(3)(ii) of this section). For category 5 and category 6 proposals, the authorized officer shall estimate the agency's full actual processing costs on a case-by-case basis. The estimated processing costs for category 5 and category 6 proposals shall be reconciled as provided in paragraphs (c)(6)(ii) and (iii) and (c)(7)(ii) and (iii) of this section.

(3) *Processing fee categories for proposals not subject to a fixed fee.*

(i) Proposals are assigned to one of the fee categories 1 through 6 as follows:

TABLE 3—PROCESSING CATEGORIES

Processing category	Federal work hours involved
1	Estimated Federal work hours are ≤8.
2	Estimated Federal work hours are >8 and ≤24.
3	Estimated Federal work hours are >24 and ≤40.
4	Estimated Federal work hours are >40 and ≤64.
5 (Master agreements).	Varies.
6	Estimated Federal work hours are >64.

(ii) *Category 5: Master agreements.* The Forest Service and the proponent may enter into master agreements for the agency to recover processing costs associated with a particular proposal, a group of proposals, or similar proposals for a specified geographic area. A master agreement shall at a minimum include:

- (A) The fee category or estimated processing costs;
- (B) A description of the method for periodic billing, payment, and auditing;
- (C) A description of the geographic area covered by the agreement;
- (D) A work plan and provisions for updating the work plan;
- (E) Provisions for reconciling differences between estimated and final processing costs; and
- (F) Provisions for terminating the agreement.

(iii) *Category 6: More than 64 hours.* Processing fees for category 6 proposals are determined on a case-by-case basis. The authorized officer shall determine the issues to be addressed and shall develop preliminary work and financial plans for estimating recoverable costs.

(4) *Multiple proposals other than those covered by master agreements (category 5).* Where processing costs benefit multiple proposals (for example, the cost of conducting an environmental analysis or printing an Environmental Impact Statement that relates to multiple proposals), the costs must be paid in equal shares or on a prorated basis by each proponent involved, as deemed appropriate by the authorized officer.

(5) *Billing and revision of processing fees.*

(i) *Billing.* For proposals assigned to a processing category, the authorized officer will issue a bill to the proponent for the processing fee that is due. The authorized officer shall not bill the proponent a processing fee until the agency is prepared to process the proposal.

(ii) *Revision of processing fees.* Processing fees shall not be reclassified

into a higher category once the processing fee category has been determined. However, if the authorized officer discovers previously undisclosed information that necessitates changing to a higher category processing fee, the authorized officer shall notify the proponent of the conditions prompting a change in the processing fee category in writing before continuing with processing the proposal. The proponent may accept the revised processing fee category and pay the difference between the previous and revised processing categories; withdraw the proposal; revise the project to lower the processing costs; or request a review of the disputed fee as provided in paragraphs (e)(1) through (4) of this section.

(6) *Payment of processing fees.* (i) Payment of the processing fee for a fixed fee proposal is due when the proposal is filed with the Forest Service. For all other proposals, payment of a processing fee shall be due within 30 days of issuance of a bill for the fee, pursuant to paragraph (c)(5) of this section. The processing fee must be paid before the Forest Service can initiate or, in the case of a revised fee, continue with processing a proposal. Payment of the processing fee by the proponent does not obligate the Forest Service to authorize, approve, or consent to, or otherwise make determinations in favor of the proponent's activity as proposed.

(ii) For category 5 cases, when the estimated processing costs are lower than the final processing costs for proposals covered by a master agreement, the proponent shall pay the difference between the estimated and final processing costs.

(iii) For category 6 cases, when the estimated processing fee is lower than the full actual costs of processing a proposal, the proponent shall pay the difference between the estimated and full actual processing costs.

(7) *Refunds of processing fees.* (i) Processing fees for fixed fee proposals or for proposals designated in categories 1 through 4 are nonrefundable and shall not be reconciled.

(ii) For category 5 cases, if payment of the processing fee exceeds the agency's final processing costs for the proposals covered by a master agreement, the authorized officer either shall refund the excess payment to the proponent or, at the proponent's request, shall credit it towards monitoring fees due.

(iii) For category 6 cases, if payment of the processing fee exceeds the full actual costs of processing a proposal, the authorized officer either shall refund the excess payment to the proponent or,

at the proponent's request, shall credit it towards monitoring fees due.

(iv) For category 5 and category 6 proposals, a proponent whose request is denied or withdrawn in writing is responsible for costs incurred by the Forest Service in processing the proposal up to and including the date the agency denies the proposal, or receives written notice of the proponent's withdrawal. When a proponent withdraws a category 5 or category 6 proposal, the proponent also is responsible for any costs subsequently incurred by the Forest Service in terminating consideration of the proposal.

(d) *Monitoring fee requirements.* A monitoring fee will not be charged for proposals subject to a fixed fee. For all other proposals that are authorized by the Forest Service under this part, the monitoring fee for an authorization shall be assessed independently of any fee charged for processing the proposal pursuant to paragraph (c) of this section. Payment of the monitoring fee is due upon issuance of the authorization or per the terms of a master agreement.

(1) *Basis for monitoring fees.* For monitoring fees in categories 1 through 4, holders of authorizations are assessed fees based upon the estimated time needed for Forest Service monitoring to ensure compliance with surface use requirements during the construction or reconstruction phase of the authorization and rehabilitation of the construction or reconstruction site. Category 5 and category 6 monitoring fees shall be based upon the agency's estimated costs to ensure compliance with the surface use terms and conditions during all phases of the authorized activity, including but not limited to monitoring to ensure compliance with surface use requirements during the construction or reconstruction phase of the authorization and rehabilitation of the construction or reconstruction site. Monitoring for all categories does not include billings, maintenance of case files, or scheduled inspections to determine compliance generally with the terms and conditions of an authorization.

(2) *Monitoring fee determinations.* The applicable fee for monitoring compliance with authorizations in categories 1 through 4 (paragraphs (d)(3)(i) of this section) shall be assessed from a schedule published in the Forest Service Handbook at 2809.15. The monitoring fee for authorizations in category 5 shall be established in the master agreement (paragraph (d)(3)(ii) of this section). For category 5 and category 6 (paragraph (d)(3)(iii) of this

section) cases, the authorized officer shall estimate the agency's monitoring costs on a case-by-case basis. The estimated monitoring costs for category 5 and category 6 cases shall be reconciled as provided in paragraphs (d)(4)(ii) and (iii) and (d)(5)(ii) and (iii) of this section.

(3) *Monitoring fee categories.* (i) Authorizations are assigned to a fee category as follows:

TABLE 4—MONITORING CATEGORIES

Monitoring category	Federal work hours involved
1	Estimated Federal work hours are ≤8.
2	Estimated Federal work hours are >8 and ≤24.
3	Estimated Federal work hours are >24 and ≤40.
4	Estimated Federal work hours are >40 and ≤64.
5 (Master agreements).	Varies.
6	Estimated Federal work hours are >64.

(ii) *Category 5: Master agreements.* The Forest Service and the holder of an authorization may enter into a master agreement for the agency to recover monitoring costs associated with a particular authorization or by a group of authorizations for a specified geographic area. A master agreement shall at a minimum include:

(A) The fee category or estimated monitoring costs;

(B) A description of the method for periodic billing, payment, and auditing of monitoring fees;

(C) A description of the geographic area covered by the agreement;

(D) A monitoring work plan and provisions for updating the work plan;

(E) Provisions for reconciling differences between estimated and final monitoring costs; and

(F) Provisions for terminating the agreement.

(iii) *Category 6: More than 64 hours.* The Forest Service shall develop a preliminary work plan and financial plan on agency resources needed to monitor compliance with the terms and conditions of the authorization during all phases of its term, including any additional time for rehabilitation of the site. The Forest Service and the proponent must enter into a written agreement that describes the Forest Service monitoring activity for the authorization. The final agreement will consist of a work plan and a financial plan.

(4) *Billing and payment of monitoring fees.*

(i) The authorized officer shall estimate the monitoring costs and shall notify the holder of the required fee. Monitoring fees in categories 1 through 4 must be paid in full before or at the same time the authorization is issued. For authorizations in category 5 and category 6, the estimated monitoring fees must be paid in full before or at the same time the authorization is issued, unless the authorized officer and the applicant or holder agree in writing to a payment schedule.

(ii) For category 5 cases, when the estimated monitoring costs are lower than the final monitoring costs for proposals covered by a master agreement, the holder shall pay the difference between the estimated and final monitoring costs.

(iii) For category 6 cases, when the estimated monitoring fee is lower than the full actual costs of monitoring an authorization, the proponent shall pay the difference in the next scheduled payment, or the authorized officer shall bill the holder for the difference between the estimated and full actual monitoring costs. Payment shall be due within 30 days of receipt of the bill.

(5) *Refunds of monitoring fees.*

(i) Monitoring fees for categories 1 through 4 are nonrefundable and shall not be reconciled.

(ii) For category 5 cases, if payment of the monitoring fee exceeds the agency's final monitoring costs for the activities covered by a master agreement, the authorized officer shall either adjust the next scheduled payment to reflect the overpayment or refund the excess payment to the holder.

(iii) For category 6 cases, if payment of the monitoring fee exceeds the full actual costs of monitoring an authorization, the authorized officer shall either adjust the next scheduled payment to reflect the overpayment or refund the excess payment to the holder.

(e) *Proponent or holder disputes concerning processing or monitoring fee assessments; requests for changes in fee categories or estimated costs.*

(1) The amount of a fixed fee assessment is not subject to review under this section.

(2) If a proponent or holder disagrees with the processing or monitoring fee category assigned by the authorized officer for categories 1 through 4 or, in the case of processing or monitoring for categories 5 and 6, with the estimated dollar amount of the processing or monitoring costs, the proponent or holder may submit a written request before the disputed fee is due for

substitution of an alternative fee category or alternative estimated costs. The written request must be submitted to the immediate supervisor of the authorized officer who determined the fee category or estimated costs. The proponent or holder must provide documentation that supports the alternative fee category or estimated costs.

(3) In the case of a disputed processing fee:

(i) If the proponent pays the full disputed processing fee, the authorized officer shall continue to process the proposal during the authorized officer's immediate supervisor's review of the disputed fee, unless the proponent requests that the processing cease.

(ii) If the proponent fails to pay the full disputed processing fee, the authorized officer shall suspend further processing of the proposal pending the authorized officer's immediate supervisor's determination of an appropriate processing fee and the proponent's payment of that fee.

(4) In the case of a disputed monitoring fee:

(i) If the proponent or holder pays the full disputed monitoring fee, the authorized officer shall issue the authorization or allow the use and occupancy to continue during the supervisory officer's review of the disputed fee, unless the proponent or holder elects not to exercise the authorized use and occupancy of National Forest System lands during the review period.

(ii) If the proponent or holder fails to pay the full disputed monitoring fee, the authorized officer shall not issue a new authorization or shall suspend the activity in whole or in part pending the supervisory officer's determination of an appropriate monitoring fee and the proponent's or holder's payment of that fee.

(5) The authorized officer's immediate supervisor shall render a decision on a disputed processing or monitoring fee within 30 calendar days of receipt of the written request from the proponent or holder. The supervisory officer's decision is the final level of administrative review. The dispute shall be decided in favor of the proponent if the supervisory officer does not respond to the written request within 30 days of receipt.

(f) *Waivers of processing and monitoring fees.* (1) All or part of a processing or monitoring fee may be waived, at the sole discretion of the authorized officer, when one or more of the following criteria are met:

(i) The proponent is a local, State, Federal, or tribal governmental entity

that does not charge processing or monitoring fees for comparable services the proponent provides to the Forest Service;

(ii) A major portion of the processing costs results from issues not related to the project being proposed;

(iii) The proposal is for a project intended to prevent or mitigate damage to real property, or to mitigate hazards or dangers to public health and safety resulting from an act of nature, an act of war, or negligence of the United States;

(iv) The proposal is for a new authorization to relocate facilities or activities to comply with public health and safety or environmental laws and regulations that were not in effect at the time the authorization was issued;

(v) The proposal is for a new authorization to relocate facilities or activities because the land is needed by a Federal agency or for a Federally funded project for an alternative public purpose; or

(vi) The proposed facility, project, or use will provide, without user or customer charges, a valuable benefit to the general public or to the programs of the Secretary of Agriculture.

(2) A proponent's or a holder's request for a full or partial waiver of a processing or monitoring fee must be in writing and must include an analysis that demonstrates how one or more of the criteria in paragraphs (f)(1)(i) through (vi) of this section apply.

(g) *Appeal of decisions.* (1) A decision by the authorized officer to assess a processing or monitoring fee or to determine the fee category or estimated costs is not subject to administrative appeal.

(2) A decision by an authorized officer's immediate supervisor in response to a request for substitution of an alternative fee category or alternative estimated costs likewise is not subject to administrative appeal.

(h) *Processing and monitoring fee schedules.* The Forest Service shall maintain schedules for processing and monitoring fees in its directive system at Forest Service Handbook 2809.15 (<https://www.fs.usda.gov/im/directives/dughtml/fsh.html>). The rates in the schedules shall be updated annually by using the annual rate of change, second quarter to second quarter, in the Implicit Price Deflator-Gross Domestic Product (IPD-GDP) index. The Forest Service shall round the changes in the rates either up or down to the nearest dollar. In the event the schedules are not updated in a particular year, the fee schedules published in the directives will remain in effect until the updates are published in the agency directives.

§ 228.203 Information collection requirements.

The rules of this subpart specify information that proponents or applicants for mineral authorizations or holders of existing authorizations must provide to allow an authorized officer to recover costs to process a request or to monitor an authorization. The information collected under this subpart is already required by law or approved for use through the information collection requirements under Subparts A through E of this part. Therefore, these rules contain information collection requirements as defined in 5 CFR part 1320. Forest Service information collection requirements for its minerals regulations have been assigned Office of Management and Budget (OMB) Control Numbers 0596-0022, 0596-0081, and 0596-0101.

Dated: May 25, 2023

Andrea Delgado,

Chief of Staff, Natural Resources and Environment.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0457; FRL-11008-01-R4]

Air Plan Approval; Georgia; Miscellaneous Rule Revisions to Gasoline Dispensing Facility—Stage I

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Georgia State Implementation Plan (SIP), submitted by the State of Georgia through the Georgia Environmental Protection Division (GA EPD) via a letter dated November 4, 2021. The SIP revision revises Georgia's Stage I vapor recovery rules primarily by removing outdated references and making several clarifying edits. The revision also updates several definitions and makes two substantive changes. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before July 13, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2022-0457 at www.regulations.gov. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. 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 www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT:

Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9222. Ms. Sheckler can also be reached via electronic mail at sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

CAA section 182(b)(2) requires states to revise their SIPs to include provisions implementing Reasonably Available Control Technology (RACT) for each category of volatile organic compound (VOC) sources covered by a Control Techniques Guidelines (CTG)¹ document in ozone nonattainment areas that are classified as moderate or above. CAA Section 182(2)(B) specifically requires states to include VOC RACT measures in their SIPs if the area is covered by a CTG issued prior to November 15, 1990. In 1975, EPA established a CTG addressing the control of VOC emissions from gasoline dispensing facilities (GDFs).² For certain GDFs, owners or operators are required

to install systems for the recovery of gasoline vapor emissions. These requirements are also known as Stage I and Stage II vapor recovery.³

Stage I vapor recovery requires the control of hydrocarbon gasoline vapors, such as VOCs, when dispensing gasoline from tanker trucks into gasoline storage tanks. Specifically, Stage I vapor recovery systems capture vapors displaced from storage tanks at GDFs during gasoline cargo truck deliveries. When gasoline is delivered into an above ground or underground storage tank, vapors that were taking up space in the storage tank are displaced by the gasoline entering the storage tank. The Stage I vapor recovery systems route these displaced vapors into the tank of the delivery truck. Some vapors are vented when the storage tank exceeds a specified pressure threshold, however, the Stage I vapor recovery systems greatly reduce the possibility of these displaced vapors being released into the atmosphere.

Georgia's Gasoline Dispensing Facilities Rule, found at 391–3–1–.02(2)(rr), applies to certain GDFs located in Barrow, Bartow, Carroll, Catoosa, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Richmond, Rockdale, Spalding, Walker, and Walton Counties. The rule required all facilities in these counties to install either Stage I or Enhanced Stage I gasoline vapor recovery systems by certain dates, the latest of which was May 1, 2023. EPA last modified the SIP-approved version of Rule 391–3–1–.02(2)(rr) on September 28, 2012. *See* 77 FR 59554.

CAA section 110(l) prohibits EPA from approving a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA Section 171), or any other applicable requirement of the CAA. The proposed changes included in Georgia's November 4, 2021, submission will not lead to any increases of NAAQS pollutants and will not otherwise interfere with any CAA applicable requirement.⁴ The changes to Georgia's

GDF rule and EPA's rationale for proposing approval are described in more detail in section II of this Notice of Proposed Rulemaking (NPRM).

II. Analysis of the State's Submission

EPA is proposing to approve changes to Rule 391–3–1–.02(2)(rr), “Gasoline Dispensing Facility—Stage I.”⁵ The revision primarily contains non-substantive changes such as language edits, removing outdated references, and clarifying edits. The revision also updates several definitions and makes two substantive changes.

The bulk of the changes in the November 4, 2021, submission are minor language edits. For example, one language edit removes the phrase “per month” from the sentence, “. . . gasoline dispensing facilities that dispense no more than 10,000 gallons average monthly throughput rate of gasoline per month . . .” to remove redundancy. Another example of a language edit is a word preference alteration that changes the word “replacement” to “replaced” in the phrase “replacement parts.” Additionally, the State has edited various provisions in the rule to remove titles from sections that are self-explanatory based on the content of the provision. Other similar changes include the correction of typos, small grammatical changes, and the necessary renumbering of some provisions to account for the removal of others.

The proposed revision also makes several changes to clarify the physical nature of gasoline vapor recovery control systems. First, with respect to the required components for a stationary storage tank, the State has added language to subparagraph (rr)1.(i)(III) specifying that required vents must stand vertically. The State added this language to further define the nature of the particular vents that operators/owners use in stationary storage tanks. Although there is no federal requirement for vents to be vertical, the vents must be at least 12 feet above the ground as required in the SIP-approved version of this subparagraph. EPA is proposing to approve this edit because the rule continues to meet the federal requirement for the vent to be at least 12 feet above the ground. Another clarifying edit the State made is to

¹ CTG documents are documents issued by EPA to provide States with EPA's presumptive VOC RACT recommendations on how to control VOC emissions from specific products or source categories in ozone nonattainment areas.

² *See* “Design Criteria for Stage I Vapor Control Systems Gasoline Service Stations” U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards Emission Standards and Engineering Division Research Triangle Park, EPA–450 (November 1975). Available at: <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=20013S56.txt>.

³ On September 25, 2015, EPA approved a SIP revision that removed Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State and allowed for the decommissioning of existing Stage II equipment. *See* 80 FR 57729 for more details on EPA's analysis of the removal of Stage II vapor recovery requirements in the State.

⁴ Georgia's November 4, 2021, submission also included SIP revisions to address the base year emissions inventory requirements and emissions statements requirements for the 2015 8-hour ozone NAAQS for the Atlanta, Georgia, 2015 8-hour ozone nonattainment area. EPA acted on those SIP

revisions in a separate rulemaking. *See* 87 FR 13179 (March 9, 2022).

⁵ In the November 4, 2021, cover letter, GA EPD requested that EPA not incorporate the changes to paragraphs 391–3–1–.01(nnnn), 391–3–1–.02(2)(rr)16.(x), 391–3–1–.02(8), and 391–3–1–.02(9) into the SIP. For this reason, EPA is not proposing to approve the changes to these paragraphs through this NPRM.

subparagraph (rr)1.(ii)(II), a provision that outlines one method to control vapors displaced from gasoline stationary storage tanks during filling. The edit specifies that when a manifold connects all gasoline stationary storage tanks vent lines, the vapor-tight vapor return line that controls displaced vapors must connect the gasoline stationary storage tank being filled directly to the delivery vessel. Previously, this provision did not use the word “connected” to specify that the vapor-tight vapor return line must directly link the delivery vessel to a gasoline stationary storage tank. EPA is proposing to approve this edit because it clarifies where the vapor-tight vapor return line must be connected to sufficiently control displaced vapors during the filling process.

In addition to the changes addressing the physical nature of the control technology, the State has made other edits to clarify various certification and recertification testing requirements. First, the State has revised Subparagraph (rr)7. to clarify that when a party other than GA EPD conducts certification or recertification testing of any Stage I gasoline vapor recovery system, the party must identify the California Air Resources Board (CARB) Executive Order number associated with the system to be tested, in addition to other information.⁶ This requirement already existed; however, Georgia added the language “associated with the system to be tested” to clarify exactly what information another party would need to submit to GA EPD for either certification or recertification testing.

With respect to other certification and recertification requirements, SIP-approved subparagraph (rr)8.(ii) requires certification testing within 30 days of installation for Enhanced Stage I gasoline vapor recovery systems approved by GA EPD and installed after December 31, 2022, and SIP-approved subparagraph (rr)8.(iv) requires recertification testing after June 1, 2008, within 24 months following the initial certification or recertification for any Enhanced Stage I gasoline vapor recovery system approved by GA EPD. The SIP revision removes these two subparagraphs and expands the applicability of subparagraphs (rr)8.(i) and 8.(iii) (renumbered to (ii)) to account for the removal. Georgia adds the word “any” to subparagraph (rr)8.(i) to require certification testing within 30 days of installation for “any” Stage I gasoline vapor recovery system

approved by GA EPD after December 31, 2002. Similarly, in subparagraph (rr)8.(iii) (renumbered to (ii)), Georgia adds the word “any” to require recertification testing after June 1, 2008, within 12 months following initial certification or recertification for “any” Stage I gasoline vapor recovery system approved by GA EPD. EPA is proposing to approve these changes to (rr)8. because the addition of the word “any” to describe Stage I gasoline vapor systems in subparagraphs (rr)8.(i) and (rr)8.(iii) (renumbered to (ii)) encompasses all Stage I gasoline vapor systems, including Enhanced Stage I vapor recovery systems and because the change to subparagraph (rr)8.(iii) (renumbered to (ii)) would require recertification testing of Enhanced Stage I vapor recovery systems within 12 months of the initial certification or recertification instead of 24 months, making the new requirements more stringent.

The State made a clarifying edit in subparagraph (rr)9. to specify that “failed test results” for certification or recertification of the gasoline vapor recovery systems must also be included in compliance reports. This requirement already existed as all compliance reports needed to include “results of all tests”; however, the State has included the new language to clarify that all tests does include failed test results.

In addition to the changes to the various certification and recertification requirements, Georgia has revised the rule’s recordkeeping requirements. Specifically, Georgia removed language in subparagraph (rr)13. regarding record disposal that stated there could be no time extension beyond the requirements of the subparagraph. Subparagraph (rr)13. does not have any timing requirements, therefore, EPA is proposing to approve this change as it removes superfluous language.

Finally, Georgia has made some clarifying edits to specify the required vapor efficiency to qualify as a “Stage I Gasoline Vapor Recovery System” or an “Enhanced Stage I Gasoline Vapor Recovery System.” Georgia has revised subparagraph (rr)15.(x)(II) to specify that a vapor recovery system must meet a threshold of 95% vapor collection efficiency to qualify as a “Stage I Gasoline Vapor Recovery System” and revised subparagraph (rr)15.(iv)(I) to specify that a vapor recovery system must meet a threshold of 98% vapor collection efficiency to qualify as an “Enhanced Stage I Gasoline Vapor Recovery System”. These thresholds already existed in Rule 391–3–1–.02(2) as each respective system was required to function in accordance with the

applicable CARB executive orders, and each CARB executive order for Stage I gasoline vapor recovery systems requires at least a 95% vapor control efficiency, while each CARB executive order for each Enhanced Stage I gasoline vapor recovery systems required at least a 98% vapor control efficiency. See Georgia Rule 391–3–1–.02(2)(rr)6.; 391–3–1–.02(2)(rr)15.(iv)(I); and 391–3–1–.02(rr)15.(x)(II). Therefore, EPA is proposing to approve these changes.

In addition to the changes outlined above, Georgia has removed language in subparagraph (rr)14. specifying that GA EPD personnel conduct annual compliance inspections and functional testing of all GDFs equipped with Enhanced Stage I or Stage I gasoline vapor recovery systems. This subparagraph now allows either GA EPD personnel or certified third-party testers to conduct annual compliance inspections and functional testing. EPA is proposing to approve this change as it expands the group of certified testers who can perform testing for annual compliance inspections and functional testing.

EPA is proposing to approve this SIP revision because the rule changes are not expected to result in any change to air pollutant emissions and therefore would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement. In addition, these changes are consistent with all applicable federal requirements for Stage I gasoline dispensing facilities.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Sections I and II of this preamble, EPA is proposing to incorporate by reference Georgia Rule 391–3–1–.02(rr), “Gasoline Dispensing Facility—Stage I,” with the exception of changes to subparagraph 391–3–1–.02(2)(rr)16.(x). This regulation was state effective on October 25, 2021. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** Section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the November 4, 2021, SIP revision to incorporate the changes to Georgia’s Stage I gasoline dispensing facility rules into the Georgia SIP. Specifically, EPA

⁶ CARB Executive Orders establish certification standards and procedures for specific vapor recovery systems.

is proposing to approve the changes to Rule 391–3–1–.02(2)(rr), “Gasoline Dispensing Facility—Stage I,” with the exception of changes to subparagraph 391–3–1–.02(2)(rr)16.(x). EPA is proposing to approve these changes for the reasons discussed above.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); 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 those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal

governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Georgia EPD did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 6, 2023.

Jeananne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2023–12580 Filed 6–12–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2023–0090; FRL–11014–01–R6]

Air Plan Approval; Oklahoma; Revisions to Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve portions of the revisions to the State Implementation Plan (SIP) for Oklahoma submitted by the State of Oklahoma on January 30, 2023. This action addresses amendments to Subchapter 37, Control of Emission of Volatile Organic Compounds (VOCs) and Subchapter 39, Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas, in the Oklahoma Administrative Code Title 252, Chapter 100, Oklahoma Department of Environmental Quality to improve the clarity and consistency of the Oklahoma SIP.

DATES: Written comments must be received on or before July 13, 2023.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2023–0090, at <https://www.regulations.gov> or via email to shahin.emad@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Emad Shahin, 214–665–6717, shahin.emad@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: For information on the revisions addressing emissions of VOC, please contact Mr. Emad Shahin, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-6717, shahin.emad@epa.gov. The EPA encourages the public to submit comments via <https://www.regulations.gov>. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” or “our” means the EPA.

I. Background

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that air quality meets the EPA’s National Ambient Air Quality Standards (NAAQS). These ambient standards are established under CAA section 109 and currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter (PM), and sulfur dioxide. A state’s air regulations are contained in its SIP, which is basically a clean air plan. Each state is responsible for developing SIPs to demonstrate how the NAAQS will be achieved, maintained, and enforced. The SIP must be submitted to the EPA for approval and any changes a state makes to the approved SIP also must be submitted to the EPA for approval.

On January 24, 2023, the Secretary of Energy and Environment for the State of Oklahoma (“the State”) submitted revisions of the Oklahoma SIP to the EPA. The revisions address Subchapters 2, 8, 37, 39, and Appendix Q in the Oklahoma Administrative Code (OAC) Title 252, Chapter 100. The submitted revisions to Subchapters 37 and 39 are severable and in this action, we are proposing to approve the revisions to Subchapters 37 (Control of Emission of Volatile Organic Compounds (VOCs)), and 39 (Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas). We are addressing the revisions to Subchapter 2 and Appendix Q in a separate action¹ and plan to address the

revisions to Subchapter 8 in separate future action.

The criteria used to evaluate these SIP revisions are found primarily in section 110 of the Act. Section 110(l) requires that a SIP revision submitted to the EPA be adopted after reasonable notice and public hearing and precludes the EPA from approving a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act.

The submitted revisions were promulgated in compliance with the Oklahoma Administrative Procedures Act and published in the *Oklahoma Register*, the official state publication for rulemaking actions. These revisions are posted in the docket for this action.

II. The EPA’s Evaluation

Subchapters 37 and 39

In this action, we are proposing to approve revisions to OAC 252:100, Subchapters 37 and 39 (OAC 252:100–37 and 252:100–39). The submitted revisions are available in the docket for this action. A summary of the State’s submitted revisions follows.

1. OAC 252:100–37–16 (Loading of VOC) revises OAC 252:100–37–16(c). The revision makes clear the Department’s long standing interpretation that loading operations from condensate tanks at natural gas compressor stations are not considered loading facilities for the purpose of this section, and thus are not subject to the requirements of this section.

2. OAC 252:100–39–45 (Petroleum (solvent) Dry Cleaning) amendment to correct the approval process for facilities that incinerate petroleum solvents dry cleaning filters and removes the outdated compliance schedule. Section 45 is specific to petroleum solvent dry cleaners in Tulsa County and the revision clarifies that incineration of petroleum dry cleaning filters would only be allowed if permitted by the appropriate regulatory entity.

The revisions to OAC 252:100–37 clarify the State’s interpretation of loading facility as a facility whose main purpose is for the loading/unloading of VOCs in relatively large quantities using specialized equipment. Although loading operations occur at compressor stations, the facility itself is not considered a loading facility and was therefore not intended to be covered by these requirements. The transfer of condensate and produced water from atmospheric storage tanks into individual tanker trucks at a compressor

station is a different type of operation (both in scale and in the equipment used). For example, applicable loading facilities include the bulk transfer of gasoline at a pipeline terminal/bulk gasoline distribution system.

There are several other provisions in Chapter 100 that apply to compressor stations. The requirements in 252:100–37–15(b) for submerged fill or a vapor recovery system would apply to most condensate tanks at compressor stations since a typical tank is about 400 barrels (16,800 gallons) and for compressor stations that have effluent water separators 252:100–37–37 would apply. Condensate tanks at compressor stations are covered under other parts of Subchapter 37, namely 252:100–37–15, in addition to any federal NSPS that may also apply such as Subpart OOOO.

Examination of the revisions indicates that the submitted revision to Subchapter 39–45 is proper and provides additional clarity. The specification that incineration of petroleum dry cleaning filters would only be allowed if permitted by the appropriate regulatory entity updates this provision to appropriately address existing law for incineration facilities in Oklahoma. The removal of an outdated deadline streamlines the SIP for additional clarity.

The submitted revisions to OAC 252:100–37 and 39 add clarity and consistency to the Loading of VOC and Petroleum (solvent) Dry Cleaning rules. The revisions do not relax the current SIP rules and are consistent with Federal regulations at 40 CFR 60 and 40 CFR 61. Therefore, and consistent with CAA section 110(l), we do not expect these revisions to interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. We are proposing to approve the submitted these revisions to Subchapter 37, Section 16 and Subchapter 39, Section 45.

III. Impact on Areas of Indian Country

Following the U.S. Supreme Court decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Public Law 109–59, 119 Stat. 1144, 1937 (August 10, 2005) (“SAFETEA”), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State’s environmental regulatory programs that were previously approved by the EPA for areas outside of Indian country. The

¹ See 88 FR 13755 (March 6, 2023).

State's request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014).²

On October 1, 2020, the EPA approved Oklahoma's SAFETEA request to administer all the State's EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country. As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively "excluded Indian country lands").

EPA's approval under SAFETEA expressly provided that to the extent EPA's prior approvals of Oklahoma's environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA's approval of Oklahoma's SAFETEA request.³ The approval also provided that future revisions or amendments to Oklahoma's approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).⁴

² In *ODEQ v. EPA*, the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of tribal jurisdiction. Under the D.C. Circuit's decision, the CAA does not provide authority to states to implement SIPs in Indian reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA's decision, described in this section, on October 1, 2020.

³ EPA's prior approvals relating to Oklahoma's SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with the D.C. Circuit's decision in *ODEQ v. EPA*) located in the state. See, e.g., 85 FR 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by the EPA's approval of Oklahoma's SAFETEA request.

⁴ On December 22, 2021, EPA proposed to withdraw and reconsider the October 1, 2020,

As explained earlier in this action, the EPA is proposing to approve revisions to portions of the Oklahoma SIP that were submitted by the State of Oklahoma on January 24, 2023. More specifically, we are proposing to approve a revision providing clarification to OAC 252:100–37–16 of Subchapter 37, Control of Emission of Volatile Organic Compounds (VOCs) and amending language and correcting approval process for OAC 252:100–39–45 of Subchapter 39, Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas, in the Oklahoma Administrative Code Title 252, Chapter 100, Oklahoma Department of Environmental Quality Consistent with the D.C. Circuit's decision in *ODEQ v. EPA* and with EPA's October 1, 2020, SAFETEA approval, if this approval is finalized as proposed, these SIP revisions will apply to all Indian country within Oklahoma, other than the excluded Indian country lands, as described earlier. Because—per the State's request under SAFETEA—EPA's October 1, 2020, SAFETEA approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ v. EPA*, the SIP will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority.⁵

SAFETEA approval. See <https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information>. EPA expects to have further discussions with tribal governments and State of Oklahoma as part of this reconsideration. EPA also notes that the October 1, 2020, approval is the subject of a pending challenge in federal court. *Pawnee Nation of Oklahoma v. Regan*, No. 20–9635 (10th Cir.). EPA may make further changes to the approval of Oklahoma's program to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020, SAFETEA approval. To the extent any change occurs in the scope of Oklahoma's SIP authority in Indian country before finalization of the proposed rule, such a change may affect the scope of the EPA's final action on the proposed rule.

⁵ In accordance with Executive Order 13990, EPA is currently reviewing our October 1, 2020, SAFETEA approval and is engaging in further consultation with tribal governments and discussions with the state of Oklahoma as part of this review. EPA also notes that the October 1, 2020, approval is the subject of a pending challenge in federal court. (*Pawnee v. Regan*, No. 20–9635 (10th Cir.)). Pending completion of EPA's review, EPA is proceeding with this proposed action in accordance with the October 1, 2020, approval. EPA's final action on the approved revisions to the Oklahoma SIP that include revisions to OAC Title 252 Chapter 100 Subchapter 39 (OAC 252:100–39) Sections 4, 16, 40, and 41 will address the scope of the state's program with respect to Indian country, and may make any appropriate adjustments, based on the status of our review at that time. If EPA's final action on Oklahoma's SIP is taken before our review of the SAFETEA

IV. Proposed Action

We are proposing to approve a portion of the revisions to the Oklahoma SIP, submitted to us on January 30, 2023. Specifically, we are proposing to approve revisions to OAC 252:100, Subchapters 37 and 39. We are proposing to approve these revisions in accordance with section 110 of the Act.

V. Environmental Justice Considerations

EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within Oklahoma. EPA then compared the data to the national average for each of the demographic groups. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that, for populations within Oklahoma, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino) is less than the national average (38.5 percent versus 43.1 percent). Within people of color, the percent of the population that is Black or African American alone is less than the national average (7.8 percent versus 13.6 percent) and the percent of the population that is American Indian/Alaska Native is greater than the national average (9.7 percent versus 1.3 percent). The percent of the population that is two or more races is greater than the national average (6.6 percent versus 2.9 percent). The percent of people living in poverty in Oklahoma is greater than the national average (15.6 percent versus 11.6 percent).

The proposed approval strengthens the SIP by adding clarity and consistency to the SIP. We expect that this action will generally be neutral or contribute to reduced environmental and health impacts on all populations in Oklahoma, including people of color and low-income populations. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

The ODEQ did not evaluate environmental justice considerations as part of their SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an

approval is complete, EPA may make further changes to the approval of Oklahoma's program to reflect the outcome of the SAFETEA review.

environmental justice analysis,⁶ as is described above. 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.

VI. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Oklahoma regulations as discussed in Section II, The EPA's Evaluation, and Section IV, Proposed Action, of this preamble. We have made, and will continue to make, these documents generally available electronically through www.regulations.gov (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 CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- 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. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

Oklahoma did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described above in the section titled, "Environmental Justice Considerations." The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous people.

This proposal to approve revisions to the Oklahoma SIP will apply, if finalized as proposed, to certain areas of Indian country throughout Oklahoma as discussed in the preamble, and therefore has tribal implications as specified in E.O. 13175 (65 FR 67249, November 9, 2000). However, this action will neither

impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA has offered consultation to tribal governments that may be affected by this action.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 7, 2023.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023-12614 Filed 6-12-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0406; FRL-10991-01-R4]

Air Plan Approval; North Carolina; Bulk Gasoline Plant and Terminal Vapor Recovery Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the North Carolina Department of Environmental Quality (NCDEQ), Division of Air Quality (DAQ), via a letter dated April 13, 2021. This SIP revision includes changes to NCDEQ's regulations regarding bulk gasoline terminals and plants, gasoline cargo tanks and vapor collection systems, and leak tightness and vapor leak requirements. The EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before July 13, 2023.

⁶ Our Environmental Justice Considerations are posted in the docket.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0406 at 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 submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mrs. Sheckler can be reached via electronic mail at sheckler.kelly@epa.gov or via telephone at (404) 562–9222.

SUPPLEMENTARY INFORMATION:

I. What action is EPA proposing?

The EPA is proposing to approve changes to North Carolina's SIP that were provided to EPA by NCDEQ via a letter dated April 13, 2021.¹ Specifically, the EPA is proposing approval of changes to 15A North Carolina Administrative Code (NCAC) Subchapter 02D, Rules .0926, *Bulk Gasoline Plants*; .0927, *Bulk Gasoline Terminals*; .0932, *Gasoline Cargo Tanks and Vapor Collection Systems*; and .2615, *Determination of Leak Tightness and Vapor Leaks*.² The changes to these rules, as well as EPA's analysis of the

changes, are discussed in the following section.³

II. EPA's Analysis of North Carolina's April 13, 2021, Submittal

Follows is EPA's analysis of the changes in the April 13, 2021, SIP revision that are the subject of this proposed rulemaking.

A. Rule 15A NCAC 02D .0926, *Bulk Gasoline Plants*

North Carolina's April 13, 2021, SIP revision includes changes to Rule 02D .0926, *Bulk Gasoline Plants*, by adding one definition, removing obsolete language, clarifying some requirements, and making general grammar and formatting updates.⁴ The EPA provides further detail below concerning the proposed changes to Rule 02D .0926.

First, North Carolina's SIP revision adds a definition at 02D .0926(a)(5) for "Cargo tank." All other definitions in this rule were renumbered accordingly to reflect this change. This is a new definition that refers to storage vessels on freight trucks or trailers that are used to transport gasoline from sources of supply to stationary storage tanks of bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline service stations. The term "cargo tank" replaces the terms "tank truck," "trailer," "trucks," "tank truck or trailer," "tank trucks or trailers," and "trucks or trailers" throughout Rule 02D .0926. These terms were not previously defined in Rule 02D .0926. The effect of this change is to clarify that the rule applies to cargo tanks rather than the motor vehicles the tanks are attached to. This is clarifying in nature because the rule has always pertained to the stationary source emissions released from the cargo tanks attached to trucks and trailers, rather than the mobile source emissions from motor vehicles.

North Carolina has also made several modifications outside the definitions section in Paragraph (a) that similarly do not result in any changes to the meaning of the regulation. North Carolina has removed the date "May 1, 1993" from Paragraph (c) in Rule 02D .0926. Paragraph (c) previously required that owners or operators of bulk gasoline plants not transfer gasoline to any storage tanks after May 1, 1993, unless both the unloading cargo tank

and the receiving stationary storage tank were equipped with an incoming vapor balance system and the receiving stationary storage tank was equipped with a fill line. North Carolina also removed the date "November 1, 2002," in Paragraph (j) of the Rule, which set a deadline by which all tanks used at bulk gasoline plants must be painted. These dates, triggering their respective compliance requirements, have passed. Therefore, removal of these dates does not alter current regulatory requirements.

Another modification in the SIP revision that does not change the meaning of the regulation is in Paragraph (g). This paragraph requires that all gasoline bulk plants located in a nonattainment area for ozone comply with the control requirements outlined in Paragraphs (d) and (e), even if the average daily throughput falls below the applicable threshold. The proposed changes to the SIP-approved rule simply streamline the language to make it more succinct. An additional clarifying edit North Carolina made was to add the word "volatile" in front of "organic material" each time that phrase is used in Paragraph (i). Rule 02D .0926 has always regulated volatile organic compounds (VOCs), so this modification does not change the meaning of these provisions and simply provides a more accurate description of the regulated pollutants. Also, in Paragraph (n), North Carolina revised the sentence to provide clarity by including cross-references to the applicable SIP-approved rules rather than summarizing the nature of those rules. Specifically, the changes include adding complete citations for 15A NCAC 02D .0932 and .2615, which provide the regulatory requirements to certify a cargo tank as leak tight (.0932) and in compliance with testing requirements (.2615).

Next, North Carolina broadens the definition of "Bulk Gasoline Terminal" by referring to gasoline storage facilities that have an average daily throughput of "greater than or equal" to 20,000 gallons, rather than only "more" than 20,000 gallons.

The remaining changes to Rule 02D .0926 are primarily minor language edits, reformatting edits, and grammatical corrections. For example, one language modification concerns word preference and changes the word "usually" to "typically." Another change capitalizes the words "vapor" and "pressure" in "Reid Vapor Pressure" and adds the abbreviation "(RVP)".

For the reasons discussed above, these proposed changes to the SIP would not interfere with any applicable

¹ EPA notes that the April 13, 2021, submittal was received by EPA on April 14, 2021.

² EPA also notes that the Agency received several revisions to the North Carolina SIP transmitted with the same April 13, 2021, cover letter. EPA is not proposing to act on revisions to the North Carolina SIP in this notice that are not explicitly identified herein. EPA may act on these other SIP revisions in separate rulemakings.

³ On July 6, 2022, NCDEQ submitted a letter to EPA withdrawing the references to 02D .0960 from Rules 02D .0926 and 02D .0927. For this reason, EPA will not act on those changes in Rules 02D .0926 and 02D .0927.

⁴ In Paragraph (n), North Carolina's Rule references Rule 02D .0960 which is not in the SIP. DAQ has withdrawn that reference in Paragraph (n) from the April 13, 2021, SIP revision.

requirement concerning attainment of the national ambient air quality standards (NAAQS) and reasonable further progress, or any other applicable requirement of the Act.⁵ Therefore, the EPA is proposing to approve the aforementioned changes to 02D .0926 into the North Carolina SIP.

B. Rule 15A NCAC 02D .0927, Bulk Gasoline Terminals

North Carolina's April 13, 2021, SIP revision includes changes to Rule 02D .0927, *Bulk Gasoline Terminals*, by adding two definitions, removing one, clarifying some requirements, and making general grammar and formatting updates.⁶ The EPA provides further detail below concerning the proposed changes to Rule 02D .0927.

North Carolina has added two definitions and removed one in Rule 02D .0927. First, in Paragraph (a), North Carolina has added a definition for the term "Pipeline breakout station" and consequently removed the term "Breakout tank" and its definition, which referred to singular storage tanks rather than the facilities containing storage tanks along pipelines. This change clarifies which specific breakout tanks are regulated by Rule 02D .0927 (*i.e.*, those located along bulk gasoline terminal pipelines).⁷ The addition of "Pipeline breakout station" and removal of "Breakout tank" has no effect on emissions as the change only provides more specificity as to where the tanks that were already regulated by the Rule are located. Lastly, like Rule 02D .0926, North Carolina has added a definition for "Cargo tank". The term cargo tank replaces the same terms in Rule 02D .0927 that are replaced in Rule 02D .0926. The addition of "cargo tank" is clarifying in nature for the same reasons outlined in Section II.A, above. The terms in Paragraph 02D .0927(a) have consequently been renumbered to account for these changes.

North Carolina made several clarifying edits to Rule 02D .0927 outside the definitions section in Paragraph (a) which similarly do not

change the meaning of the regulation. In Paragraph (c), North Carolina has clarified that the owner or operator of a bulk gasoline terminal must obtain and maintain records of a pre-installation certification from the manufacturer stating the vapor control efficiency of the system in use. In Paragraphs (e) and (f), North Carolina removed the initial compliance date of December 1, 2002. These paragraphs require the owner or operator of bulk gasoline terminals to paint all gasoline storage tanks white or silver and install an external floating roof tank as a self-supporting roof, such as a geodesic dome. The December 1, 2002, compliance date has passed; therefore, removal of this date does not alter current regulatory requirements.

Another clarifying edit specifies in Paragraph (a)(5) that "gasoline" refers to a petroleum distillate with an RVP of "4.0 psi or greater" instead of "four psia or greater." The term "psia" is changed to "psi" which correctly specifies the RVP of gasoline and is consistent with the standard abbreviation in the CAA (*See, e.g.*, CAA section 211(h)).⁸ Paragraph (p)(2) has also been reworded for clarity to ensure that records on inspections include findings detailing the location, nature, and severity of each leak. In Paragraph (k), North Carolina has added cross-references to other SIP-approved rules, specifically 15 NCAC 02D .0932 and .2615. This modification clarifies the meaning of what "certified leak tight" means for cargo tanks by referencing the regulatory requirements to certify a cargo tank is leak tight. North Carolina also changes a citation in the definition for "Leak" in Paragraph (a)(6). This citation for a reference method using a combustible gas detector to detect gas leaks was changed from 15A NCAC 02D .0940 to Appendix B of EPA-450/2-78-051. Since the new test method is identical to the previous reference, EPA finds this change acceptable.

The remaining changes to Rule 02D .0927 are primarily minor language edits, reformatting edits, and grammatical corrections. For example, one language edit throughout the rule changes the formatting of rules from using the phrase "Section" to "15A NCAC 02D". Another edit concerns word preference and changes the word "usually" to "typically".

For the reasons discussed above, these proposed changes to the SIP would not interfere with any applicable

requirement concerning attainment of the NAAQS or any other applicable requirement of the Act. Therefore, the EPA is proposing to approve the aforementioned changes to 02D .0927 into the North Carolina SIP.

C. Rule 15A NCAC 02D .0932, Gasoline Cargo Tanks and Vapor Collection Systems

North Carolina's April 13, 2021, SIP revision includes changes to 15A NCAC 02D .0932, *Gasoline Cargo Tanks and Vapor Collection Systems*, which was revised to update definitions, revise the acceptable methods for certification, revise recordkeeping requirements, remove obsolete language, correct grammar, and update the format of references.

North Carolina has added two definitions and removed two definitions. First, as with Rules 02D .0926 and 02D .0927, North Carolina has added a definition for "Cargo tank" and replaced several terms throughout Rule 02D .0932 with the term "cargo tank." This definition replaces the definition for "Truck tank," which also referred to the same storage containers used to transport gasoline; however, the change more accurately describes the storage vessels that the rule applies to. The EPA preliminarily finds this change to be clarifying in nature for the same reasons outlined in Section II.A, above. North Carolina has also replaced the definition of "Truck tank vapor collection equipment" with a definition of "Cargo tank vapor collection equipment" to identify what exactly constitutes the vapor collection equipment. The new definition is identical to the old one except for specifying that the term now refers to the vapor collection equipment for cargo tanks rather than the equipment for truck tanks. As the new definition more accurately identifies what the Rule applies to, EPA finds these changes to be clarifying in nature. Paragraph (a) has been renumbered and reformatted to account for these changes.

North Carolina has also modified the definition of "Certified Facility," which it has renamed as "Cargo tank testing facility" for consistency with the newly added definitions. The new definition removes a cross-reference to Rule 02D .0960, which is not in the SIP and required certification via a sticker that gasoline cargo tanks had passed an EPA Appendix A Method 27 (Method 27) (*see* 40 CFR 63.425) leak tightness test. Instead, North Carolina is modifying Paragraph (a)(5) of this rule to cite to Subpart F of 49 CFR part 107. The modification would require cargo tank testing facilities to comply with the

⁵ CAA Section 110(l) prohibits EPA from approving a SIP revision if the revision "would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter."

⁶ Similar to the changes in Rule 02D .0926(n), Rule 02D .0927(k) also references Rule 02D .0960 which is not in the SIP. DAQ has withdrawn that reference in Paragraph (k) from the April 13, 2021, SIP revision.

⁷ In Paragraph (a)(1), North Carolina has modified the definition of "Bulk gasoline terminal" by replacing the term "breakout tanks" with "a pipeline breakout station" for consistency with the modifications to the definition section.

⁸ The term "psia" means pounds per square inch absolute, which refers to the pressure that a gauge would read plus the addition of atmospheric pressure, which is always present. RVP is measured in psi (*i.e.*, without the addition of atmospheric pressure).

registration requirements outlined in Subpart F of 49 CFR part 107. As explained in further detail in Section II.D below, the EPA is proposing to approve a modification to Rule 02D .2615 that would require the use of either a Method 27 test or a 49 CFR 180.407 test for leak tightness.⁹ The effect of these modifications is to eliminate the North Carolina specific stickers certifying compliance with Method 27, and instead require certification via a USDOT inspection sticker that signifies the gasoline cargo tank passed either the Method 27 or 49 CFR 180.407 leak test.^{10 11} The Federal Motor Carrier Safety Administration (FMCSA) program oversees cargo tank testing facilities that conduct these tests as a part of the USDOT inspection. The USDOT inspection uses either the 49 CFR 180.407 leak test or Method 27 to test for leak tightness. Allowing owners and operators of gasoline cargo tanks to rely on the USDOT inspection sticker to signify passing the leak test would eliminate a duplicative requirement that owners and operators go through North Carolina specific inspections in addition to USDOT inspections. The EPA preliminarily finds this change approvable because the modification is consistent with changes to the other rules in this notice and will not impact air quality because the alternative test is at least as stringent as Method 27, as discussed in Section II.D of this notice of proposed rulemaking (NPRM). Therefore, the change will not interfere with attainment and maintenance of the NAAQS or any other applicable requirement of the Act.

North Carolina has also made a modification to the Rule that clarifies

the meaning of Paragraph (c)(1). In Paragraph (c)(1), cross references to Rule 02D .0912 and Section 02D .2600 are removed and replaced with a cross reference to Rule 02D .2615. The modification requires a gasoline cargo tank to be certified to be leak tight pursuant to the test procedures outlined in Rule 02D .2615 and removes a reference to Rule 02D .0912. These changes are not substantive because Rule 02D .0912 requires owners or operators of VOC sources to demonstrate compliance by the methods described in Section 2600, and Rule 02D .2615 is the only rule in Section 2600 applicable to Rule 02D .0932.

North Carolina has also made changes to Paragraphs (c) and (d) that modify the meaning of those provisions. First, in Paragraphs (c)(5)(A) through (H), which contain recordkeeping requirements, North Carolina has updated the information required for recordkeeping. The changes to the recordkeeping requirements update the paragraph to account for the 49 CFR 180.407 test for leak tightness, include a requirement to provide information concerning any corrective repairs made to the cargo tank, and remove the reference to North Carolina specific inspection stickers certifying compliance with Method 27, consistent with the change discussed above eliminating the state sticker requirement. Additionally, the changes require more information in the leak test records, including but not limited to: (1) contact information of the cargo tank testing facility, (2) the name and signature of the individual performing the leak test as well as the owner of the tank, (3) the identification number of the tank, (4) documentation of the test date and results, and (5) other information. The new recordkeeping requirements will comprehensively cover the required information to determine whether cargo tanks comply with either Method 27 or 49 CFR 180.407. North Carolina has also modified Paragraph (d)(4) to now require the Director to allow less frequent monitoring if no more than 10 leaks are found after two complete annual checks and require more frequent monitoring if more than 20 leaks are found. These requirements were previously discretionary, and the Director could decide whether to require less or more monitoring. The EPA is proposing to approve this change because it requires more frequent monitoring if more than 20 leaks are found and because the SIP currently allows the Director to require less frequent monitoring if no more than 10 leaks are found.

The remaining changes to Rule 02D .0927 are primarily minor language edits, reformatting edits, and grammatical corrections. For example, North Carolina removed the words “that is” from the phrase “that is flush” in describing how an opening in a storage tank is connected to the tank bottom. Another change replaces the terminology “breakout tanks” with “pipeline breakout stations” to reflect the change in terminology in 02D .0927. North Carolina has also reformatted how it refers to rules, changing “Rule .2615” to “15A NCAC 02D .2615,” for example.

For the reasons discussed above, these proposed changes to the SIP would not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act. Therefore, EPA is proposing to approve the aforementioned changes to Rule 02D .0932 into the North Carolina SIP.

D. Rule 15A NCAC 02D .2615, Determination of Leak Tightness and Vapor Leaks

North Carolina’s April 13, 2021, SIP revision includes changes to 15A NCAC 02D .2615, *Determination of Leak Tightness and Vapor Leaks*. Specifically, these changes include adding a new test procedure to determine the leak tightness of cargo tanks, updating a website reference, and updating the formatting of rule references.

As mentioned in Section II.C, the SIP revision includes changes to Rule 02D .2615 to allow gasoline cargo tanks to obtain a leak test certification using the USDOT 49 CFR 180.407 methodology as an alternative to Method 27. This change, and the change to Rule 02D .0932(a)(5) discussed above, center on eliminating the North Carolina specific inspection stickers certifying the exclusive use of Method 27. This change allows gasoline cargo tanks receiving leak test certification to be tested using either the Method 27 or the USDOT 49 CFR 180.407 methodology. Once a cargo tank has passed either leak test, the owner or operator of the cargo tank must display a USDOT inspection sticker signifying the gasoline cargo tank has passed. This SIP-approved rule and the proposed change, if approved by the EPA, do not impact the applicability of any federal standards that cover these sources independent of the SIP such as New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants. These sources must also comply with those federal standards. As an example, 40 CFR part 60, subpart XX, *Standards of Performance for Bulk Gasoline*

⁹ 49 CFR 180.407(h) requires the use of the leak test in 49 CFR 180.407(c) but allows cargo tanks “used to transport petroleum distillate fuels that are equipped with vapor collection equipment” to be leak tested in accordance with Method 27. See 180.407(h)(1) and (h)(3). However, the “hydrostatic test alternative, using liquid in [Method 27] may not be used to satisfy the leak testing requirements of this paragraph. The test must be conducted using air.” See 180.407(h)(3). EPA explains in Section II.D of this NPRM that the 49 CFR 180.407 test is at least as stringent as the Method 27 test.

¹⁰ Rule 02D .0932(c)(2) requires each gasoline cargo tank that has been certified leak tight to display a sticker near the USDOT certification plate that complies with the test and inspection marking requirements outlined in 49 CFR 180.415.

¹¹ 49 CFR 180.415 requires each cargo tank that has successfully passed the inspection and testing requirements outlined in 49 CFR 180.407 to be marked near the specification plate or front head of the cargo tank with the date of the last applicable test or inspection and an identifier for the type of test or inspection. For ease of reference, EPA refers to this marking as the “USDOT inspection sticker” throughout this notice. For additional information, see the May 24, 2023, email from Randy P. Strait, North Carolina Department of Environmental Quality, to Lynora Benjamin, EPA Region 4.

Terminals, requires each gasoline tank truck subject to this federal rule to have vapor tightness documentation on file and updated at least once per year to reflect current test results as determined by Method 27. *See* 40 CFR 60.505(b). Thus, any gasoline tank truck subject to subpart XX must annually determine its vapor tightness using EPA Reference Method 27, and no other testing options are available for meeting the vapor tightness documentation requirement of subpart XX.

The purpose of the Method 27 and USDOT leak tests is to detect tank leaks of volatile vapors (*i.e.*, fugitive VOCs) while under pressure during product loading. The USDOT tests are performed by certified inspectors registered with USDOT who are held to strict record keeping practices. *See* 49 CFR 180.409; 40 CFR 180.417. The registered inspectors perform both the USDOT leak test as well as the Method 27 test, which under 49 CFR 180.407, can be performed as an alternative for those cargo tanks equipped with vapor collection equipment dedicated to the transportation of petroleum distillate fuels. *See* 49 CFR 180.407(h)(2). The primary change to North Carolina's cargo tank certification program is to allow reliance on the certification of test facilities by the FMCSA, rather than to require reliance on a duplicative state-specific program to ensure that cargo tanks do not leak. USDOT and the North Carolina rule both will continue to require gasoline cargo tanks to be tested annually and certified leak tight.

North Carolina's SIP revision includes a demonstration showing that the tests are comparable in identifying repairs necessary to correct leaks and that the change does not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act. The two leak test methods are similar in that each method requires the cargo tank to be pressurized to check for leaks. The main difference is that the USDOT method requires pressure testing of each chamber of a cargo tank, whereas Method 27 requires pressure testing of the whole tank by opening the chambers.¹² Although chamber by chamber pressure testing takes longer, it identifies leak locations for repair better than Method 27. Cargo tanks typically contain three or more chambers for fuel. The EPA anticipates that many gasoline cargo tanks in North Carolina will

continue to use Method 27 since it takes less time than the USDOT method.

The EPA has reviewed the demonstration provided by North Carolina in the April 13, 2021, submittal and agrees that that rule changes would not increase VOC emissions¹³ or interfere with attainment and maintenance of any NAAQS. Regarding the NAAQS pollutant ozone, North Carolina is a nitrogen oxide (NO_x) limited jurisdiction, which means ozone formation is limited to the amount of NO_x available in the ambient air, not the amount of VOC. Therefore, EPA does not expect this to have an appreciable impact on ground level ozone formation. Furthermore, the proposed rule changes would have no impact on the direct emissions of any NAAQS pollutant.

For the reasons discussed above and in North Carolina's noninterference demonstration, the changes to Rule 02D .2615 would not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act. The revised program will reduce the burden of a duplicative leak inspection for cargo tank owners as they will only be required to test and obtain a single certification sticker.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference as discussed in paragraph II, A–D of this preamble. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the following North Carolina rules in 15A NCAC Subchapter 02D: Rule 02D .0926, *Bulk Gasoline Plants* (state effective November 1, 2020); Rule 02D .0927, *Bulk Gasoline Terminals* (state effective November 1, 2020); Rule 02D .0932, *Gasoline Cargo Tanks and Vapor Collection Systems* (state effective October 1, 2020); and Rule 02D .2615, *Determination of Leak Tightness and Vapor Leaks* (state effective October 1, 2020). The EPA has made, and will continue to make, these materials generally available at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

The EPA is proposing to approve North Carolina's April 13, 2021, SIP revision to incorporate changes to North Carolina's bulk gasoline plant, terminal,

and vapor recovery system rules into the SIP. Specifically, EPA is proposing to approve the changes as described to 02D .0926, *Bulk Gasoline Plants*; 02D .0927, *Bulk Gasoline Terminals*; 02D .0932, *Gasoline Cargo Tanks and Vapor Recovery Collection Systems*; and 02D .2615, *Determination of Leak Tightness and Vapor Leaks*. EPA is proposing to approve these changes because they meet CAA requirements and would not interfere with any applicable requirement concerning attainment or reasonable further progress.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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 they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); 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 those requirements would be inconsistent with the CAA.

¹² Method 27 also includes a vacuum test in addition to the pressure test. The USDOT rule only allows the use of Method 27 for cargo tanks equipped with vapor collection equipment transporting petroleum distillate fuels. *See* 49 CFR 180.407(h)(2) and footnote 10.

¹³ VOCs are precursors to the NAAQS for ozone and particulate matter.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. 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.”

NCDEQ did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 6, 2023.

Jeananne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2023–12601 Filed 6–12–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0618; FRL–9242–01–R4]

Air Plan Approval; North Carolina; Volatile Organic Compound Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision to the North Carolina SIP, submitted by the State of North Carolina through the North Carolina Department of Environmental Quality (NCDEQ), Division of Air Quality (NCDAQ), via a letter dated April 13, 2021. This SIP revision updates several NCDEQ air regulations which apply to sources that emit volatile organic compounds (VOC). **DATES:** Comments must be received on or before July 13, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0618 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. 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 www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Jane Spann, Air Regulatory Management

Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Spann can be reached via electronic mail at spann.jane@epa.gov or via telephone at (404) 562–9029.

SUPPLEMENTARY INFORMATION:

I. What action is EPA proposing to take?

EPA is proposing to approve changes to North Carolina’s SIP that were provided to EPA through NCDAQ via a letter dated April 13, 2021.¹ Specifically, EPA is proposing to approve changes to 15A North Carolina Administrative Code (NCAC) Subchapter 02D, Section .0900, *Volatile Organic Compounds* (hereinafter referred to as Section .0900).² The April 13, 2021, revision to the North Carolina SIP transmits a few substantive changes and a number of changes that do not alter the meaning of the regulations such as clarifying changes, updated cross-references, and several ministerial language changes. In addition, other changes include adding, deleting, and editing definitions and adding SIP-strengthening language.

II. EPA’s Analysis of the State’s Submittal

North Carolina’s Section .0900 rules regulate sources that emit greater than or equal to 15 pounds of VOC per day, unless otherwise specified in Section .0900. Most of the SIP changes to Section .0900 are ministerial and formatting changes, with clarifying changes throughout. EPA is proposing to approve the changes to Rules .0901, *Definitions*; .0902, *Applicability*; .0903, *Recordkeeping; Reporting; Monitoring*; .0906, *Circumvention*; .0909, *Compliance Schedules for Sources in Ozone Nonattainment and Maintenance Areas*; .0912, *General Provisions on Test Methods and Procedures*; .0918, *Can Coating*; .0919, *Coil Coating*; .0922, *Metal Furniture Coatings*; .0923, *Surface Coating of Large Appliance Parts*; .0924, *Magnet Wire Coating*; .0925, *Petroleum Liquid Storage in Fixed Roof Tanks*; .0928, *Gasoline Service Stations Stage 1*; .0930, *Solvent Metal Cleaning*; .0931, *Cutback Asphalt*; .0933, *Petroleum*

¹ EPA notes that the submittal was received through the State Planning Electronic Collaboration System (SPECS) on April 14, 2021. For clarity, this notice will refer to the submittal by the date on the cover letter, which is April 13, 2021.

² EPA notes that the Agency received several submittals revising the North Carolina SIP that were transmitted with the same April 13, 2021, cover letter. EPA has considered will be considering action for these other SIP revisions in separate rulemakings.

Liquid Storage in External Floating Roof Tanks; .0935, *Factory Surface Coating of Flat Wood Paneling*; .0937, *Manufacture of Pneumatic Rubber Tires*; .0943, *Synthetic Organic Chemical and Polymer Manufacturing*; .0944, *Manufacture of Polyethylene*; *Polypropylene and Polystyrene*; .0945, *Petroleum Dry Cleaning*; .0947, *Manufacture of Synthesized Pharmaceutical Products*; .0948, *VOC Emissions from Transfer Operations*; .0949, *Storage of Miscellaneous Volatile Organic Compounds*; .0951, *RACT For Sources of Volatile Organic Compounds*; .0955, *Thread Bonding Manufacturing*; .0956, *Glass Christmas Ornament Manufacturing*; .0957, *Commercial Bakeries*; .0961, *Offset Lithographic Printing and Letterpress Printing*; .0962, *Industrial Cleaning Solvents*; .0963, *Fiberglass Boat Manufacturing Materials*; .0964, *Miscellaneous Industrial Adhesives*; .0965, *Flexible Package Printing*; .0966, *Paper, Film and Foil Coatings*; .0967, *Miscellaneous Metal and Plastic Parts Coatings*; and .0968, *Automobile and Light Duty Truck Assembly Coatings*.³ EPA's analysis of each aforementioned rule change included in the April 13, 2021, SIP revision is below:

a. Rule .0901, Definitions

Rule .0901 includes definitions that apply to Section .0900 rules. The April 13, 2021, revision does not include any substantive changes to Rule .0901 but includes only minor wording, formatting, administrative and technical changes, e.g., in the definition of "loading rack," changing a reference to "tank truck or trailer" to "cargo tank," which corresponds to the addition of the definition of "cargo tank" in Rule .0926.⁴ Changes to Rule .0901 also include updates to American Society for Testing and Materials (ASTM) and American Petroleum Institute (API) bulletin references that are appropriate because the references have become outdated, incorporation by reference of an API document, and an update to the formatting of rule references.

The State of North Carolina originally adopted Rule .0901 in 1979. EPA most recently approved amendments to the state rule in North Carolina's SIP on May 9, 2013. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, SIP revision with respect to Rule .0901 because, as minor, non-substantive changes, they will not impact air quality

and thus will not interfere with any applicable Clean Air Act (CAA or Act) requirements.⁵

b. Rule .0902, Applicability

Rule .0902 outlines the applicability parameters for Section .0900 rules. The April 13, 2021, revision does not include any substantive changes to Rule .0902 but includes minor changes to update the formatting of rule references and makes minor wording changes including changing "truck tanks" to "cargo tanks," which corresponds to the addition of the definition of "cargo tank" in Rule .0926.⁶ Rule .0902(c) is changed to refer to exclusions found in Rule .0902(d) instead of Rule .0902(d)(1). Rule .0902(d)(2) is not currently approved into the North Carolina SIP. Because the Rule .0902(d) reference effectively includes only Rule .0902(d)(1) for SIP purposes, EPA is proposing to approve the revised version of Rule .0902(c) except as it refers to Rule .0902(d)(2). Also, Rule .0902(f) adds the date January 2, 2014, for clarification related to identifying certain moderate nonattainment areas required to address Control Technique Guidelines (CTGs).

The State of North Carolina originally adopted Rule .0902 in 1979. EPA most recently approved amendments to the state rule in North Carolina's SIP on July 25, 2013. *See* 78 FR 44890. EPA is proposing to approve the April 13, 2021, updates to Rule .0902 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

c. Rule .0903, Recordkeeping: Reporting: Monitoring

Rule .0903 outlines the recordkeeping, reporting, and monitoring requirements for Section .0900 rules. The April 13, 2021, revision does not include substantive changes to Rule .0903 but only makes minor grammatical edits and updates the formatting of a rule reference. These changes clarify the meaning of the previously SIP-approved version of the rule.

EPA most recently incorporated updates to Rule .0903 into the North Carolina SIP on July 25, 2013. *See* 78 FR 44890. EPA is proposing to approve the updates to Rule .0903 because, as minor, non-substantive changes, they will not

impact air quality and thus they will not interfere with any applicable CAA requirements.

d. Rule .0906, Circumvention

Rule .0906 outlines the restriction of concealing VOC emissions related to the Section .0900 rules. The April 13, 2021, revision does not include substantive changes to Rule .0906 but includes minor grammatical edits. These edits clarify but do not change the meaning of the previously SIP-approved version.

The State of North Carolina originally adopted Rule .0906 in 1979. EPA most recently approved amendments to the state rule in North Carolina's SIP on December 19, 1986. *See* 51 FR 45468. EPA is proposing to approve the April 13, 2021, updates to Rule .0906 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

e. Rule .0909, Compliance Schedules for Sources in Ozone Nonattainment and Maintenance Areas

Rule .0909 outlines compliance schedules for sources in ozone nonattainment areas and those nonattainment areas that have been redesignated to attainment (*i.e.*, maintenance areas), as they relate to the Section .0900 rules. The April 13, 2021, revision does not include substantive changes to Rule .0909 but includes minor grammatical and wording edits and updates the formatting of rule references. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0909 in 1979. EPA most recently approved amendments to the state rule in North Carolina's SIP on July 25, 2013. *See* 78 FR 44890. EPA is proposing to approve the April 13, 2021, updates to Rule .0909 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

f. Rule .0912, General Provisions on Test Methods and Procedures

Rule .0912 outlines general provisions on test methods and procedures related to Section .0900 rules. The April 13, 2021, revision does not include substantive changes to Rule .0912 but includes minor grammatical edits and updates the formatting of a rule reference. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

³ Hereinafter, the North Carolina Rules will be identified by "Rule" and the accompanying number, e.g., Rule .0901.

⁴ Changes to Rule .0926 submitted with the April 13, 2021, cover letter will be considered for action in a separate rulemaking.

⁵ Section 110(l) of the CAA prohibits EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act.

⁶ *See* n.4.

The State of North Carolina originally adopted Rule .0912 in 1979. EPA most recently approved amendments to the state rule in North Carolina's SIP on May 9, 2013. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, updates to Rule .0912 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

g. Rule .0918, Can Coating

Rule .0918 outlines VOC-related provisions for can coating operations in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0918 but includes minor administrative, grammatical, and wording edits and updates the formatting of a rule reference. Also, Rule .0918 is revised to limit the applicability of Rule .0918(d) to sources controlling VOC prior to July 1, 2000, to reflect that, while Rule .0918 already references Rule .0518, Rule .0518 was repealed on July 1, 2000. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0918 in 1979. EPA most recently approved amendments to the state rule in North Carolina's SIP on August 1, 1997. *See* 62 FR 41277. EPA is proposing to approve the April 13, 2021, updates to Rule .0918 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

h. Rule .0919, Coil Coating

Rule .0919 outlines VOC-related provisions for coil coating operations in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0919 but includes minor administrative and clarifying word changes, *e.g.*, a change to clarify that Rule .0919 applies to VOC that come from coating applicators. Also, Rule .0919 is revised to limit the applicability of Rule .0919(d) to sources controlling VOC prior to July 1, 2000, to reflect that, while Rule .0919 already references Rule .0518, Rule .0518 was repealed on July 1, 2000. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0919 in 1979. EPA most recently approved amendments to the state rule in North Carolina's SIP on August 1, 1997. *See* 62 FR 41277. EPA is proposing to approve the April 13, 2021, updates to Rule .0919 because, as minor, non-substantive changes, they

will not impact air quality and thus they will not interfere with any applicable CAA requirements.

i. Rule .0922, Metal Furniture Coatings

Rule .0922 outlines VOC-related provisions for metal furniture coating operations in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0922 but includes minor administrative and grammatical edits, updates the formatting of rule references, and updates references to federal regulations. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0922 in 1979. EPA most recently approved amendments to the state rule in North Carolina's SIP on May 9, 2013. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, updates to Rule .0922 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

j. Rule .0923, Surface Coating of Large Appliance Parts

Rule .0923 outlines VOC-related provisions for surface coating operations for large appliance parts in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0923 but includes minor administrative and grammatical edits, updates the formatting of rule references, and updates references to federal regulations. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0923 in 1979. EPA most recently approved amendments to the state rule in North Carolina's SIP on May 9, 2013. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, updates to Rule .0923 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

k. Rule .0924, Magnet Wire Coating

Rule .0924 outlines VOC-related provisions for magnet wire coating operations in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0924 but includes minor administrative and clarifying word changes, *e.g.*, a change clarifies that Rule .0924 applies to VOC from the oven(s) of magnet wire coating operations. Also, Rule .0924 is revised to limit Rule .0924(d) to sources

controlling VOC prior to July 1, 2000, to reflect that, while Rule .0924 already references Rule .0518, Rule .0518 was repealed July 1, 2000. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0924 in 1979. EPA most recently approved amendments to the state rule in North Carolina's SIP on August 1, 1997. *See* 62 FR 41277. EPA is proposing to approve the April 13, 2021, updates to Rule .0924 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

l. Rule .0925, Petroleum Liquid Storage in Fixed Roof Tanks

Rule .0925 outlines VOC-related provisions for petroleum liquid storage in fixed roof tanks in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0925 but makes minor administrative, grammatical, and wording edits, technical corrections such as changing vapor pressure "psia" to "pounds per square inch," and updates to the formatting of rule references. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0925 in 1979. EPA most recently approved amendments to the state rule in North Carolina's SIP on June 23, 1994. *See* 59 FR 32362. EPA is proposing to approve the April 13, 2021, updates to Rule .0925 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

m. Rule .0928, Gasoline Service Stations Stage 1

Rule .0928 outlines VOC-related provisions for gasoline service stations stage 1 controls in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0928 but makes minor administrative and grammatical edits, as well as technical corrections such as changing Reid vapor pressure "psia" to "pounds per square inch," changing references to "tank trucks or trailers" to "cargo tanks" which corresponds to the addition of the definition of "cargo tank" in Rule .0926,⁷ and changing "Dual point system" to "Dual point vapor recovery system." Changes to Rule .0928 also alphabetize definitions and update the formatting of rule references. These

⁷ See n.4.

changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0928 in 1979. EPA most recently approved amendments to the state rule in North Carolina's SIP on August 1, 1997. *See* 62 FR 41277. EPA is proposing to approve the April 13, 2021, updates to Rule .0928 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

n. Rule .0930, Solvent Metal Cleaning

Rule .0930 outlines VOC-related provisions for solvent metal cleaning in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0930 but includes minor administrative and grammatical edits and updates the formatting of rule references. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0930 in 1979. EPA most recently approved amendments to the state rule in North Carolina's SIP on May 9, 2013. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, updates to Rule .0930 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

o. Rule .0931, Cutback Asphalt

Rule .0931 outlines VOC-related provisions for cutback asphalt in North Carolina. The April 13, 2021, revision includes substantive and non-substantive changes to Rule .0931. The substantive changes include adding paving roads, sidewalks, airfields, runways, taxiways, and parking aprons to the list of applicable purposes of the manufacture and use of cutback asphalts. The substantive changes also include the removal of an exclusion for cutback asphalt used for a tack coat for the purpose of patch work not to exceed 1672 square meters (2000 square yards). These substantive changes are approvable because they are considered SIP-strengthening. The non-substantive changes are minor administrative and grammatical edits including the removal of the definition of "Emulsified asphalt" (a term which does not appear elsewhere in Rule .0931 and thus seemingly need not be defined) and a minor technical clarification specifying that the Federal Aviation Administration (FAA) Weather Station referenced in paragraph (c) is the FAA Surface Weather Observation Station.

These changes clarify and strengthen the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0931 in 1979. EPA most recently approved amendments to the state rule in North Carolina's SIP on June 23, 1994. *See* 59 FR 32362. EPA is proposing to approve the April 13, 2021, updates to Rule .0931 because both the substantive and minor, non-substantive changes will not adversely impact air quality and thus will not interfere with any applicable CAA requirements.

p. Rule .0933, Petroleum Liquid Storage in External Floating Roof Tanks

Rule .0933 outlines VOC-related provisions for petroleum liquid storage in external floating roof tanks in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0933 but includes minor administrative and grammatical edits, updates the formatting of rule references, and clarifies that the routine visual inspections referenced in paragraph (d) are done to verify the conditions of the seal. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0933 in 1980. EPA most recently approved amendments to the state rule in North Carolina's SIP on May 9, 2013. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, updates to Rule .0933 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

q. Rule .0935, Factory Surface Coating of Flat Wood Paneling

Rule .0935 outlines VOC-related provisions for factory surface coating of flat wood paneling operations in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0935 but includes minor administrative and grammatical edits and updates the formatting of rule references. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0935 in 1980. EPA most recently approved amendments to the state rule in North Carolina's SIP on May 9, 2013. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, updates to Rule .0935 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

r. Rule .0937, Manufacture of Pneumatic Rubber Tires

Rule .0937 outlines VOC-related provisions for manufacture of pneumatic rubber tires in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0937 but includes minor administrative and grammatical edits. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0937 in 1980. EPA most recently approved amendments to the state rule in North Carolina's SIP on August 1, 1997. *See* 62 FR 41277. EPA is proposing to approve the April 13, 2021, updates to Rule .0937 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

s. Rule .0943, Synthetic Organic Chemical and Polymer Manufacturing

Rule .0943 outlines VOC-related provisions for synthetic organic chemical and polymer manufacturing in North Carolina. The April 13, 2021, revision includes mostly non-substantive changes to Rule .0943, such as minor administrative and grammatical edits and updates to the formatting of rule references, which clarify but do not change the meaning of the previously SIP-approved version of the rule. The SIP revision also includes a substantive, SIP-strengthening change: in Rule .0943(i), the change from stating that the Director "shall" allow less frequent emissions monitoring to stating that the Director "may" allow it.

The State of North Carolina originally adopted Rule .0943 in 1985. EPA most recently approved amendments to the state rule in North Carolina's SIP on May 9, 2013. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, updates to Rule .0943 because, as minor, non-substantive changes or strengthening changes, they will not negatively impact air quality and thus they will not interfere with any applicable CAA requirements.

t. Rule .0944, Manufacture of Polyethylene: Polypropylene and Polystyrene

Rule .0944 outlines VOC-related provisions for manufacture of polyethylene (polypropylene and polystyrene) in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0944 but includes minor administrative and grammatical edits and updates the

formatting of rule references. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0944 in 1985. EPA most recently approved amendments to the state rule in North Carolina's SIP on November 19, 1986. *See* 51 FR 41786. EPA is proposing to approve the April 13, 2021, updates to Rule .0944 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

u. Rule .0945, Petroleum Dry Cleaning

Rule .0945 outlines VOC-related provisions for petroleum dry cleaning in North Carolina. The April 13, 2021, revision includes mostly non-substantive changes to Rule .0945, such as minor administrative and grammatical edits and updates to the formatting of rule references, which clarify but do not change the meaning of the previously SIP-approved version of the rule. The SIP revision also includes a substantive, SIP-strengthening change: in Rule .0945(g), adding a retention requirement for records of compliance tests.

The State of North Carolina originally adopted Rule .0945 in 1985. EPA most recently approved amendments to the state rule in North Carolina's SIP on May 9, 2013. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, updates to Rule .0945 because, as minor, non-substantive changes or strengthening changes, they will not negatively impact air quality and thus they will not interfere with any applicable CAA requirements.

v. Rule .0947, Manufacture of Synthesized Pharmaceutical Products

Rule .0947 outlines VOC-related provisions for manufacture of synthesized pharmaceutical products in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0947 but includes minor administrative and grammatical edits, updates the formatting of rule references and clarifies in paragraph (c) when controlling VOC emissions from synthesized pharmaceutical products manufacturing facility storage tanks that pressure/vacuum conservation tanks shall be set at plus or minus 0.8 inches of water instead of set at 0.8 inches of water. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0947 in 1994. EPA most recently approved amendments to the state rule in North Carolina's SIP on

May 5, 1995. *See* 60 FR 22283. EPA is proposing to approve the April 13, 2021, updates to Rule .0947 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

w. Rule .0948, VOC Emissions from Transfer Operations

Rule .0948 outlines provisions for VOC emissions from transfer operations in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0948 but makes minor administrative and grammatical edits such as changing "tank trucks, trailers" to "cargo tanks," which corresponds to the addition of the definition of "cargo tank" in Rule .0926, and updates the formatting of rule references. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0948 in 1994. EPA most recently approved amendments to the state rule in North Carolina's SIP on August 27, 2001. *See* 66 FR 34117. EPA is proposing to approve the April 13, 2021, updates to Rule .0948 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

x. Rule .0949, Storage of Miscellaneous Volatile Organic Compounds

Rule .0949 outlines provisions for storage of miscellaneous VOC in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0949 but includes minor administrative and grammatical edits and updates the formatting of rule references. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0949 in 1994. EPA most recently approved amendments to the state rule in North Carolina's SIP on August 27, 2001. *See* 66 FR 34117. EPA is proposing to approve the April 13, 2021, updates to Rule .0949 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

y. Rule .0951, RACT for Sources of Volatile Organic Compounds

Rule .0951 outlines provisions for RACT for sources of VOC in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0951 but includes minor administrative and grammatical edits

and updates the formatting of rule references. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0951 in 1994. EPA most recently approved amendments to the state rule in North Carolina's SIP on May 9, 2013. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, updates to Rule .0951 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

z. Rule .0955, Thread Bonding Manufacturing

Rule .0955 outlines VOC provisions for thread bonding manufacturing in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0955 but includes minor administrative and grammatical edits and updates the formatting of rule references. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0955 in 1995. EPA most recently approved amendments to the state rule in North Carolina's SIP on February 1, 1996. *See* 61 FR 3588. EPA is proposing to approve the April 13, 2021, updates to Rule .0955 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

aa. Rule .0956, Glass Christmas Ornament Manufacturing

Rule .0956 outlines VOC provisions glass Christmas ornament manufacturing in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0956 but includes minor administrative and grammatical edits. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0956 in 1995. EPA most recently approved amendments to the state rule in North Carolina's SIP on February 1, 1996. *See* 61 FR 54362. EPA is proposing to approve the April 13, 2021, updates to Rule .0956 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

bb. Rule .0957, Commercial Bakeries

Rule .0957 outlines VOC provisions at commercial bakeries in North Carolina.

The April 13, 2021, revision does not include substantive changes to Rule .0957 but includes minor administrative and grammatical edits, updates the formatting of rule references, and clarifies that in paragraph (d) the reference to commercial baking ovens refers to ovens in commercial bakeries. These changes clarify but do not change the meaning of the previously SIP-approved version of the rule.

The State of North Carolina originally adopted Rule .0957 in 1995. EPA most recently approved amendments to the state rule in North Carolina's SIP on February 1, 1996. *See* 61 FR 3588. EPA is proposing to approve the April 13, 2021, updates to Rule .0957 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

cc. Rule .0961, Offset Lithographic Printing and Letterpress Printing

Rule .0961 outlines VOC-related provisions for offset lithographic printing and letterpress printing in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0961 but makes minor administrative and wording changes, such as changing paragraph (h) to specify that alternative methods used to determine the VOC content must be consistent with 15A NCAC 02D .2602(h) and to specify that alternative methods used to determine the control efficiency by measuring volatile organic compounds at the control device inlet and outlet must be consistent with 15A NCAC 02D .2602(h). Changes to Rule .0961 also update the formatting of rule references.

The State of North Carolina originally adopted Rule .0961 in 2010. Rule .0961 was adopted to replace, in part, Rule .0936, Graphic Arts, which EPA removed from the SIP on May 9, 2013. *See* 78 FR 27065. EPA most recently approved amendments to the state rule (Rule .0961) in North Carolina's SIP on July 25, 2013. *See* 78 FR 44890. EPA is proposing to approve the April 13, 2021, updates to Rule .0961 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

dd. Rule .0962, Industrial Cleaning Solvents

Rule .0962 outlines VOC-related provisions for industrial cleaning solvents in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0962 but makes minor administrative and wording changes, such as changing

paragraph (c) to delete repealed Rules .0921, .0934, and .0936⁸ from the list of rules that are exempt from paragraph (e) as it relates to cleaning material used for cleaning operations, and changes to Rule .0962 also update the formatting of rule references.

The State of North Carolina originally adopted Rule .0962 in 2010. EPA most recently approved amendments to the state rule in North Carolina's SIP on July 25, 2013. *See* 78 FR 44890. EPA is proposing to approve the April 13, 2021, updates to Rule .0962 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

ee. Rule .0963, Fiberglass Boat Manufacturing Materials

Rule .0963 outlines VOC-related provisions for fiberglass boat manufacturing materials in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0963 but makes minor administrative and wording changes such as clarifying in paragraph (k) that SCAQMD Method 312–91 was developed by the South Coast Air Quality Management District and describes where to find information on this method, and changes to Rule .0963 that update the formatting of rule references.

The State of North Carolina originally adopted Rule .0963 in 2010. EPA most recently approved amendments to the state rule in North Carolina's SIP on May 9, 2013. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, updates to Rule .0963 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

ff. Rule .0964, Miscellaneous Industrial Adhesives

Rule .0964 outlines VOC-related provisions for miscellaneous industrial adhesives in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0964 but makes minor administrative and wording changes such as, in paragraph (b), the deletion of the exemption from control of VOC emissions for miscellaneous industrial adhesives product categories covered by repealed Rules .0921, .0934, and .0936,⁹ and changes to Rule .0964 that update the formatting of rule references.

⁸ Rules .0921, .0934, and .0936 were removed from the North Carolina SIP on May 9, 2013. *See* 78 FR 27065.

⁹ *Id.*

The State of North Carolina originally adopted Rule .0964 in 2010. EPA most recently approved amendments to the state rule in North Carolina's SIP on May 9, 2013. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, updates to Rule .0964 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

gg. Rule .0965, Flexible Package Printing

Rule .0965 outlines VOC-related provisions for flexible package printing operations in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0965 but includes minor administrative and wording changes and updates the formatting of rule references.

The State of North Carolina originally adopted Rule .0965 in 2010. Rule .0965 was adopted to replace, in part, Rule .0936, Graphic Arts, which EPA removed from the SIP on May 9, 2013, which is also when EPA most recently approved amendments to the state rule (Rule .0965) in North Carolina's SIP. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, updates to Rule .0965 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

hh. Rule .0966, Paper, Film and Foil Coatings

Rule .0966 outlines VOC-related provisions for paper, film, and foil coating operations in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0966 but includes minor administrative and wording changes and updates the formatting of rule references.

The State of North Carolina originally adopted Rule .0966 in 2010. Rule .0966 was adopted to replace, in part, Rule .0920, Paper Coatings, which EPA removed from the SIP on May 9, 2013, which is also when EPA most recently approved amendments to the state rule (Rule .0966) in North Carolina's SIP. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, updates to Rule .0966 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

ii. Rule .0967, Miscellaneous Metal and Plastic Parts Coatings

Rule .0967 outlines VOC-related provisions for miscellaneous metal and plastic parts coating operations in North Carolina. The April 13, 2021, revision

does not include substantive changes to Rule .0967 but makes minor administrative and wording changes such as, in paragraph (c), the deletion of the exemption from this rule for sources covered by repealed Rules .0921 and .0936,¹⁰ and changes to Rule .0967 that update the formatting of rule references.

The State of North Carolina originally adopted Rule .0967 in 2010. EPA most recently approved amendments to the state rule in North Carolina's SIP on May 9, 2013. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, updates to Rule .0967 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

jj. Rule .0968, Automobile and Light Duty Truck Assembly Coatings

Rule .0968 outlines VOC-related provisions for automobile and light duty assembly coating operations in North Carolina. The April 13, 2021, revision does not include substantive changes to Rule .0968 but updates rule references and/or the formatting thereof. For example, paragraph (a) updates the reference for Automobile Topcoat Protocol from EPA-450/3-88-018 to EPA-453/R-08-002 or 40 CFR part 60, subpart MM. Also, changes to paragraph (d) clarify that the VOC emission limit is in grams of VOC per liter of coating excluding water and exempt compounds, as applied.

The State of North Carolina originally adopted Rule .0968 in 2010. EPA most recently approved amendments to the state rule in North Carolina's SIP on May 9, 2013. *See* 78 FR 27065. EPA is proposing to approve the April 13, 2021, updates to Rule .0968 because, as minor, non-substantive changes, they will not impact air quality and thus they will not interfere with any applicable CAA requirements.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the North Carolina rules discussed in Section II. These regulations were state effective on November 1, 2020. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER**

INFORMATION CONTACT section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the April 13, 2021, SIP revision to incorporate various changes to North Carolina's VOC air provisions into the SIP. Specifically, EPA is proposing to approve various ministerial and minor changes to language and other clarifying changes throughout North Carolina's rules in 02D Section .0900, *Volatile Organic Compounds*. EPA is proposing to approve these changes for the reasons discussed above.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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 action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); 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 those requirements would be inconsistent with the Clean Air Act;

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

The NCDAQ did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

¹⁰ Rules .0921 and .0936 were repealed from the North Carolina SIP on May 9, 2013 (*See* 78 FR 27065).

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

Dated: June 6, 2023.

Jeanne Gettle,

Acting Regional Administrator, Region 4.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2019–0212; FRL–10997–01–R6]

Air Plan Disapproval; Louisiana; Excess Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA, the Act), the Environmental Protection Agency (EPA) is proposing to disapprove a revision to the Louisiana State Implementation Plan (SIP) submitted by the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), on November 22, 2016, and supplemented on June 9, 2017. The submittals are in response to the EPA's national SIP call of June 12, 2015, concerning excess emissions during periods of Startup, Shutdown and Malfunction (SSM). EPA is proposing to determine that the revision to the SIP in the submittals does not correct the deficiency with the Louisiana SIP identified in the June 12, 2015 SIP call. We are taking this action in accordance with section 110 of the Act.

DATES: Comments must be received on or before July 13, 2023.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2019–0212 at <https://www.regulations.gov> or via email to Shar.alan@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary

submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Alan Shar, (214) 665–6691, Shar.alan@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Regional Haze and SO₂ Section, EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, (214) 665–6691, Shar.Alan@epa.gov. We encourage the public to submit comments via <https://www.regulations.gov>, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

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I. Background

A. EPA's 2015 SSM SIP Action

On February 22, 2013, the EPA issued a **Federal Register** proposed rulemaking action outlining EPA's policy at the time with respect to SIP provisions related to periods of SSM. The EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the CAA with regard to excess emission events.¹ For

each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, EPA issued a document supplementing and revising what the Agency had previously proposed on February 22, 2013, in light of a D.C. Circuit decision that determined the CAA precludes authority of the EPA to create affirmative defense provisions applicable to private civil suits. EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. The EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate (79 FR 55920, September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” (80 FR 33839) June 12, 2015, hereafter referred to as the “2015 SSM SIP Action.” The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states, including Louisiana, were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

EPA issued a Memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with CAA requirements.² Importantly, the 2020

Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction (78 FR 12460) Feb. 22, 2013.

² October 9, 2020, Memorandum “Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State

¹ State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial

Memorandum stated that it “did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.” Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to Louisiana in 2015. The 2020 Memorandum did, however, indicate EPA’s intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA’s Deputy Administrator withdrew the 2020 Memorandum and announced EPA’s return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).³ As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including overburdened communities, receive the full health and environmental protections provided by the CAA.⁴ The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum of EPA’s plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA’s intent.

EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the agency takes action on SIP submissions, including the November 22, 2016, and June 9, 2017 Louisiana SIP submittals, provided in response to the 2015 SSM SIP Action.

B. Louisiana’s Provision Related to Excess Emissions

Louisiana Administrative Code (LAC), Title 33 Environmental Quality, Part III, Air (LAC 33:III), Chapter 22 Control of Emissions of Nitrogen Oxides (NO_x) is applicable only to the Baton Rouge ozone nonattainment area and its Region of Influence (ROI).⁵ LAC

33:III.2201.C(8) provides that point sources at an affected facility “are exempted” from the NO_x emission limitations “during start-up and shutdown . . . or during a malfunction.” LAC 33:III.2201.C(8) was originally approved by the EPA into the Louisiana SIP on September 27, 2002 (67 FR 60877) and became federally effective on October 27, 2002. As a part of the EPA’s 2015 SSM SIP Action, the EPA made a finding that LAC 33:III.2201.C(8) of the Louisiana SIP is substantially inadequate to meet CAA requirements and issued a SIP call with respect to this provision because it provided for an automatic exemption.⁶

II. Analysis of SIP Submission

In response to the June 12, 2015 SSM SIP Action, LDEQ repealed section LAC 33:III.2201.C(8) under the State law and added a new section, LAC 33:III.2201.K. Startup and Shutdown, in its place.⁷

Iberville, Livingston, and West Baton Rouge. LAC 33:III.2201.A(1) defines Region of Influence as an area to the north of the Baton Rouge nonattainment area that encompasses affected facilities in the attainment parishes of East Feliciana, Pointe Coupee, St. Helena, and West Feliciana.

⁶ See “Affected States in EPA Region VI”, section IX.G.4, June 12, 2015 (80 FR 33968).

⁷ LAC 33:III.2201.K Startup and Shutdown

“1. For affected point sources that are shut down intentionally more than once per month, the owner or operator shall include NO_x emitted during periods of start-up and shutdown for purposes of determining compliance with the emission factors set forth in Subsection D of this Section, or with an alternative plan approved in accordance with Paragraph E.1 or 2 of this Section.

2. For all other affected point sources, effective May 1, 2017, the owner or operator shall either comply with Paragraph K.1 of this Section or the work practice standards described in Paragraph K.3 of this Section during periods of start-up and shutdown. If the owner or operator chooses to comply with work practice standards, the emission factors set forth in Subsection D of this Section shall not apply during periods of start-up and shutdown.

3. Work Practice Standards

a. The owner or operator shall operate and maintain each affected point source, including any associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

b. Coal-fired and fuel oil-fired electric power generating system boilers and fuel oil-fired stationary gas turbines shall use natural gas during start-up. Start-up ends when any of the steam from the boiler or steam turbine is used to generate electricity for sale over the grid or for any other purpose (including on-site use). If another fuel must be used to support the shutdown process, natural gas shall be utilized.

c. Engage control devices such as selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR) as expeditiously as possible, considering safety and manufacturer recommendations. The department shall incorporate into the applicable permit for each affected facility appropriate requirements describing the source-specific conditions or parameters identifying when operation of the control device shall commence.

The November 22, 2016, SIP submittal as supplemented by the June 9, 2017 SIP submittal requested the removal of the SIP-called provision LAC

33:III.2201.C(8) and approval of LAC 33:III.2201.K into the SIP in its place.⁸ As detailed in the Louisiana’s June 9, 2017 SIP submittal, LAC 33:III.2201.K would require affected NO_x sources to comply with either: (1) the applicable emission limitations and standards at all times, including periods of startup and shutdown; or (2) the applicable emission limitations and standards at all times, except during periods of startup and shutdown covered by work practice standards permissible under the rule. Thus, owners and operators of sources that would choose not to comply with the numeric emission limitations during periods of startup and shutdown would be allowed to comply with alternative work practice standards. The owner or operator would not have to select the same method of compliance for every affected point source and would be allowed to revise its selection of the method of compliance for one or more affected point sources by means of a permit modification. Any noncompliance with the emission limitations or with the alternative plan would be submitted in writing within 90 days of the end of each ozone season (May 1–September 30, inclusive) to the administrative authority.

d. Minimize the start-up time of stationary internal combustion engines to a period needed for the appropriate and safe loading of the engine, not to exceed 30 minutes.

e. Maintain records of the calendar date, time, and duration of each start-up and shutdown.

f. Maintain records of the type(s) and amount(s) of fuels used during each start-up and shutdown.

g. The records required by Subparagraphs K.3.e and f of this Section shall be kept for a period of at least five years and shall be made available upon request by authorized representatives of the department.

4. On or before May 1, 2017, the owner or operator shall notify the Office of Environmental Services whether each affected point source will comply with Paragraph K.1 or K.3 of this Section during periods of start-up and shutdown.

a. The owner or operator does not have to select the same option for every affected point source.

b. The department shall incorporate into the applicable permit for each affected facility the provisions of Paragraph K.1 and/or K.3 of this Section, as appropriate. The owner or operator may elect to revise the method of compliance with Subsection K of this Section for one or more affected point sources by means of a permit modification.”

⁸ The June 9, 2017 submittal states that it supplements LDEQ’s November 22, 2016 submittal, as it relates to the proposed revisions which are the subject of this proposed rulemaking.

Implementation Plans,” from Andrew R. Wheeler, Administrator.

³ September 30, 2021, Memorandum “Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,” from Janet McCabe, Deputy Administrator.

⁴ Section J, June 12, 2015 (80 FR 33985).

⁵ In 2012, EPA designated nonattainment areas for the 2008 ozone NAAQS (77 FR 30088, May 21, 2012), including the Baton Rouge area consisting of five parishes: Ascension, East Baton Rouge,

A. EPA Recommendations for Development of Alternative Emission Limitations Applicable During Startup and Shutdown

EPA appreciates the State's efforts in removing the NO_x exemption provision and replacing the exemption provision with an Alternative Emission Limitations (AELs) approach. The EPA interprets the CAA to allow SIPs to include AELs for modes of operation during which an otherwise applicable emission limitation cannot be met, such as may be the case during startup or shutdown. The AEL, whether a numerical limitation, technological control requirement or work practice requirement, would apply during a specific mode of operation as a component of the continuously applicable emission limitation. All components of the resulting emission limitation must meet the substantive requirements applicable to the type of SIP provision at issue, must meet the applicable level of stringency for that type of emission limitation and must be legally and practically enforceable.⁹

For the AELs to be approvable (*i.e.*, meet CAA requirements), alternative requirements applicable to the source during startup and shutdown should be narrowly tailored and take into account considerations such as the technological limitations of the specific source category and the control technology that is feasible during startup and shutdown.¹⁰ As articulated in the 2015 SSM SIP Action, the EPA recommends giving consideration to the following seven specific criteria for developing AELs in SIP provisions that apply during startup and shutdown:¹¹ (1) The revision is limited to specific, narrowly defined source categories using specific control strategies; (2) Use of the control strategy for this source category is technically infeasible during startup or shutdown periods; (3) The AEL requires that the frequency and duration of operation in startup or shutdown mode are minimized to the greatest extent practicable; (4) As part of its justification of the SIP revision, the state analyzes the potential worst-case emissions that could occur during startup and shutdown based on the applicable AEL; (5) The AEL requires that all possible steps are taken to minimize the impact of emissions during startup and shutdown on ambient air quality; (6) The AEL requires that, at all times, the facility is operated in a manner consistent with

good practice for minimizing emissions and the source uses best efforts regarding planning, design, and operating procedures; and (7) The AEL requires that the owner or operator's actions during startup and shutdown periods are documented by properly signed, contemporaneous operating logs or other relevant evidence. The EPA will use these criteria when evaluating whether a particular AEL meets CAA requirements for SIP provisions. Any SIP revision establishing an AEL that applies during startup and shutdown would be subject to the same procedural and substantive review requirements as any other SIP submission.

We also note that AELs applicable during startup and shutdown cannot allow an inappropriately high level of emissions or an effectively unlimited or uncontrolled level of emissions, as those would constitute impermissible *de facto* exemptions for emissions during certain modes of operation.¹²

The proposed revision to Chapter 22 of the Louisiana SIP has been reviewed to determine whether it addresses and resolves the deficiency with the Louisiana SIP as identified in the EPA's June 12, 2015 SSM SIP Action and whether the proposed revision meets all CAA requirements for SIPs.

B. Evaluation

After reviewing the information in Louisiana's SIP revision submittals,¹³ the following deficiencies have been identified:

(a) The proposed LAC 33:III.2201.K(3)(a) would apply to *all* affected point sources of NO_x (electric power generating system boilers, industrial boilers, process heaters/furnaces, stationary gas turbines, and stationary internal combustion engines) in the Baton Rouge ozone nonattainment area and its ROI. Although the Baton Rouge area was redesignated in 2017 from nonattainment to attainment with respect to the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS),¹⁴ the Chapter 22 provisions in the Louisiana SIP are necessary and applicable to affected sources in the Parishes of Ascension, East Baton

Rouge, Iberville, Livingston, and West Baton Rouge and its ROI.¹⁵ The proposed LAC 33:III.2201.K(3)(a) is considered a "general duty" provision. We support the inclusion of general duty provisions as separate additional requirements in SIPs, for example, to ensure that owners and operators act consistent with reasonable standards of care; however, a general duty-type provision does not ensure the AELs meet the applicable stringency requirements for SIPs (*e.g.*, Reasonably Available Control Technology (RACT)).¹⁶ As discussed in section II.A of this document, criterion 1 of the 7 specific criteria for developing AELs, the EPA recommends that AELs be limited to specific and narrowly defined source categories using specific control strategies.¹⁷ The categories of sources (electric power generating system boilers, industrial boilers, process heaters/furnaces, stationary gas turbines, and stationary internal combustion engines) to which LAC 33:III.2201.K(3)(a) would apply are broad and the administrative record accompanying Louisiana's SIP submittals does not contain sufficient information demonstrating that the proposed AELs meet the CAA applicable stringency requirements for all covered sources.¹⁸ For example, the general duty that an owner or operator shall operate a source consistent with "safety and good air pollution control practices for minimizing emissions" is not sufficient to identify what these practices might be across the wide range of source categories to which this standard applies, nor is it clear how such a general duty would be practically enforceable and serve as a limitation on emissions that satisfies, for example, the

¹⁵ See <https://www3.epa.gov/airquality/greenbook/hmcty.html> (URL dated 10 April 2023).

¹⁶ See comment 4, EPA's December 16, 2016 comment letter to Deidra Johnson of LDEQ.

¹⁷ See comment 3, EPA's December 16, 2016 comment letter to Deidra Johnson of LDEQ.

¹⁸ While LAC 33:III.2201.K(3)(b) imposes fuel type and a timing requirement during startup of coal-fired and fuel oil-fired electric power generating system boilers and fuel oil-fired stationary gas turbines, LAC 33:III.2201.K(3)(c) requires timely engagement of control devices such as SCR or SNCR, and LAC 33:III.2201.K(3)(d) limits the startup time of stationary internal combustion engines, we note that for certain affected point sources not equipped with a control device (*i.e.*, industrial boilers, process heaters/furnaces, and stationary gas turbines), the only requirement that applies would be the general duty provision in LAC 33:III.2201.K(3)(a) and the recordkeeping requirements of LAC 33:III.2201.K(3)(e), (f) and (g). Although LDEQ in its response to EPA comment #3 states that EPA has categorized MACT recordkeeping requirements as work practice standards, the MACT standards referenced by LDEQ also include specific emission limitations.

⁹ June 12, 2015 (80 FR 33913).

¹⁰ *Id.*

¹¹ June 12, 2015 (80 FR 33980).

¹² June 12, 2015 (80 FR 33980).

¹³ Louisiana's SIP submittals include copies of EPA's August 3, 2016, and December 16, 2016, comment letters on LDEQ's proposed rulemaking associated with the development of revisions to LAC 33:III.2201, as well as LDEQ's responses to the comments raised in those letters.

¹⁴ December 27, 2016 (81 FR 95051) Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Louisiana; Redesignation of Baton Rouge 2008 8-Hour Ozone Nonattainment Area to Attainment, Effective March 21, 2017.

RACT requirement during startup or shutdown.

(b) The proposed LAC 33:III.2201.K fails to require a source take all possible steps to minimize the impact of emissions during startup and shutdown on ambient air quality, as recommended in criterion 5 of 7, discussed in section II.A of this document, for developing AELs in SIPs. As EPA has previously stated, SIPs are ambient-based standards and any emissions above the allowable limit may cause or contribute to violations of the NAAQS.¹⁹ We note that including a statement to the effect requiring the owner or operator to take all possible steps so that NAAQS or Prevention of Significant Deterioration (PSD) increments are not exceeded as a result of emission events from these sources could cure this deficiency.

(c) The proposed LAC 33:III.2201.K(4)(b) states that “[t]he owner or operator may elect to revise the method of compliance . . . of this section for one or more affected point sources by means of a *permit* modification.” EPA has stated that a “SIP needs to reflect the control obligations of sources, and any revision or modification of those obligations should not be occurring through a separate process, such as a permit process, which would not ensure that “alternative” compliance options do not weaken the SIP.” See June 12, 2015 (80 FR 33915). Additionally, “any revisions to obligations in the SIP need to occur through the SIP revision process”²⁰ Mere reliance upon a permit-based approach when setting forth an AEL without going through a source-specific SIP revision (public notice and comment) process circumvents EPA’s role in reviewing and approving SIP emission limitations to ensure that AELs are “enforceable” or “permissible,” as required by CAA section 110(a)(2)(A) or 110(a)(2)(C). Moreover, emission limits contained in an air permit that is not approved in the SIP and could be later modified (e.g., LAC 33:III.2201.K(4)(b))—without requiring EPA approval as a substitute measure—is not considered permanent.²¹ The EPA notes that SIP-enforceable methods of compliance with emission limitations that are specified only in a permit are not part of the SIP unless and until they are submitted to EPA and federally

approved into the SIP. The fact that EPA has approved the permitting program itself into the SIP does not mean that EPA has approved the actual contents of each permit issued or has made such contents an approved part of the SIP.²² In the context of emission limitations contained in a SIP, EPA views the approach of establishing AELs through a permit program that does not involve submitting the relevant permit requirements to the EPA for inclusion in the SIP as a form of “director’s discretion,” a type of provision that, as explained in the 2015 SSM SIP Action, is inconsistent with CAA requirements because it would allow the state permitting authority to create alternatives to SIP emission limitations without complying with the CAA’s SIP revision requirements.²³ In response to a potential argument that EPA and the public would have an opportunity to comment on the permit, we note that this opportunity for public comment is not a substitute for a source-specific SIP revision, which is needed to alter otherwise applicable SIP emission limitations.²⁴ A fully approvable SIP emission limitation, including periods of startup and shutdown, must meet all substantive requirements of the CAA applicable to such a SIP provision. The proposed AELs in LAC 33:III.2201.K applicable during startup and shutdown periods should be clear so as not to conflict or undermine statutory obligations that SIP emission limitations meet all stringency requirements.²⁵ The language in LAC 33:III.2201.K is not sufficiently specific to ensure that the proposed AELs do not undermine other more stringent SIP emission limitation requirements applicable to some affected sources subject to LAC 33:III.2201.

(d) Similarly, the proposed LAC 33:III.2201.K(3)(c) reads, “[t]he department shall incorporate into the applicable *permit* for each affected facility appropriate requirements describing the source-specific conditions or parameters identifying when operation of the control device shall commence (emphasis added).” In its 2016 comment letter, EPA stated that “it would be necessary to submit such applicable permits to the EPA as source-specific SIP revisions to ensure

attainment/maintenance of NAAQS, preservation of PSD increments, and SIP enforcement.”²⁶ The proposed revisions set forth in the November 22, 2016, and June 9, 2017 submittals do not provide for a mechanism to submit such applicable permits to the EPA for review and approval into the Louisiana SIP as source-specific SIP revisions. As previously noted above, the state’s air permitting process, on its own, cannot be used to create alternatives to or impose conditions for SIP emission limitations for sources during startup and shutdown in lieu of a SIP revision. The state may use the permit development process as a means to evaluate and establish AELs for periods of startup and shutdown for a specific source, but such permit conditions would not negate or replace applicable SIP limits without being approved as a source-specific SIP revision.²⁷

(e) The EPA recommendation in criterion 2 of 7 in section II.A for the establishment of AELs requires justification that use of the control strategy for the affected source category is technically infeasible during startup or shutdown periods. EPA does not recommend establishing AELs for sources that are capable of meeting their existing emission limitations at all times. It is unclear how the proposed revision in LAC 33:III.2201.K takes this technical infeasibility justification fully into account within the SIP process prior to its implementation by the owner or operator. Louisiana does explain that it is well understood that sources utilizing SNCR and SCR for control must reach the necessary temperature before being able to operate properly. But the Louisiana rules also anticipate some sources may desire to comply with the rule limits at all times including startup and shutdown. Many sources likely utilize control techniques that can operate through a wide range of conditions including startup and shutdown. Because Louisiana did not submit information on the particular sources utilizing AELs, EPA cannot evaluate whether all of these sources are meeting any underlying requirement during startup and shutdown. For example, where an existing limitation represents RACT and the state is submitting an AEL that allows emissions in excess of that limit during startup, the SIP submission should explain why the RACT limit cannot be

¹⁹ EPA’s 1982 Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions, September 28, 1982 Kathleen M. Bennett Memorandum.

²⁰ June 12, 2015 (80 FR 33916).

²¹ Disapproval of Missouri Air Plan; Control of Sulfur Dioxide Emissions, EPA Docket ID No. EPA–R07–OAR–2022–0531 available at www.regulations.gov, July 8, 2022 (87 FR 40760).

²² June 12, 2015 (80 FR 33915–33916, and 33922).

²³ November 28, 2022 (87 FR 72944); see also 80 FR 33922 (The EPA is not authorized to approve a program that in essence allows a SIP revision without compliance with the applicable statutory requirements in sections 110(k)(3), 110(l) and 193 and any other provision that is germane to the particular SIP emission limitation at issue).

²⁴ November 28, 2022 (87 FR 72944).

²⁵ June 12, 2015 (80 FR 33893).

²⁶ See comment 6, EPA’s December 16, 2016 comment letter to Deidra Johnson of LDEQ.

²⁷ Disapproval of Georgia Rules for Air Quality Control Pertaining to Startup, Shutdown and Malfunction, EPA Docket ID No. EPA–R4–OAR–2022–0294 available at www.regulations.gov, November 28, 2022 (87 FR 72944).

met during startup, as part of the justification for a higher RACT limit during startup. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.²⁸ Furthermore, as provided in LAC 33:III.2201.K(2) affected point sources capable of meeting the original emission limitations and standards (set forth in LAC 33:III.2201.D) at all times, even during periods of startup and shutdown, have the option of complying with AELs such as work practice standards (LAC 33:III.2201.K(3)) in lieu of meeting those original limitations. Accordingly, EPA views this option as inconsistent with EPA's 2015 SSM SIP Action.

(f) The EPA recommendation in criterion 4 of 7 in section II.A for the establishment of AELs states that the air agency, as a part of its justification of the SIP revision, should analyze the potential worst-case emissions that could occur during startup and shutdown based on the applicable AEL. The June 9, 2017 SIP submittal references Louisiana's November 22, 2016 SIP submittal wherein LDEQ remarks, "[P]resuming the newly-established work practice standards have no demonstrable impact on NO_x emissions (an unnecessarily conservative assumption), LDEQ's historical emissions data represents the potential "worst-case" scenario that could be attributed to the alternative emission limitation." The submission goes on to explain that despite the exemption, air quality in the Baton Rouge area has improved. It is unclear, however, why LDEQ assumes that the worst-case emissions under the AELs could never be higher than the historical actual emissions. We also note that AELs applicable during startup and shutdown cannot allow an inappropriately high level of emissions or an effectively unlimited or uncontrolled level of emissions, as those would constitute impermissible de facto exemptions for all affected NO_x point sources emissions during startup and shutdown. Establishing AELs absent of analyzing worst-case scenarios that could occur during startup and shutdown, similar to exemptions, shields emissions, leads to aggravated air quality and precludes enforcement. As submitted, it is unclear how LAC

33:III.2201.K takes this factor into consideration. Should there be an assertion that the potential worst-case emissions analysis will be taken into account during development of applicable specific permit conditions for each affected facility, we note that LAC 33:III.2201.K does not provide for submittal of applicable permits or their relevant sections into the SIP and, as previously discussed, a permitting process on its own cannot be used to create alternatives to SIP emission limitations for sources during startup and shutdown in lieu of a SIP revision. With respect to proposed LAC 33:III.2201.K(4)(b), we also note that even if Louisiana intended to submit these AELs as SIP revisions, the potential resource burden on LDEQ and EPA—in evaluating each single source AEL for both consideration of the criteria for an AEL and compliance with SIP requirements—could be significant.²⁹

(g) Finally, Louisiana's proposed revision to add LAC 33:III.2201.K to the SIP creates a non-SIP mechanism for amending the SIP by creating alternatives to it. It also creates the potential for confusion because all the requirements of the associated AEL would not be contained in the SIP together with the SIP limits it amends, thereby allowing for the possibility of non-SIP AELs provisions that conflict with the SIP limits. Moreover, it does so without opportunity for EPA review or disapproval where the AEL fails to meet CAA requirements. Any AEL which revises a limit that is EPA-approved as part of the Louisiana SIP must be submitted as a SIP revision in accordance with CAA section 110. EPA's 2015 SSM SIP Action states that AELs which modify SIP-approved emissions limitations, whether adopted on a case-by-case basis or as an AEL generally applicable to a narrow category of similar sources, must be presented to EPA for approval as a SIP revision and go through the SIP revision process. The AELs at issue here would be changes to a state emissions regulation adopted as part of the Louisiana SIP to implement the CAA, and as such must be approved by EPA as a SIP revision. States cannot unilaterally make changes to SIP-approved emission limits and compliance obligations, merely through a permit modification, without the requirements of CAA section 110 being met, including a public comment process and EPA approval. The fact that an AEL must be incorporated into a permit that is part of the EPA-approved

Louisiana SIP does not do away with this requirement that the AEL be submitted as a SIP revision and go through the SIP revision process.

In conclusion, we are proposing to make a determination that Louisiana's November 22, 2016 and June 9, 2017 SIP revision submittals that would repeal LAC 33:III.2201.C(8) and replace it with LAC 33:III.2201.K titled Startup and Shutdown, do not correct the deficiency and substantial inadequacy with LAC 33:III.2201.C(8), as identified in the June 12, 2015 SSM SIP Action.

III. Proposed Action

The EPA is proposing to disapprove a revision to the Louisiana SIP submitted by LDEQ on November 22, 2016, as supplemented on June 9, 2017, in response to EPA's 2015 SSM SIP Action concerning excess emissions during periods of SSM. In accordance with section 110 of the Act, we are proposing to disapprove the revision to Louisiana SIP that would repeal LAC 33:III.2201.C(8) and add a new section LAC 33:III.2201.K Startup and Shutdown in its place.³⁰ The EPA's review indicates that this SIP revision would not correct the substantial inadequacy identified in the June 12, 2015 SIP call related to section LAC 33:III.2201.C(8). EPA is not reopening the 2015 SSM SIP Action and is only taking comment on whether the proposed SIP revision is consistent with CAA requirements and whether it addresses the substantial inadequacy identified in the 2015 SSM SIP Action for the Louisiana SIP section LAC 33:III.2201.C(8).

If the Agency finalizes this disapproval, CAA section 110(c)(1) would require EPA to promulgate a Federal Implementation Plan (FIP) within 24 months of the effective date of the final disapproval action, unless EPA first approves a complete SIP revision that corrects the deficiency with LAC 33:III.2201.C(8) as identified in the 2015 SSM SIP Action or the deficiencies identified in Section II.B of this document within such time. In addition, final disapproval would trigger mandatory sanctions under CAA section 179 and 40 CFR 52.31 unless the State submits, and EPA approves, a complete SIP revision that corrects the identified deficiencies within 18

²⁸ "NO_x Supplement" FR titled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," November 25, 1992 (57 FR 55620). Also, see September 17, 1979 (44 FR 53762).

²⁹ See December 22, 2022 (87 FR 78619).

³⁰ The removal of the exemption in LAC 33:III.2201.C(8) and the addition of LAC 33:III.2201.K is considered an inseparable action. The proposed disapproval of the addition of LAC 33:III.2201.K to the SIP would make an approval of the removal of LAC 33:III.2201.C(8) from the SIP more stringent than Louisiana anticipated or intended. See *Bethlehem Steel Corp. v. Gorsuch*, 742 F.2d 1028, 1036–37 (7th Cir. 1984).

months of the effective date of the final disapproval action.³¹

IV. Environmental Justice Considerations

For informational and transparency purposes only, the EPA is providing additional analysis of environmental justice associated with this proposed action for the purpose of providing information to the public.

EPA first reviewed demographic data, which provides an assessment of individual demographic groups, of the populations living within Louisiana.³² The EPA then compared the data to the national average for each of the demographic groups. The results of the demographic analysis indicate that, for populations within Louisiana, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is similar to the national average (57.9 percent of Louisiana's population compared to 59.3 percent nationally). The percent of persons who reported their race as Black or African American alone is significantly higher than the national average (33.0 percent

versus 13.6 percent). The percentage of Louisiana's population living in poverty is 19.6 percent, which is higher than the national average of 11.6 percent. The percent of people over 25 with a high school diploma in Louisiana is similar to the national average (86.2 percent versus 88.9 percent), while the percent with a Bachelor's degree or higher is lower than the national average (25.5 percent versus 33.7 percent).

EPA conducted screening analyses using EJSCREEN, an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.³³ The EJSCREEN tool presents these indicators at a Census Block Group (CBG) level or a larger users specified area that covers multiple CBGs.³⁴ EJSCREEN is not a tool for performing in depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to environmental justice and is subject to uncertainty in some underlying data (e.g., some environmental indicators are based on monitoring data which are not

uniformly available; others are based on self-reported data).³⁵ EJSCREEN environmental indicators help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population in the U.S. EJSCREEN also provides information on demographic indicators, including percent low-income, communities of color, level of income, unemployment rate, linguistic isolation, less than high school education, population below age 5, population over age 64, and low life expectancy compared to the U.S. as a whole.³⁶ The EPA prepared EJSCREEN reports, including demographic indicators, covering each of these 9 affected parishes (Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, and West Feliciana). See Tables 1 and 2 for a summary of demographic indicator results from the EPA's screening-level analysis for these 9 affected parishes. The detailed EJSCREEN reports are provided in the docket for this rulemaking.

TABLE 1—DEMOGRAPHIC INDICATORS FOR LOUISIANA PARISHES ASCENSION, EAST BATON ROUGE, EAST FELICIANA, IBERVILLE, AND LIVINGSTON

Demographic indicators	Ascension	East Baton Rouge	East Feliciana	Iberville	Livingston	US
	Value (%ile)	Value (%ile)	Value (%ile)	Value (%ile)	Value (%ile)	Value (-)
People of Color	32% (52nd %ile)	56% (70th %ile)	46% (59th %ile)	52% (68th %ile)	13% (29th %ile)	40
Low Income	21% (39th %ile)	35% (61st %ile)	31% (40th %ile)	38% (66th %ile)	27% (48th %ile)	30
Unemployment Rate	6% (65th %ile)	7% (68th %ile)	7% (63rd %ile)	10% (81st %ile)	5% (60th %ile)	5
Limited English Speaking.	1% (60th %ile)	2% (63rd %ile)	0% (75th %ile)	1% (57th %ile)	1% (58th %ile)	5
Population with Less Than High School Education.	10% (58th %ile)	10% (55th %ile)	21% (71st %ile)	20% (80th %ile)	13% (65th %ile)	12
Population below Age 5	7% (68th %ile)	7% (64th %ile)	5% (48th %ile)	5% (54th %ile)	7% (66th %ile)	6
Population over Age 64	12% (35th %ile)	14% (45th %ile)	18% (65th %ile)	16% (51st %ile)	13% (41st %ile)	16
Low Life Expectancy	17% (31st %ile)	19% (50th %ile)	22% (53rd %ile)	23% (83rd %ile)	20% (52nd %ile)	20

Percentiles (%ile) are within the US, where indicated.

³¹ The offset sanction in CAA section 179(b)(2) would be triggered 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) would be triggered 24 months after the effective date of a final disapproval. Although the sanctions clock would begin to run from the effective date of a final disapproval, mandatory sanctions under CAA section 179 generally apply only in designated nonattainment areas. This includes areas designated as nonattainment after the effective date of a final disapproval. As discussed in the 2015 SSM SIP Action, EPA will evaluate the geographic scope of potential sanctions at the time it makes a determination that the air agency has failed to make a complete SIP submission in response to the 2015 SIP call, or at the time it disapproves such a SIP submission. The appropriate geographic scope for sanctions may vary depending upon the SIP provisions at issue. See June 12, 2015 (80 FR 33930)

EPA Docket ID No. EPA-HQ-OAR-2012-0322 available at www.regulations.gov; November 28, 2022 (87 FR 72946) Disapproval of Air Quality Implementation Plans; Georgia—Revisions to Rules for Air Quality Control Pertaining to Startup, Shutdown and Malfunction EPA Docket ID No. EPA-R4-OAR-2022-0294 available at www.regulations.gov; and April 6, 2023 (88 FR 20447–20448) Air Plan Partial Disapproval and Partial Approval; Tennessee—Revisions to Startup, Shutdown, and Malfunction Rules EPA Docket ID No. EPA-R4-OAR-2022-0783 available at www.regulations.gov.

³² See the United States Census Bureau's QuickFacts on Louisiana at <https://www.census.gov/quickfacts/fact/table/LA/US/PST045222>.

³³ See The EJSCREEN tool available at <https://www.epa.gov/ejscreen>.

³⁴ See <https://www.census.gov/programssurveys/geography/about/glossary.html>.

³⁵ In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (i.e., lower sampling error), particularly for small geographic areas and population groups. For more information, see https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.

³⁶ For additional information on environmental indicators in EJSCREEN, see “EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation,” Chapters 2, 3, and Appendix C (September 2019) at https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf.

TABLE 2—DEMOGRAPHIC INDICATORS FOR LOUISIANA PARISHES POINTE COUPEE, ST. HELENA, WEST BATON ROUGE, AND WEST FELICIANA

Demographic indicators	Pointe Coupee	St. Helena	West Baton Rouge	West Feliciana	US
	Value (%ile)	Value (%ile)	Value (%ile)	Value (%ile)	Value
People of Color	40% (59th %ile)	56% (70th %ile)	45% (63rd %ile)	48% (65th %ile)	40
Low Income	42% (71st %ile)	44% (74th %ile)	32% (57th %ile)	29% (53rd %ile)	30
Unemployment Rate	5% (62nd %ile)	17% (94th %ile)	8% (75th %ile)	8% (76th %ile)	5
Limited English Speaking	1% (60th %ile)	1% (58th %ile)	0% (0th %ile)	1% (57th %ile)	5
Population with Less Than High School Education.	19% (78th %ile)	21% (82nd %ile)	13% (66th %ile)	20% (80th %ile)	12
Population below Age 5	6% (59th %ile)	6% (55th %ile)	7% (66th %ile)	4% (41st %ile)	6
Population over Age 64	21% (70th %ile)	19% (66th %ile)	14% (43rd %ile)	15% (50th %ile)	16
Low Life Expectancy	21% (63rd %ile)	24% (87th %ile)	21% (67th %ile)	15% (11th %ile)	20

Percentiles (%ile) are within the US, where indicated.

Communities in close proximity to and/or downwind of industrial sources may be subject to disproportionate environmental impacts of excess emissions. Short- and/or long-term exposure to air pollution has been associated with a wide range of human health effects including increased respiratory symptoms, hospitalization for heart or lung diseases, and even premature death.³⁷ Excess emissions during startups, shutdowns, and malfunctions exceed applicable emission limitations and can be considerably higher than emissions under normal steady-state operations. As to all population groups within the previously designated Baton Rouge ozone nonattainment area and its ROI, we believe that this proposed action will pave the way to future environmental benefits and reduce adverse impacts.

As discussed earlier, this rulemaking, if finalized as proposed, will lead to future actions to remove an impermissible SIP provision which currently provides affected sources emitting NO_x in excess of otherwise allowable amounts with an opportunity to exempt violations occurring during SSM events. The removal of LAC 33:III.2201.C(8) from the Louisiana SIP is necessary to preserve the enforcement structure of the CAA, to preserve the jurisdiction of courts to adjudicate questions of liability and remedies in judicial enforcement actions and to preserve the potential for enforcement by the EPA and other parties under the citizen suit provision as an effective deterrent to violations. If finalized as proposed, this action will lead to additional rulemaking actions intended to ensure that all communities and populations, including overburdened

communities, receive the full human health and environmental protection provided by the CAA. We therefore propose to determine that this rulemaking action, if finalized as proposed, will not have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

V. Statutory and Executive Order Reviews

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

The 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), and 14094 (88 FR 21879, April 11, 2023); and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

The proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

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 (5 U.S.C. 601 *et seq.*). This action merely proposes to disapprove a SIP submission as not meeting the CAA.

D. Unfunded Mandates Reform Act (UMRA)

The proposed 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. This proposed action imposes no enforceable duty on any

State, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

The proposed 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

The proposed action will not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definitions of “covered regulatory action” in section 2–202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission from Louisiana as not meeting CAA requirements.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution and Use

The proposed action is not subject to Executive Order 13211, because it is not

³⁷ <https://www.epa.gov/air-quality-management-process/managing-air-quality-human-health-environmental-and-economic#what> (URL dated 01/30/2023).

a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This proposed rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the previously designated Baton Rouge ozone nonattainment area and its Region of Influence. In addition, there is no information in the record upon which this action is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples. This proposed action simply proposes to disapprove a SIP submission as not meeting CAA requirements for SIPs.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Sulfur dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 7, 2023.

Eartha Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–12615 Filed 6–12–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2022–0156; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BF85

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Navasota False Foxglove and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list Navasota false foxglove (*Agalinis navasotensis*), a plant species from Grimes and Tyler Counties, Texas, as an endangered species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list Navasota false foxglove. After a review of the best available scientific and commercial information, we find that listing the species is warranted. We also propose to designate critical habitat for Navasota false foxglove under the Act. In total, approximately 1.9 acres (0.8 hectares) in Grimes and Tyler Counties, Texas, fall within the boundaries of the proposed critical habitat designation. In addition, we announce the availability of a draft economic analysis of the proposed designation of critical habitat for Navasota false foxglove. If we finalize this rule as proposed, it would add this species to the List of Endangered and Threatened Plants and extend the Act’s protections to the species and its designated critical habitat.

DATES: We will accept comments received or postmarked on or before August 14, 2023. Comments submitted

electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by July 28, 2023.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS–R2–ES–2022–0156, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2022–0156, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available at <https://fws.gov/species/navasota-false-foxglove-agalinis-navasotensis>, and <https://www.regulations.gov> at Docket No. FWS–R2–ES–2022–0156, or both. For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at <https://www.regulations.gov> at Docket No. FWS–R2–ES–2022–0156 and on the Service’s website at <https://fws.gov/species/navasota-false-foxglove-agalinis-navasotensis>.

FOR FURTHER INFORMATION CONTACT:

Chuck Ardizzzone, Project Leader, Texas Coastal Ecological Services Field Office, U.S. Fish and Wildlife Service, 17629 El Camino Real, Ste. 211, Houston, TX 77058; telephone: (281) 286–8282. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make

international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the Navasota false foxglove meets the definition of an endangered species; therefore, we are proposing to list it as such and proposing a designation of its critical habitat. Both listing a species as an endangered or threatened species and designating critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose to list the Navasota false foxglove as an endangered species under the Act, and we propose the designation of critical habitat for the species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the Navasota false foxglove is endangered due to the following threats: the encroachment of woody vegetation (Factor A) and the demographic consequences of few (three) small populations (Factor E). Land use changes (Factor A), consequences from global climate change (Factors A and E), and the cumulative impacts from all of the above-mentioned influences are also impacting the species' status.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the

geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

- (1) The species' biology, range, and population trends, including:
 - (a) Biological or ecological requirements of the species, including habitat requirements;
 - (b) Genetics and taxonomy;
 - (c) Historical and current range, including distribution patterns, including the locations of any additional populations of this species;
 - (d) Historical and current population levels, and current and projected trends; and
 - (e) Past and ongoing conservation measures for the species, its habitat, or both.
- (2) Threats and conservation actions affecting the species, including:
 - (a) Factors that may be affecting the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.
 - (b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species.
 - (c) Existing regulations or conservation actions that may be addressing threats to this species.
- (3) Additional information concerning the historical and current status of this species.

(4) Specific information on:

- (a) The amount and distribution of Navasota false foxglove habitat;
- (b) Any additional areas occurring within the range of the species, in Grimes and Tyler Counties, Texas, that should be included in the designation because they (i) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or (ii) are unoccupied at the time of listing and are essential for the conservation of the species; and
- (c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and
- (d) Whether occupied areas are adequate for the conservation of the species, as this will help us evaluate the potential to include areas not occupied at the time of listing. Additionally, please provide specific information regarding whether or not unoccupied areas would, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species. We also seek comments or information regarding whether areas not occupied at the time of listing qualify as habitat for the species.
- (7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.
- (8) Additional information regarding land ownership within the proposed critical habitat units
- (9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.
- (10) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.
- (11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. If you think we should exclude any additional areas, please provide information supporting a benefit of exclusion.

(12) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific information available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Our final determination may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is threatened instead of endangered, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designation may not include all areas proposed, may include some

additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion and exclusion will not result in the extinction of the species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to announcing them in the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On June 25, 2007, we received a petition to list 475 species, including Navasota false foxglove, from Forest Guardians (now WildEarth Guardians). On December 16, 2009, we published a 90-day finding for 192 of those species, including the Navasota false foxglove (74 FR 66866). We found that there was substantial information indicating that listing the species may be warranted. The Navasota false foxglove was added to our national listing workplan with a target completion date of fiscal year 2023 for the 12-month finding. We completed a species status assessment for the species in 2022.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the Navasota false foxglove. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270),

and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the Navasota false foxglove SSA report. We sent the SSA report to eight independent peer reviewers, including scientists, botanists, and consultants with a variety of expertise in rare plants, conservation and restoration, and fire management. We received review from two peer reviewers. Results of this structured peer review process can be found at <https://regulations.gov> under Docket No. FWS-R2-ES-2022-0156. In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this proposed rule.

Summary of Peer Reviewer Comments

As discussed in Peer Review, above, we received comments from two peer reviewers on the draft SSA report. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA report. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications in terminology and discussions of genetic diversity, and other editorial suggestions.

I. Proposed Listing Determination Background

Agalinis (false foxglove) is a genus of about 70 species in North, Central, and South America that until 2008 was aligned with members of the family Scrophulariaceae (figwort). In 2008, it was shown to be more closely related to Orobanchaceae (broomrape), which consists mostly of hemiparasitic plants (plants that obtain part of their food by parasitism; Pettengill and Neel 2008, p. 15).

Navasota false foxglove is a narrowly endemic, hemiparasitic, annual plant known from only two counties in southeast Texas (Grimes and Tyler Counties). Navasota false foxglove flowering begins in mid-September and is triggered by short days when there are fewer hours of sunlight (Reed et al. 2005, p. 7). Navasota false foxglove blooms from mid-September to October, and seeds mature from October to early November. Fruit maturation and seed dispersal occurs by November; other *Agalinis* fruit typically contains between 50 and 180 seeds (Cunningham and Parr 1990, p. 269). Plants are usually dead by December. This species

is relatively hard to see when the plants are not in flower, and even during flowering times they can be hard to see across the landscape. They bloom every day in fall months, and flowers often drop by mid-afternoon of the same day. Navasota false foxglove require full sunlight and will not grow in solid stands of very dense vegetation (Strong and Williamson 2015, p. 6). The species occurs on rocky outcrops with well drained, shallow soils that have historically been ungrazed and unplowed.

Navasota false foxglove is an annual herb from a few fibrous roots, 11–36 inches (2.7–9.1 decimeters) tall, often tinged with purple, maroon, or bronze. The blooms are often purplish-pink in color. The leaves and general appearance of Navasota false foxglove resemble several other common false foxgloves that all have thin, thread-like leaves (Canne-Hilliker and Dubrule 1993, pp. 426–431).

Navasota false foxglove is hemiparasitic (a plant that possesses chlorophyll and typically carries out photosynthesis but is partially parasitic on the roots or shoots of a plant host), and little bluestem (*Schizachyrium scoparium*) is hypothesized to be one of the main plants that it parasitizes (Reed 2019 pers. comm.). Host plants provided needed nutrients for survival and reproduction of Navasota false foxglove, especially in drought years.

Navasota false foxglove is found in three populations in two counties in Texas and is most similar to Caddo false foxglove (*Agalinis caddoensis*), a species presumed extinct from Louisiana. The status of Navasota false foxglove as a distinct species was supported by DNA barcoding research (Pettengill and Neel 2010, entire), but the distinction and population genetics between the current sites in Grimes and Tyler Counties, Texas, have not been analyzed. The Grimes County and Tyler County populations are separated by more than 100 miles.

Land use has remained consistent since the populations were found. The private landowners have allowed the Service and other individuals from Texas A&M University to visit their property for surveys and implementing habitat management projects.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened

species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

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

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

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

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

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an "endangered species" or a "threatened species." In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an "endangered species" or a "threatened species" only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

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

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

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess Navasota false foxglove viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt over time to long-term changes in the environment (for

example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

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

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R2–ES–2022–0156 on <https://www.regulations.gov> and at <https://www.fws.gov/office/texas-coastal-ecological-services>.

Summary of Biological Status and Threats

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

We evaluated the individual needs of Navasota false foxglove in terms of the resource needs and/or the circumstances that are necessary to complete each stage of the life cycle. The life history of Navasota false foxglove is closely tied to its specific habitat requirements for all stages of the species' life cycle. Table 1 summarizes the resources that are needed by life stage. For further information about any particular life stage or resource need, see chapter 2 of the SSA report (Service 2022, pp. 8–24).

TABLE 1—RESOURCE NEEDS BY LIFE STAGE

Life stage	Resources and/or circumstances needed for individuals to complete each life stage	Resource function	References
Seeds	• Calcareous sandy to clay loam soils that are ungrazed, unplowed, shallow thin soils. • Limited woody encroachment; open prairie habitat. • Full sun. • Annual precipitation events that provide enough soil moisture for germination.	Habitat Nutrition Seed dispersal.	Strong and Williamson 2015, pp. 5, 9; Canne-Hilliker & Dubrule 1993, p. 433.
Germination	• Host plants (growing root tips that produce exudate for development). • Annual precipitation events that provide enough soil moisture for germination. • In drought years, a host to parasitize to gather more nutrients and water. • Disturbance from periodic fires stimulates new root growth in host plants and therefore stimulates germination of <i>Agalinis</i> seeds. • Calcareous, shallow, sandy to clay loam soils that are ungrazed and unplowed. • Limited woody encroachment; open prairie habitat. • Full sun.	Habitat Nutrition	Strong and Williamson 2015, pp. 5, 9; Canne-Hilliker & Dubrule 1993, p. 433; Yatskievych 2021, pers. comm.
Seedlings	• Calcareous, shallow, sandy to clay loam soils that are ungrazed and unplowed. • Limited woody encroachment; open prairie habitat. • Full sun • Annual precipitation events that provide enough soil moisture for germination.	Habitat Nutrition	Strong and Williamson 2015, pp. 5, 8, 9; Canne-Hilliker & Dubrule 1993, p. 433.
Mature and reproductive adults.	• Short sun hour days to trigger flowering • Full sun exposure; can maintain with shade up to 10–15%. • Pollinators. • Host plant for resources.	Habitat Nutrition Reproduction.	Strong and Williamson 2015, pp. 5, 9; Canne-Hilliker & Dubrule 1993, p. 433; Reed 2021, pers. comm.

TABLE 1—RESOURCE NEEDS BY LIFE STAGE—Continued

Life stage	Resources and/or circumstances needed for individuals to complete each life stage	Resource function	References
Fruit/capsule	• Sparse surrounding vegetation (adversely affected if surrounding vegetation is too thick). • Calcareous, shallow, sandy to clay loam soils that are ungrazed and unplowed. • Limited woody encroachment; open prairie habitat. • Annual precipitation events that provide enough soil moisture for germination. • Pollination (selfing or pollinators) • Host plant for resources. • Calcareous, shallow, sandy to clay loam soils that are ungrazed and unplowed. • Limited woody encroachment; open prairie habitat. • Full sun. • Annual precipitation events that provide enough soil moisture for germination.	Habitat Nutrition Reproduction.	Canne-Hilliker & Dubrule 1993, p. 433; Strong and Williamson 2015, pp. 5, 9.

We identify the species' needs in terms of redundancy and representation of the species. We evaluate the redundancy of this species by the number and distribution of Navasota false foxglove populations. Having multiple populations distributed across a larger area reduces the risk of catastrophic events that may affect one or more populations simultaneously, affecting the whole species. Fewer populations distributed narrowly across the species' range would increase catastrophic risk and lower redundancy. Representation of Navasota false foxglove is based on the presence of multiple, self-sustaining populations across the range of the species and their contributions to providing adaptive capacity to the species in the face of changing conditions. Navasota false foxglove requires a level of genetic diversity that enables the species to adapt to environmental change. We do not know if there is occupied habitat elsewhere within Grimes County, Tyler County, or other areas of Texas. Therefore, we do not know how many populations are necessary to provide sufficient redundancy and representation to the species.

Stressors Affecting Navasota False Foxglove and Its Habitat

Encroachment of Woody Vegetation

Navasota false foxglove thrives in full sun along with its assumed host plant, little bluestem. This species thrives in full sun and on outcrops that are described as distinct islands surrounded by a sea of Post Oak Savannah (Canne-Hilliker and Dubrule 1993). Woody vegetation shades out areas of habitat that have previously provided full sun, inhibiting plant growth. Woody vegetation from surrounding savannahs,

if not controlled, will invade these distinct islands of outcrops and reduce full sun conditions, which Navasota false foxglove needs to survive. Management, including prescribed fires, can prevent the invasion of woody vegetation and stimulate root growth of the host plant. Woody vegetation control has occurred in element occurrence (EO) 6674 (East), through both prescribed fires and mechanical removal; subsequent surveys revealed much higher numbers of individuals. Habitat improvements and prescribed fires have only occurred within EO 6674 (East), although woody vegetation occurs at the other two populations as well.

Disturbance

Navasota false foxglove has adapted to different types of disturbance including land clearing, road improvements, grazing, vegetation removal, and prescribed fire. Some disturbance types are beneficial; after a prescribed fire, the number of individuals the following survey year had more than doubled, indicating this species may be fire dependent. Although Navasota false foxglove may be able to persist through different types of disturbances, the species occurs in areas that are historically ungrazed and unplowed, indicating it is not tolerant of land use changes.

All three Navasota false foxglove populations are near developed roads or areas used for harvesting timber, areas that are vulnerable to actions such as road construction, grading, and other ground-moving activities. Grazing, another type of disturbance, has occurred on the Grimes West population of Navasota false foxglove, where evidence of hoof prints and livestock

waste were observed. Individual livestock have not been present during visits to this site. While several individuals of Navasota false foxglove have been observed in these areas, trampling could occur, but because livestock grazing is limited and we know of no plans for it to increase, it likely does not pose a current threat to the species.

Climate Change and Drought

Climate change has already begun, and continued greenhouse gas emissions at or above current rates will cause further warming (Intergovernmental Panel on Climate Change (IPCC) 2013, pp. 11–12). Warming in the Southwest is expected to be greatest in the summer, and annual mean precipitation is very likely to decrease in the Southwest (IPCC 2013, pp. 11–12). In Texas, the number of extreme hot days (high temperatures exceeding 95 degrees Fahrenheit (°F)) are expected to double by around 2050 (Kinniburgh et al. 2015, p. 83).

The Fifth Assessment Report of the IPCC (2013, p. 23) projects the following changes by the end of the 21st century, relative to the 1986 to 2005 averages:

- It is virtually certain that most land areas will experience warmer and/or fewer cold days and nights;
- It is virtually certain that most land areas will experience warmer and/or more frequent hot days and nights;
- It is very likely that the frequency and/or duration of warm spells and heat waves will increase in most land areas;
- It is very likely that the frequency, intensity, and/or amount of heavy precipitation events will increase in mid-latitude land masses; and
- It is likely that the intensity and/or duration of droughts will increase on a regional to global scale.

Representative concentration pathways (RCPs) provide a framework for modelling in the next stages of scenario-based research for greenhouse gas emissions. These are plausible pathways toward reaching each target of time-evolving emissions or concentrations of radiatively active constituents (Moss et al. 2010, p. 752). RCPs provide scenarios that include time series of emissions and concentrations of greenhouse gases, aerosols, and chemically active gases. Within the term “representative concentration pathway,” the word “representative” signifies that each RCP provides only one of many possible scenarios that would lead to the specific radiative-forcing characteristics. The word “pathway” emphasizes that not only are the long-term concentration levels something to consider, but the possible outcomes of these trajectories over time (Moss et al. 2010, p. 752). RCP models provide one of many possible scenarios for future conditions based on specific radiative-forcing characteristics, for example, change in the concentration of carbon dioxide or the output of the sun. Two RCP scenarios were used in the SSA. One pathway was evaluated at RCP 4.5, where the radiative forces are stabilized at 4.5 watts per square meter by year 2100 and concentrations are constant after year 2150. The second pathway evaluated was RCP 8.5, where the radiative forces are greater than 8.5 watts per square meter by year 2100 and continue to rise.

Depending on timing and intensity of drought events, Navasota false foxglove could be adversely affected by increased mortality rates, reduced reproductive output due to loss or reduced vigor of mature plants, and reduced rates of seed germination and seedling recruitment. Increases in soil temperatures and soil moisture evaporation in response to predicted ambient warming could increase rates of soil seed bank depletion by increasing seedling mortality rates (Ooi 2012, pp. S54–S55) and diminish the resilience of Navasota false foxglove populations by reducing the species’ ability to maintain soil seed

banks. While climate has changed in recent decades in regions where the Navasota false foxglove occurs, the rate of change likely will continue to increase into the future.

The species retains the ability to rebound after drought, likely due to the seed bank responding to rewetted conditions. Reviewing the survey data from extreme drought years in Texas (i.e., 2011, the driest year on record), abundance increased the year after the drought ended. Species specialists hypothesize that the seed bank provides resiliency by allowing the species to be dormant through dry years and then germinating in years when conditions are suitable. We do not have information regarding how long or how intense of a drought the species can withstand.

Conservation Efforts and Regulatory Mechanisms

Of the three source features for Navasota false foxglove, all three EOs occur entirely on privately owned land. The owners of the land where the EO 6674 (East) population occurs protect the habitat for conservation purposes and voluntarily allow researchers and scientists on their property to conduct surveys. Employees of the Texas Parks and Wildlife Department and the Service, as well as researchers from Texas A&M University, have visited the EO 6674 (West) population several times. This population is not currently being managed for Navasota false foxglove, but it has new electric fencing to restrict cattle (as noted during the fall 2020 site visit). The EO 9000 source feature is currently owned by a timber company and has not been visited by biologists in several years. The habitat descriptions and locations of some other plant species specimens report the presence of Navasota false foxglove, but these locations have not been verified nor surveyed for Navasota false foxglove by specialists at this time.

Current Condition

It is very difficult to determine the population sizes and demographic

trends of an annual plant with wide annual variation in the numbers of individuals that germinate from the seed bank, flower, and set seed. In the case of EOs that have multiple source features, seed germination pulses may not be synchronous at all source features; as the maximum numbers observed at different areas may occur in different years, the potential population size may be much greater than the numbers observed in an entire EO in any single year. However, the annual survey results for each EO represent the best available data from which to assess population size, and regardless of year-to-year variation, these populations are not large and occupy very small areas. Small, isolated populations are more vulnerable to catastrophic losses caused by random fluctuations in recruitment (demographic stochasticity) or variations in rainfall or other environmental factors (environmental stochasticity) (USFWS 2016, p. 20). Because these populations occur over such small areas, any event that affects a population is expected to affect the entire population, possibly resulting in extirpation. In addition to population size, it is likely that population density also influences resiliency, since reproduction requires genetically compatible individuals to be clustered within the forage ranges of the species’ pollinators.

Population resiliency for the current condition of Navasota false foxglove was derived from two habitat factors (host plant availability, open canopy) and two demographic factors (population size and connectivity). To rank these four factors, we described conditions that were assumed to contribute to “high,” “moderate,” “low,” or “very low” levels of population resilience and provided each with a quantified rank of 3, 2, 1, or 0, respectively (see table 2, below). See chapter 4 of the SSA report for a full description of each factor (Service 2022, p. 27–32).

TABLE 2—CURRENT CONDITION CATEGORIES

Condition category	Habitat factors		Demographic factors	
	Host plant availability	Open canopy (% of sun exposure)	Population size	Population connectivity
High (3)	Habitat supports LBS, ¹ and the plant occurs throughout the occupied area.	≥75% open habitat	≥1,667 individuals	Population located within 0–0.25 km of another occupied site.
Moderate (2) ..	LBS occurs in some of the occupied area.	50–75% open habitat	834–1,667 individuals	Population located between 0.25 and 0.5 km from another occupied site.

TABLE 2—CURRENT CONDITION CATEGORIES—Continued

Condition category	Habitat factors		Demographic factors	
	Host plant availability	Open canopy (% of sun exposure)	Population size	Population connectivity
Low (1)	LBS has a low occurrence in the occupied area.	25–50% open habitat	≤834 individuals	Population located between 0.5 and 1 km from another occupied site.
Very Low (0) ..	LBS does not occur in the occupied area.	≤25% open habitat	0 individuals	Population located >1 km from another occupied site.

¹ LBS stands for little bluestem (*Schizachyrium scoparium*).

The available survey data for Navasota false foxglove are limited to “presence/absence,” and where population estimates are provided, the data are infrequent and generally incomparable because survey methodologies were not documented and changed over time. Therefore, we cannot determine if Navasota false foxglove population numbers are changing over time across the source features. In the absence of current survey data for some populations (EO 9000), it was assumed that if a historically known population site maintains habitat conditions conducive to the species, the population is presumed extant. Therefore, the current condition of the species may be overestimated.

The conservation principles of resiliency, redundancy, and representation were used to summarize the current condition site scores for Navasota false foxglove (see table 3, below). The resiliency of each source feature was based on the survey data and condition of the individual source features. Specifically, the site scores for the extant populations within each source feature considered the total number and size of extant populations in each area (*i.e.*, redundancy within the source feature), and other factors such as observed population size, specific local stressors, and available survey data. The species’ redundancy and representation were assessed based on the distribution of the species. As mentioned above, there can be some uncertainty in population size of these

source features. Our assessment of the species’ needs determined that populations with fewer than 834 individuals are considered to have low resiliency (Table 2). Based on our survey results from the largest unit (Unit 1: E.O. 6674 (East)), there has not been a survey year with more than 834 individuals since the early 2000s. All three populations were ranked as a low for population size due to several years in a row of surveys with fewer than 834 individuals in all populations at each survey year. Additionally, canopy conditions and connectivity are moderate or low in all populations. Results of the current condition analysis indicate that none of the populations are in high condition, one is in moderate condition, and two are in low condition.

TABLE 3—CURRENT CONDITION SITE SCORES

Location (EO)	Habitat factors		Demographic factors		Final site score
	Host plant availability	Canopy openness (sun exposure)	Population size	Population connectivity	
EO 6674 (East)	High	Moderate	Low	Moderate	Moderate.
EO 6674 (West)	Low	Moderate	Low	Moderate	Low.
EO 9000	Low	Moderate	Low	Very Low	Low.

Future Conditions

As part of the SSA, we also developed two future condition scenarios to capture the range of uncertainties regarding future threats and the projected responses by the Navasota false foxglove. Our scenarios assumed two different climate model scenarios and similar or increasing effects from the influences on species viability into the future. Because we determined that the current condition of the Navasota false foxglove is consistent with an endangered species (see Determination of Navasota False Foxglove’s Status, below), we are not presenting the results of the future scenarios in this proposed rule. Please refer to the SSA report (Service 2022, p. 32–34) for the full analysis of future scenarios.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

Determination of Navasota False Foxglove’s Status

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

curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we determined that encroachment of woody vegetation (Factor A), disturbance (Factor A), consequences from climate change (Factors A and E), and the cumulative impacts from all of the above-mentioned influences are threats to the Navasota false foxglove's continued existence. Two of the three extant populations have low resiliency, which makes them much less likely to be able to withstand stochastic events such as drought and disturbance. The third population has moderate resiliency.

A narrow endemic, Navasota false foxglove has little redundancy and no adaptive capacity (representation), as it has few populations and is inherently at a higher risk of extinction. Simply being a narrow endemic does not, in and of itself, mean the species is in danger of extinction and should be listed. Because this species is a narrow endemic with few populations and population resiliency is either low (two of three populations) or moderate (third population), reduction in population resiliency can have an outsized influence on the species' overall viability. The E.O. records of Navasota false foxglove have been documented with a combined area of less than 2 acres. A single event, such as a prolonged drought or a single development project, could easily extirpate all or most of the remaining populations. Woody vegetation is currently negatively affecting the populations, and without woody vegetation removal or prescribed fire, the species could be reduced or eliminated from these areas that become shaded.

Population resiliency has presumably declined given the sparse number of individuals observed in recent surveys. The E.O. 9000 (Tyler) population has low resiliency and little to no connectivity to the other two populations, as it is greater than 100 miles away. Therefore, the likelihood of the E.O. 9000 (Tyler) population being able to recover from stochastic events, or be repopulated if it extirpated, is greatly reduced or eliminated.

The species as a whole possesses little adaptive capacity. The lack of connectivity and isolation of the populations has eliminated gene flow, and the species retains little ability to withstand environmental variation. As a whole, the species has limited representation and redundancy, and low to moderate resiliency of the populations, resulting in low species viability. Currently, Navasota false foxglove populations are extremely vulnerable to woody vegetation encroachment, disturbance, and environmental variation due to climate change, and the loss of a population could cascade into the extinction of the species. Thus, after assessing the best available information, we determine that the Navasota false foxglove is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We have determined that the Navasota false foxglove is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the Navasota false foxglove warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity v. Everson*, 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), which vacated the provision of the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37578; July 1, 2014) providing that if the Service determines that a species is threatened throughout all of its range, the Service will not analyze whether the species is endangered in a significant portion of its range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the Navasota false foxglove meets the Act's definition of an endangered species. Therefore, we propose to list the Navasota false foxglove as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened ("downlisting") or removal from protected status ("delisting"), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the time and cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species,

as new substantive information becomes available. If we list the Navasota false foxglove, its recovery outline, draft recovery plan, final recovery plan, and any revisions would be available on our website as they are completed (<https://www.fws.gov/program/endangered-species>), or from our Texas Coastal Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Texas would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Navasota false foxglove. Information on our grant programs that are available to aid species recovery can be found at: <https://www.fws.gov/service/financial-assistance>.

Although the Navasota false foxglove is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a

species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with the Service.

Examples of actions that may be subject to the section 7 processes are land management or other landscape-altering activities on Federal lands administered by the Service, as well as actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Examples of Federal agency actions that may require consultation for the Navasota false foxglove could include any other landscape-altering activities on Federal lands administered by the Federal Highway Administration for any future construction and maintenance of roads or highways. Given the difference in triggers for conferencing and consultation, Federal agencies should coordinate with the local Service field office (see **FOR FURTHER INFORMATION CONTACT**, above) with any specific questions.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.61, make it illegal for any person subject to the jurisdiction of the United States to: import or export; remove and reduce to possession from areas under Federal jurisdiction; maliciously damage or destroy on any such area; remove, cut, dig up, or damage or destroy on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law; deliver, receive, carry,

transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce an endangered plant. Certain exceptions apply to employees of the Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62. With regard to endangered plants, a permit may be issued for scientific purposes or to enhance the propagation or survival of the species. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Normal agricultural and silvicultural practices, including herbicide and pesticide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices; and

(2) Normal residential landscaping activities.

To the extent of what is currently known, trampling and other activities that would result in habitat disturbance would be considered likely to result in violation of section 9 of the Act in addition to what is already described in the prohibitions found at 50 CFR 17.61. Additional activities that will be considered likely to result in violation of section 9 of the Act may be identified during coordination with the local field office. Questions regarding whether specific activities would constitute violation of section 9 of the Act should be directed to the Texas Coastal Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

II. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery,

or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would likely result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement "reasonable and prudent alternatives" to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an

endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

As discussed earlier in this document, there is currently no imminent threat of collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In our SSA report and proposed listing determination for the Navasota false foxglove, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to Navasota false foxglove and that those threats in some way can be addressed by section 7(a)(2) consultation measures. The species occurs wholly in the jurisdiction of the United States, and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because the Secretary has not identified other circumstances for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for the Navasota false foxglove.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Navasota false foxglove is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is

not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of "critical habitat."

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Navasota false foxglove.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define "physical or biological features essential to the conservation of the species" as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence or a

particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Navasota false foxglove needs well drained soils, such as rocky outcrops and sandy loam over sandstone. Plants occupy open areas of the outcrops where sun exposure is nearly constant (no more than 10 to 15 percent shade), and populations have been found in areas that have been historically ungrazed and unplowed. Additionally, the species needs the presence of the presumed host plant, little bluestem, to provide nutrients during drought. When needed, Navasota false foxglove parasitizes and extracts resources from its host plant, little bluestem, for survival and reproduction.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of Navasota false foxglove from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (Service 2022, entire), which is available at <https://www.regulations.gov> under Docket No. FWS-R2-ES-2022-0156. We have determined that the following physical or biological features are essential to the conservation of Navasota false foxglove:

(1) Calcareous sandy to clay loam soils that are ungrazed, unplowed, shallow thin soils.

(2) Open prairie habitat with limited woody encroachment.

(3) Annual precipitation events that provide enough soil moisture to germinate.

(4) Full sun exposure (no more than 10 to 15 percent shade).

(5) Presence of the little bluestem (*Schizachyrium scoparium*) as host plant.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the species may require special management consideration or protection to reduce the threat of woody encroachment. Special management considerations or protection may be required within critical habitat areas to address these threats. Management activities that could ameliorate these threats include, but are not limited to, prescribed fire and manual removal of woody encroachment. These management activities would protect the physical or biological features for the species by opening up the habitat for more sunlight and expanding the habitat area for the species' survival. Additionally, these management activities would help increase potential habitat and allow for an expanded seed bank for this species.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. While the Navasota false foxglove needs additional areas to increase viability of the species, we are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat. We are aware of no areas from which the species has been extirpated, and we do not currently have information sufficient to determine

which other areas may be suitable for the species. We are proposing to designate critical habitat in areas within the geographical area occupied by the species at the time of listing. Within the three currently occupied areas, the physical or biological features that are common across all habitat types are limited woody encroachment, full sun exposure, host plants, and annual precipitation events that provide enough soil moisture to germinate. The Oakville formation and Catahoula formation make up the rocky outcrop component within the occupied areas along with fine sandy loam, sandy loam, and clay soils.

In summary, for areas within the geographical area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

The three critical habitat unit boundaries are directly related to the presence of the species on the ground. The EO 6674 (East) unit boundaries were refined by survey data from the fall of 2021. The EO 6674 (West) and EO 9000 critical habitat unit boundaries were refined by using areas of presumed occupancy and information about suitable soil type and drainage compatible to the species, due to the lack of more recent survey data.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for Navasota false foxglove. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate as critical habitat lands that we have determined

are occupied at the time of listing (*i.e.*, currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species. We are not aware of any additional historical locations where the species was found. Additionally, we are unable to identify suitable areas that would meet the species' needs outside of its currently occupied range. Of areas that we analyzed as potentially suitable areas, we concluded that we had no information to suggest any areas would contribute to the long-term conservation of the species. We have concluded that no unoccupied areas meet the definition of critical habitat.

All three units in Grimes and Tyler Counties, Texas, are proposed for designation based on one or more of the physical or biological features being present to support Navasota false foxglove's life-history processes. All three units in Grimes and Tyler Counties contain all of the identified physical or biological features and support multiple life-history processes.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on <https://www.regulations.gov> at Docket No. FWS-R2-ES-2022-0156 and on our internet site at <https://www.fws.gov/office/texas-coastal-ecological-services>.

Proposed Critical Habitat Designation

We are proposing approximately 1.9 acres (ac) (0.8 hectares (ha)) in three units as critical habitat for the Navasota false foxglove. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Navasota false foxglove. The three areas we propose as critical habitat are: (1) EO 6674 (East) Unit, (2) EO 6674 (West) Unit, and (3) EO 9000 (Tyler) Unit. Table 4 shows the proposed critical habitat units and the approximate area of each unit.

TABLE 4—PROPOSED CRITICAL HABITAT UNITS FOR NAVASOTA FALSE FOXGLOVE

Unit	Area (acres)	Area (hectares)	Landowner/land manager(s)	Occupied?
1. EO 6674 (East)	0.8	0.3	Private	Yes.
2. EO 6674 (West)	0.5	0.2	Private	Yes.
3. EO 9000 (Tyler)	0.6	0.2	Private	Yes.
Total	1.9	0.8		

Note: Area sizes may not sum due to rounding.

Unit 1: EO 6674 (East)

Unit 1 consists of 0.8 ac (0.3 ha) and is located 4 miles just to the northeast of the town of Navasota, in Grimes County, Texas. Unit 1 is completely on private land and can be accessed by a public road. Farm to Market Road 3090 runs along the eastern side of this unit, and a portion of the unit is within the Texas Department of Transportation right-of-way. Unit 1 consists of rolling hills with a rocky outcrop (Oakville Formation) and well-drained soils. The area has edges of woody vegetation that give way to open areas of full sunlight. This unit is occupied and has been since the initial identification of the Navasota false foxglove in 1993. It contains all of the physical or biological features needed for the Navasota false foxglove. Special management considerations may be required to reduce encroachment from woody vegetation to maintain open prairie and full sun exposure.

Unit 2: EO 6674 (West)

Unit 2 consists of 0.5 ac (0.2 ha) and is located about 3.5 miles northeast of the town of Navasota, in Grimes County, Texas. This area is occupied and located about 0.9 miles to the west of Unit E.O. 6674 (East). The unit occurs along the Oakville formation that extends across southeast Texas. This formation gives way to rocky outcrop areas that have well-drained soils and areas of rolling hills. This unit is just off County Road 403 in Grimes County and is owned by private landowners. The area has been leased to a cattle association since 2019. It contains all of the physical or biological features needed for the Navasota false foxglove. Special management considerations may be required to reduce encroachment from woody vegetation to maintain open prairie and full sun exposure.

Unit 3: EO 9000 (Tyler)

Unit 3 consists of 0.6 ac (0.2 ha) and is located approximately 7 miles to the northwest of Colmesneil, Texas, in Tyler County. This area is occupied along a roadside right-of-way. This site is more than 100 miles to the northeast of Units

1 and 2 in Grimes County. This site is located on the Catahoula formation along with rolling hills, well-drained soils, and timber activity. This site has previously been harvested for timber and is currently owned by a timber company. This site is located just along the roadside of County Road 2845. It contains all of the physical or biological features needed for the Navasota false foxglove. Special management considerations may be required to reduce encroachment from woody vegetation to maintain open prairie and full sun exposure.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to

jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define “reasonable and prudent alternatives” (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency’s legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director’s opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinstate consultation if any of the following four conditions occur: (1) the amount or extent of taking specified in the incidental take statement is exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (4) a new species is listed or critical habitat designated that may be affected by the identified action. The reinstatement requirement applies only to actions that remain subject to some discretionary Federal involvement or control. As provided in 50 CFR 402.16, the requirement to reinstate

consultations for new species listings or critical habitat designation does not apply to certain agency actions (e.g., land management plans issued by the Bureau of Land Management in certain circumstances.

Application of the “Destruction or Adverse Modification” Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that we may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to, actions that would permanently destroy habitat and would result in complete destruction of habitat and any viable seed bank for this species. Such activities could include, but are not limited to, widening Farm to Market Road 3090 in Grimes County, developing timber roads to access timber harvesting, and allowing areas to become overgrown with woody vegetation. These activities could reduce the amount of sunlight available for the species’ survival and could potentially destroy the habitat and any viable seed bank in the area.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a), if the Secretary determines in

writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. No DOD lands with a completed INRMP are within the proposed critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the “2016 Policy”; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor’s opinion entitled, “The Secretary’s Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act” (M–37016). In our final designation, we will explain each decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In our final rules, we explain any decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable. We describe below the process that we use for taking into consideration each category of impacts and any initial analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.”

The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.*, conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities,

where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. Section 3(f) of E.O. 12866 identifies four criteria when a regulation is considered a “significant regulatory action”, and requires additional analysis, review, and approval if met. The criterion relevant here is whether the designation of critical habitat may have an economic effect of \$100 million or more in any given year (section 3(f)(1)). Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for the Navasota false foxglove is likely to exceed the economically significant threshold.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Navasota false foxglove (IEc 2022, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.*, absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas is also likely to jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. As a result, we generally focus

the screening analysis on areas of unoccupied critical habitat (unoccupied units or unoccupied areas within occupied units). Overall, the screening analysis assesses whether any additional management or conservation efforts may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our draft economic analysis (DEA) of the proposed critical habitat designation for the Navasota false foxglove; our DEA is summarized in the narrative below.

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Navasota false foxglove, first we identified, in the IEM dated July 20, 2022, probable incremental economic impacts associated with vegetation management and prescribed fire. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, in areas where the Navasota false foxglove is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If, when we list the species, we also finalize this proposed critical habitat designation, Federal agencies would be required to consider the effects of their actions on the designated habitat, and if the Federal action may affect critical habitat, our consultations would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the Navasota false foxglove’s critical habitat. Because the designation of critical habitat for Navasota false foxglove is proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to

the species being listed and those which would result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Navasota false foxglove would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the Navasota false foxglove totals approximately 1.9 ac (0.8 ha) in Grimes and Tyler Counties, Texas, and is divided into three units. All three units are currently occupied by species. In these areas any actions that may affect the species or its habitat would also affect designated critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address adverse modification over and above those recommended as necessary to avoid jeopardizing the continued existence of Navasota false foxglove. Therefore, only administrative costs are expected to result from the proposed critical habitat designation. The only incremental impact of critical habitat designation that we anticipate is the small (not expected to exceed \$2,800 per year) administrative effort required during section 7 consultation to document effects on the physical or biological features of the critical habitat and whether the action appreciably diminishes the value of critical habitat as a whole for the conservation of the listed species (IEc 2022, p. 8). While this additional analysis will require time and resources by the Federal action agency and the Service (if a Federal nexus exists), it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant.

We are soliciting data and comments from the public on the draft economic analysis discussed above, as well as on all aspects of this proposed rule and our required determinations. During the development of a final designation, we will consider the information presented in the economic analysis and any

additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under the authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19 and the 2016 Policy. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DOD lands or areas that pose potential national-security concerns (e.g., a DOD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of “critical habitat.” However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i), because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DOD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DOD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides credible information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a

reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DOD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for Navasota false foxglove are not owned or managed by the DOD or DHS, and, therefore, we anticipate no impact on national security or homeland security.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as habitat conservation plans (HCPs), safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs)—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

Summary of Exclusions Considered Under Section 4(b)(2) of the Act

In preparing this proposal, we have determined that no HCPs or other management plans for the Navasota false foxglove currently exist, and the proposed designation does not include any Tribal lands or trust resources or any lands for which designation would have any economic or national security impacts. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation, and thus, as described above, we are not considering excluding any particular areas on the basis of the presence of conservation agreements or impacts to trust resources.

However, if through the public comment period we receive information that we determine indicates that there are potential economic, national security, or other relevant impacts from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will evaluate that information and may conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19. If we receive a request for exclusion of a particular area and after evaluation of supporting information we do not exclude, we will fully describe our decision in the final rule for this action.

Required Determinations

Clarity of the Rule

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

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

Regulatory Planning and Review
(Executive Orders 12866 and 13563, and 14094)

Executive Order 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. We have developed this proposed rule in a manner consistent with these requirements. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and

town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and

based on currently available information, we certify that, if made final, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that this proposed critical habitat designation would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or Tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare

Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this proposed rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of \$100 million or greater in any year, that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments and, as such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Navasota false foxglove in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat

conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for Navasota false foxglove, and it concludes that, if adopted, this designation of critical habitat would not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the Federal government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical

habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

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

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations. In a line of cases starting with *Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), the courts have upheld this position.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at

512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat designation for the Navasota false foxglove, so no Tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Texas Coastal Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Texas Coastal Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title

50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. In § 17.12, amend paragraph (h) by adding an entry for “*Agalinis navasotensis*” to the List of Endangered and Threatened Plants in alphabetical order under Flowering Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
* * * * *				
<i>Agalinis navasotensis</i>	Navasota false foxglove	Wherever found	E	[Federal Register citation when published as a final rule]; 50 CFR 17.96(a). ^{CH}
* * * * *				

■ 3. In § 17.96, amend paragraph (a) by adding an entry for “Family Orobanchaceae: *Agalinis navasotensis* (Navasota false foxglove)” immediately following the entry for “Family Orobanchaceae: *Castilleja cinerea* (ash-gray Indian paintbrush)” to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

* * * * *

Family Orobanchaceae: *Agalinis navasotensis* (Navasota false foxglove)

(1) Critical habitat units are depicted for Grimes and Tyler Counties, Texas, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of Navasota false foxglove consist of the following components:

(i) Calcareous sandy to clay loam soils that are ungrazed, unplowed, shallow thin soils.

(ii) Open prairie habitat with limited woody encroachment.

(iii) Annual precipitation events that provide enough soil moisture to germinate.

(iv) Full sun exposure (no more than 10 to 15 percent shade).

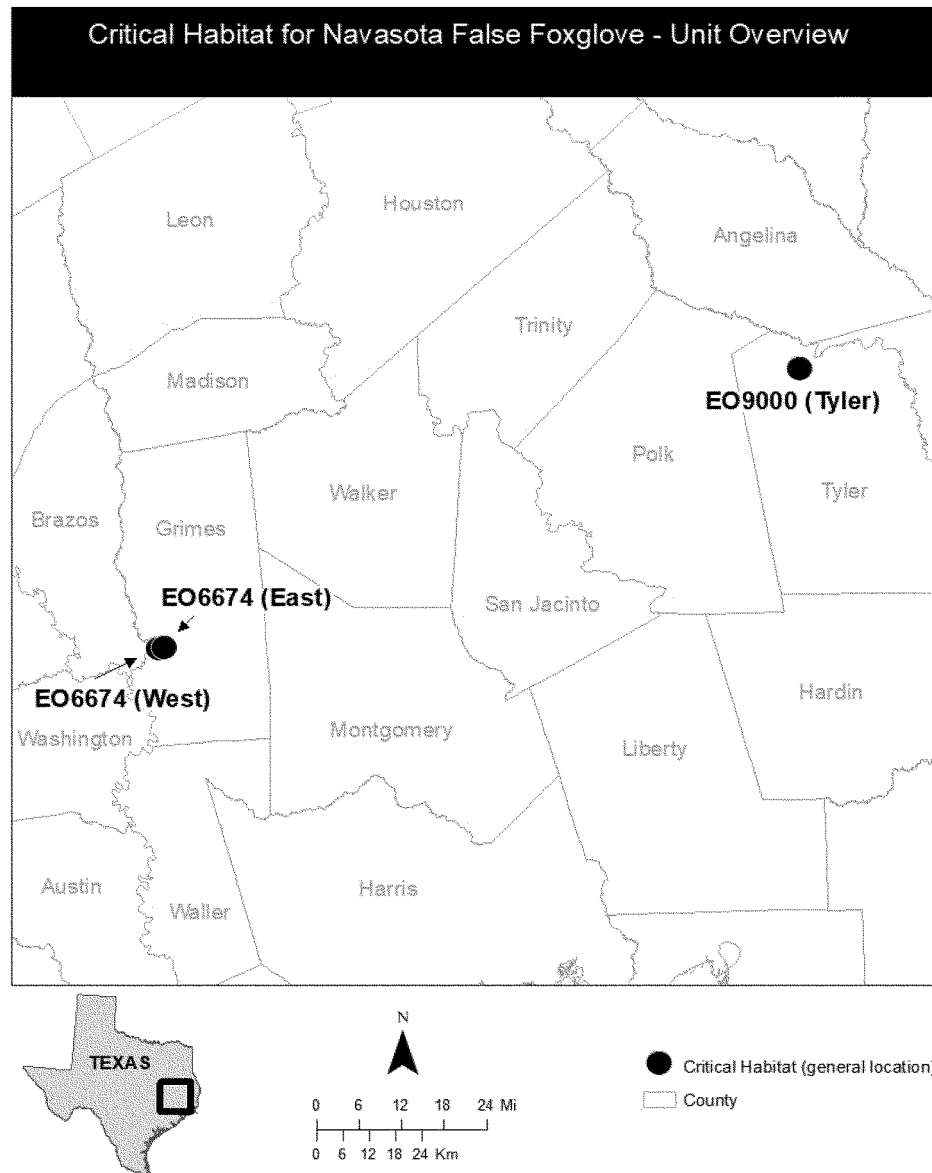
(v) Presence of the little bluestem (*Schizachyrium scoparium*) as host plant.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the final rule.

(4) Data layers defining critical habitat units were created using stream segments from the U.S. Geological Survey National Hydrography Dataset. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at <https://www.fws.gov/office/texas-coastal-ecological-services> or at <https://www.regulations.gov> at Docket No. FWS-R2-ES-2022-0156.

(5) Index map follows:

Figure 1 to Family Orobanchaceae: *Agalinis navasotensis* (Navasota false foxglove) paragraph (5)



(6) Units EO 6674 (East) and EO 6674 (West); Grimes County, Texas.

(i) Unit EO 6674 (East) consists of approximately 0.8 acres (ac) (0.3 hectares (ha)) on private land located east of Navasota, in central-west Grimes County, Texas. Unit EO 6674 (East) is along a well-drained ridge line that extends down to Farm to Market 3090.

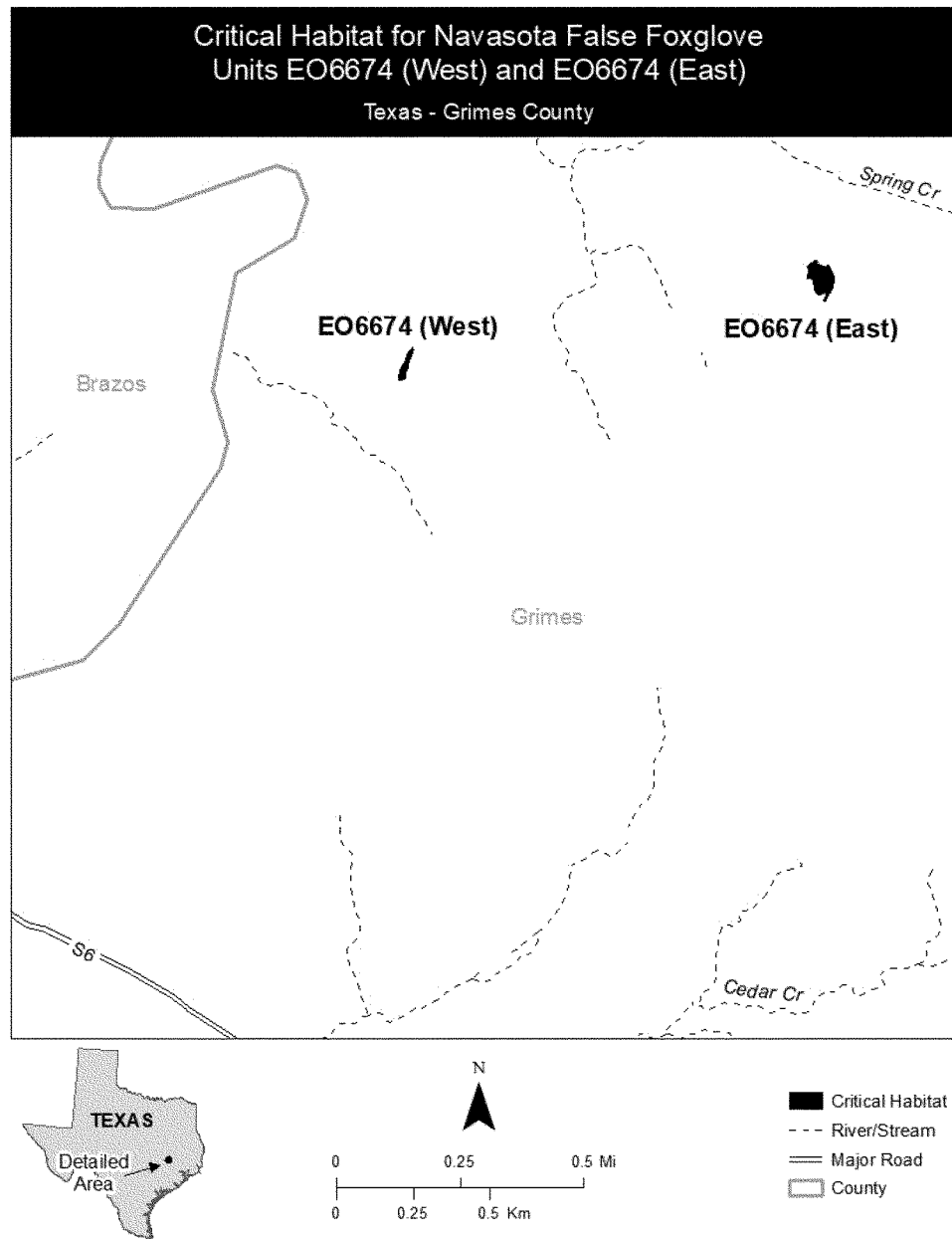
The Unit EO 6674 (East) right-of-way is owned by the Texas Department of Transportation.

(ii) Unit EO 6674 (West) consists of approximately 0.5 ac (0.2 ha) on private land located east of Navasota, in central-west Grimes County, Texas. This unit is just off Country Road 403. Unit EO 6674 (West) is a fenced area for cattle and

extends along a shallow, well-drained area along the side of a grazing allotment.

(iii) Map of Units EO 6674 (East) and EO 6674 (West) follows:

Figure 2 to Family Orobanchaceae: *Agalinis navasotensis* (Navasota false foxglove) paragraph (6)(iii)



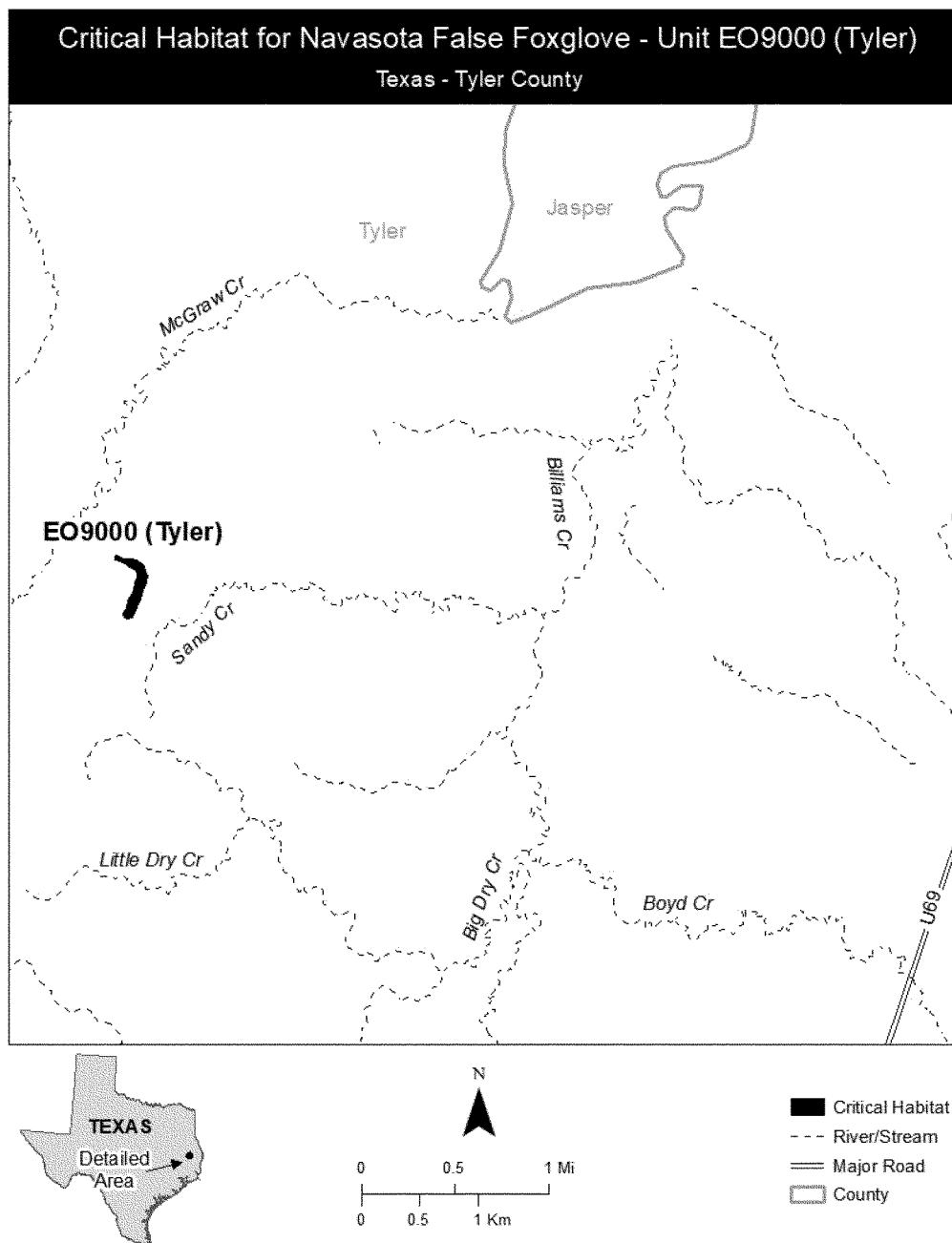
(7) Unit EO 9000 (Tyler); Tyler County, Texas.

(i) Unit EO 9000 (Tyler) consists of approximately 0.6 ac (0.2 ha) of private land northwest of Colmesneil, in

northern Tyler County, Texas. This unit is located along the roadside of County Road 2845. Unit EO 9000 (Tyler) has previously been harvested for timber.

(ii) Map of Unit EO 9000 (Tyler) follows:

Figure 3 to Family Orobanchaceae: *Agalinis navasotensis* (Navasota false foxglove) paragraph (7)(ii)



* * * * *

Martha Williams,
Director, U.S. Fish and Wildlife Service.
[FR Doc. 2023-12129 Filed 6-12-23; 8:45 am]
BILLING CODE 4333-15-P

Notices

Federal Register

Vol. 88, No. 113

Tuesday, June 13, 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

30-Day Notice of Proposed Information Collection for Foreign Tax Reporting by Assistance Recipients

AGENCY: U.S. Agency for International Development.

ACTION: Notice of public information collection.

SUMMARY: The U.S. Agency for International Development (USAID) seeks Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, USAID requests public comment on this collection from all interested individuals and organizations.

DATES: Submit comments on or before July 13, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. 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: Kelly Miskowski, at (202) 916-2752 or via email at polycymailbox@usaid.gov.

SUPPLEMENTARY INFORMATION: USAID previously published a Notice of Public Information Collection in the **Federal Register** on February 22, 2022 at *87 FR 9563* allowing for a 60-day public comment period. This **Federal Register** Notice was for a reinstatement of OMB approval number 0412-0510 with changes. This approval covers USAID’s Standard Provisions in USAID Grants and Cooperative Agreements to Non-Governmental Organizations. One of these provisions is entitled

“REPORTING HOST GOVERNMENT TAXES (DECEMBER 2014).”

Subsequent to this publication, USAID published a proposed information collection in the **Federal Register** on April 12, 2022 at *87 FR 21606* allowing for a 60-day public comment period. This 60-day Notice amended and updated the information collection as to the “REPORTING HOST GOVERNMENT TAXES” due to changes to the text of this provision. In response to this Notice, one respondent submitted a comment indicating that one hour annual burden per respondent is insufficient as it varies substantially by project and that prime recipients must collect this information from subrecipients which adds burden.

Additionally, projects which occur in multiple countries have even more burden. USAID disagrees that one hour is an inaccurate estimate. As the commenter notes, the burden varies between instruments. USAID solicited estimates from various field offices which resulted in an overall average of approximately one hour. As such, no changes have been made to the burden estimate.

The purpose of this notice is to allow an additional 30 days for public comment. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of functions of the agency, including the practical utility of the information; (b) the accuracy of USAID’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents.

All comments must be in writing and submitted through the method(s) specified in the **ADDRESSES** section above. All submissions must include the information collection title. Please include your name, title, organization, postal address telephone number, and email address in the text of the message. Please note that comments submitted in response to this Notice are public record. We recommend that you do not submit detailed personal information, Confidential Business Information, or any information that is otherwise protected from disclosure by statute. USAID will only address comments that explain why the proposed collection

would be inappropriate, ineffective, or unacceptable without a change. Comments that are insubstantial or outside the scope of the notice of request for public comment may not be considered.

OMB No: 0412-0510.

Form: No Form associated with this collection.

Title of Information Collection: United States Agency for International Development (USAID) Automated Directives System (ADS) Chapter 303 Standard Provisions Information Collection.

Type of Review: Revision of a currently approved collection.

Purpose:

The Foreign Tax Reporting collection is needed to comply with current statutory requirements. Sec. 7013, Public Law 116-260, 143 Stat. 1182, the annual Department of State, Foreign Operations, and Related Programs Appropriations Act (SFOAA), and similar provisions in prior years’ SFOAAs, mandate that agencies take certain actions to prevent taxation of assistance provided with funds appropriated in an SFOAA, or to obtain full reimbursement of all taxes paid. Since 2003, USAID has required these reports in its grants and cooperative agreements and recently received approval for this collection as part of an omnibus approval to the ADS 303 Standard Provisions Information Collection. The reporting requirement was revised in 2014 (in Sec. 7013, Pub. L. 113-76, 128 Stat. 5) to redefine the taxes that must be reported. Due to updates to the language of the SFOAA, the provision entitled “REPORTING HOST GOVERNMENT TAXES” was revised in December 2022 resulting in a change to the information collection associated with this provision.

Respondents: U.S. and foreign recipients of direct grants and cooperative agreements carrying out their award activities overseas.

Estimated Number of Annual Responses: 4,800.

Annual Burden Hours per

Respondent: 1.

Estimated Number of Annual Burden Hours: 4,800.

Mark Walther,

Senior Procurement Executive, U.S. Agency for International Development.

[FR Doc. 2023-12552 Filed 6-12-23; 8:45 am]

BILLING CODE 6116-01-P

DEPARTMENT OF AGRICULTURE**Submission for OMB Review;
Comment Request**

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

Comments regarding this information collection received by July 13, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

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

Animal and Plant Health Inspection Service

Title: Phytosanitary Export Certification.

OMB Control Number: 0579–0052.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests and noxious weeds not widely distributed within the United States, and eradicating those imported pests when eradication is feasible. The Plant Protection Act

authorizes USDA to carry out this mission. APHIS will collect information using several forms and other information activities.

Need and Use of the Information: APHIS will use the information collected to locate shipments, guide inspection, and issue a certificate to meet the requirements of the importing country. Failure to provide this information would have an impact on many U.S. exporters who would no longer be able to engage in the business of exporting plants and plant products overseas.

Description of Respondents: Business or other for-profit; State, and local or Tribal government.

Number of Respondents: 9,102.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 401,228.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–12618 Filed 6–12–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE**Foreign Agricultural Service****Amendment; Notice of Intent for
Agricultural Policy Advisory
Committee (APAC) and the Related
Agricultural Technical Advisory
Committees (ATACs) for Trade**

AGENCY: Foreign Agricultural Service, United States Department of Agriculture.

ACTION: Amendment Notice of Intent to Reestablish Agricultural Technical Advisory Committees (ATACs) and Continuation of Requests for Nominations.

SUMMARY: This notice is to amend the notice of renewal published on June 6, 2023, to give notice that the U.S. Department of Agriculture's (USDA) intends to reestablish the Agricultural Technical Advisory Committees (ATACs) for a 4-year period. Pursuant to Section 135 of the Trade Act of 1974 and the Federal Advisory Committee Act, as amended, notice is hereby given that the Secretary of Agriculture (Secretary), in coordination with the United States Trade Representative (Trade Representative), notice of renewal for the Agricultural Policy Advisory Committee (APAC) and intent to reestablish the related Agricultural Technical Advisory Committees (ATACs) for Trade to provide detailed policy and technical advice, information, and recommendations

regarding trade barriers, negotiation of trade agreements, and implementation of existing trade agreements affecting food and agricultural products, including the performance of other advisory functions relevant to U.S. agricultural trade policy matters.

DATES: We will accept nominations for membership on the APAC and six ATACs throughout the four-year charter term of the committees (June 2023 through June 2027). New applicants are considered approximately every 12–18 months.

ADDRESSES: Electronic copies of the nomination materials should be sent to ATACs@usda.gov.

All nomination materials may also be mailed in a single, complete package to: Office of the Secretary, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 200A Jamie L. Whitten Building, Washington, DC 20250–1001, Attn: APAC/ATACs.

FOR FURTHER INFORMATION CONTACT:

Darlene Maginnis, Group Federal Officer, Foreign Agricultural Service, U.S. Department of Agriculture at 202–868–7059; or by email at ATACs@usda.gov. You can find additional information about the APAC and ATACs on the Foreign Agricultural Service website at www.fas.usda.gov/atacs.

SUPPLEMENTARY INFORMATION:

Rechartering of Existing Committees: Pursuant to Section 135 of the Trade Act of 1974 (19 U.S.C. 2155 (c)) and the Federal Advisory Committee Act, as amended, (5 U.S.C. 10), FAS gives notice that the Secretary and Trade Representative intends to renew the APAC and reestablish the following six ATACs:

- Animals and Animal Products;
- Fruits and Vegetables;
- Grains, Feed, Oilseeds, and Planting Seeds;
- Processed Foods;
- Sweeteners and Sweetener Products; and,

- Tobacco, Cotton, Peanuts and Hemp (newly revised title), amending the notice of renewal published under citation 88 FR 37507; FR Doc. 202312313 and filed on June 6, 2023.

In 1974, Congress established a private sector advisory committee system to ensure that U.S. trade policy and negotiation objectives adequately reflect U.S. commercial and economic interests. The private sector advisory committee system currently consists of three tiers:

- The President's Advisory Committee for Trade Policy and Negotiations;

- Five general policy advisory committees, including the APAC; and,
- Several technical advisory committees, including the ATACs.

Background

In 1974, Congress established a private-sector advisory committee system to ensure that U.S. trade policy and negotiation objectives adequately reflect U.S. commercial and economic interests.

As provided for in the law and their charters, the APAC has the following responsibilities:

(A) The Committee will advise, consult with, and make recommendations to the Secretary and Trade Representative concerning the trade policy of the United States and the matters arising in the administration of such policy; (B) The Committee will provide information and advice regarding the following: negotiating objectives and bargaining positions of the United States before the United States enters into trade agreements, the operation of any trade agreement once entered into, and matters arising in connection with the administration of the trade policy of the United States; and (C) The Committee will furnish such other advisory opinions and reports as the Secretary and Trade Representative deem necessary; and the ATACs have similar responsibilities:

General Committee Information

Each committee has a chairperson, who is elected from the membership of that committee. Committees meet as needed, and all committee meetings are typically held in Washington, DC or by telephone conference. Committee meetings may be closed if USTR determines that a committee will be discussing issues that justify closing a meeting or portions of a meeting, in accordance with 19 U.S.C. 2155(f).

Throughout the year, members are requested to review sensitive trade policy information and provide comments regarding trade negotiations. In addition to their other advisory responsibilities, at the conclusion of negotiations of any trade agreement, all committees are required to provide a report on each agreement to the President, Congress, USTR and USDA.

Committee Membership Information

All committee members are appointed by and serve at the discretion of the Secretary and Trade Representative. Committee appointments are typically for a period of four years but may be renewed for an additional term. Each committee member must be a U.S. citizen and must represent a U.S. entity

with an interest in agricultural trade and must not be registered with the Department of Justice under the Foreign Agents Registration Act. To attend most meetings, committee members must have a current security clearance. New members will be guided in how to apply for a security clearance and their appointment will be contingent on successful completion of the investigation. Committee members serve without compensation and are not reimbursed for their travel expenses. No person may serve on more than one USDA advisory committee at the same time unless a specific exception is granted by the USDA Committee Management Officer. No entity may have more than one representative on any single trade advisory committee.

Nominations and Appointments of Members

Eligibility: Nominations for APAC and ATAC membership are open to individuals representing U.S. entities with an interest in agricultural trade without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. Equal opportunity practices in accordance with U.S. Government policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee take into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. Members should have expertise and knowledge of agricultural trade as it relates to policy and commodity specific issues. Members will normally come from an entity with an interest in agriculture, and will serve as a Representative, presenting the views and interests of a particular U.S. entity that has an interest in the subject matter of the committee.

However, should a member be appointed primarily for his or her expertise, and not as a representative of an interest group, he or she shall be designated as a Special Government Employee (SGE). SGEs are subject to specific provisions of the ethics laws, including disclosure of financial interests, if they are appointed because of their personal knowledge, background, or expertise. USDA will assist SGEs in disclosing their financial interest and will provide ethics training on an annual basis.

Appointments are made of individuals only and are not transferrable. No person, company, producer, farm organization, trade association, or other entity has a right to

membership on a committee. In making appointments, every effort will be made to maintain balanced representation on the committees with representation from producers, farm and commodity organizations, processors, traders, and consumers. Geographical diversity on each committee will also be sought.

Nominations: Nominating a person to serve on any of the committees requires submission of a current resume for the nominee and the USDA AD-755 (Advisory Committee Membership Background Information, OMB Number 0505-0001), available on the internet at: <http://www.fas.usda.gov/trade-advisorycommittees-applying-membership>. A cover letter should also be submitted indicating the specific committee for which the individual is being nominated, why the nominee wants to be a committee member, and his or her qualifications for membership, and how the submitter learned about this call for nominations. The cover letter should also include the statements required below related to Federally Registered Lobbyists and Foreign Firms. If applicable, the application should include a sponsor letter on the non-Federal governmental entity letterhead containing a brief description of the manner in which international trade affects the entity and why the applicant should be considered for membership. Forms may also be requested by sending an email to ATACs@usda.gov, or by phone at (202) 868-7059.

Federally Registered Lobbyists: All nominees must provide a statement confirming their lobbyist status.

Pursuant to the Revised Guidance on the Appointment of Lobbyists to Federal Advisory Committees, Boards and Commissions, published by the Office of Management and Budget (OMB) on August 13, 2014, federally-registered lobbyists are no longer prohibited from serving on the advisory committees in a representative capacity. OMB's revised guidance clarifies that the eligibility restriction does not apply to advisory committee members who are specifically appointed to represent the interests of a nongovernmental entity, a recognizable group of persons or nongovernmental entities (an industry sector, labor unions, environmental groups, etc.), or state or local governments. The lobbyist prohibition continues to apply to persons serving on advisory committees in their individual capacity (e.g., SGEs).

Foreign Firms: If the nominee is to represent an entity or corporation with ten percent or greater non-U.S. ownership, the nominee must state the extent to which the organization or

interest to be represented by the nominee is owned by non-U.S. citizens, organizations, or interests and demonstrate at the time of nomination that this ownership interest does not constitute control and will not adversely affect his or her ability to serve as an advisor on the U.S. agriculture advisory committee for trade.

Dated: June 8, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023-12649 Filed 6-12-23; 8:45 am]

BILLING CODE 3410-10-P

DEPARTMENT OF AGRICULTURE

Forest Service

Virginia Resource Advisory Committee; Meeting

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Virginia Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, on the George Washington and Jefferson National Forest, within its counties, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person meeting with virtual accommodation if needed will be held on July 11, 2023, 12:30 p.m.–3:30 p.m., Eastern Daylight Time.

Written and Oral Comments: Anyone wishing to provide in-person and/or virtual comments must pre-register by 11:59 p.m. Eastern Daylight Time on July 5, 2023. Written public comments will be accepted by 11:59 p.m. Eastern Daylight Time on July 10, 2023. Comments submitted after this date will be provided to the Agency, but the Committee may not have adequate time to consider those comments prior to the meeting.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in-person and virtually at the George Washington and Jefferson National

Forest Supervisor's Office located at 5162 Valleypointe Parkway, Roanoke, Virginia 24019. The public may also join virtually via teleconference by calling 202-650-0123, 125903887#. RAC information and meeting details can be found at the following website: <https://www.fs.usda.gov/main/gwj/workingtogether/advisorycommittees> by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to FSM.FS.GWJNF-PA@usda.gov or via mail (*i.e.*, postmarked) to Gwen Mason, Designated Federal Officer, 5162 Valleypointe Parkway, Roanoke, Virginia 24019. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. Eastern Daylight Time on July 5, 2023, and speakers can only register for one speaking slot. Oral comments must be sent by email to FSM.FS.GWJNF-PA@usda.gov or via mail (*i.e.*, postmarked) to Gwen Mason, George Washington and Jefferson National Forest, 5162 Valleypointe Parkway, Roanoke, Virginia 24019.

FOR FURTHER INFORMATION CONTACT:

Gwen Mason, Designated Federal Officer (DFO), by phone at (540) 265-5100 or email at gwendolyn.mason@usda.gov or Jennifer Hummel, Acting RAC Coordinator at (540) 265-5100 or email at jennifer.hummel@usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss Title II project proposals;
2. Make funding recommendations on Title II projects;
3. Approve meeting minutes; and
4. Schedule the next meeting.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the

Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720-2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

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.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: June 7, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023-12599 Filed 6-12-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

On June 7, 2023, the Department of Commerce, published a 30-day public comment period notice with FR Document Number 2023-12186 (Page 37200) seeking public comments for an

information collection entitled, “Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.” This document referenced incorrect information in the Needs and Uses section, and Commerce hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: For additional information concerning this correction, contact Sheleen Dumas, the Department Paperwork Reduction Act Clearance Officer, at (202) 482–3360, PRAComments@doc.gov.

SUPPLEMENTARY INFORMATION:

Correction

Need and Uses: Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that the Department of Commerce (DOC) programs are effective and meet our customers’ needs we use a generic clearance process to collect qualitative feedback on our service delivery. This collection of information is necessary to enable DOC to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between DOC and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

We continue to solicit public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and

assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

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

[FR Doc. 2023–12521 Filed 6–12–23; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Eligibility Questionnaire for HAVANA Act Payments

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public’s reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before August 14, 2023.

ADDRESSES: Interested persons are invited to submit written comments by mail to Anna Kelley, 1401 Constitution

Avenue NW, Rooms 1844–1846, Washington, DC 20230 or by email to anna.kelley@trade.gov or PRAComments@doc.gov. Please reference OMB Control Number 0690–0037 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Charles Cutshall, Chief Privacy Officer, 202–482–5735, and ccutshall@doc.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for an extension of an approved information collection.

This collection of information is needed to obtain information from respondents of the Helping American Victims Affected by Neurological Attacks (HAVANA) Act of 2021, which was signed by President Biden in October 2021. The Act provides for the possibility of one-time lump sum payments for those affected by Anomalous Health Incidents (AHIs).

This includes current and former Department employees, and dependents of current or former employees who, on or after January 1, 2016, became injured by a qualifying injury to the brain while they were an employee of the Department.

II. Method of Collection

Information on this form will be collected electronically, email, mail, fax, or interviews.

III. Data

OMB Control Number: 0690–0037.

Form Number(s): CD–350.

Type of Review: Regular submission, Extension of approved information collection.

Affected Public: Individuals or Federal Government personnel.

Estimated Number of Respondents: 20.

Estimated Time per Response: 1 hour (30 minutes claimant/30 minutes physician).

Estimated Total Annual Burden Hours: 20.

Estimated Total Annual Cost to Public: \$2,350.35.

Respondent’s Obligation: Voluntary.

Legal Authority: HAVANA Act of 2021 (Pub. L. 117–46).

IV. Request for Comments

We are soliciting public comments to permit the Department to: (a) Evaluate whether the proposed information collection is necessary for the proper

functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

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

[FR Doc. 2023–12641 Filed 6–12–23; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–37–2023]

Foreign-Trade Zone (FTZ) 218, Notification of Proposed Production Activity; Derecktor Fort Pierce, LLC; (Refurbished Water Vessels and Hulls); Fort Pierce, Florida

Derecktor Fort Pierce, LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Fort Pierce, Florida, within Subzone 218A. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on June 6, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/ component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the

background section of the Board's website—accessible via www.trade.gov/ftz.

The proposed finished products include: sailboats; boat tenders; ferries; motor yachts, pleasure vessels, and sports vessels exceeding 7.5 meters; research vessels; and, aluminum hulls and hull modules (duty rate ranges from duty-free to 1.5%).

The proposed foreign-status materials and components include: O-rings and adapters; rubber bearings with brass shells; carbon poles and fittings; hydraulic components (filters; linear acting power units; power units; pumps); water filtration systems; windlasses; propeller shafts; bearing seals; digital video recorders; marine propulsion engines (diesel; spark-ignition reciprocating or rotary internal combustion piston); marine propulsion engine components (engine mounts; seal kits; thermostats; engine controls; electrical control boxes); pumps (lubricating oil; fresh water system); natural stone tiles with height and width less than seven centimeters (cm); marble, granite, or onyx, for floors, countertops, or walls; quartz slabs for countertops; China tableware; window glass (tempered; laminated); lead crystal glassware and barware; silverware sets; weathertight and watertight marine doors (iron; steel; aluminum); anchor chain; anchors and grapnels (iron; steel); mooring bollards; aluminum walkways; engine mounts for marine propulsion engines with spark-ignition internal combustion pistons; ventilation fans; ventilation hoods, not exceeding 120 cm width; blowers; refrigerating units; HVAC equipment chassis and coils; fire dampers; water mist extinguisher systems; winches and capstans; cranes; propellers and blades; DC electric motors of an output exceeding 750 watts but not exceeding 375 kilowatts; AC generators; transformers (having a power handling capacity not exceeding 650 kilo volt-amperes (kVA); having a power handling capacity exceeding 1 kVA); rectifiers; motor boat tenders; aluminum yacht hull modules and super structures; aluminum hulls and hull modules; wood furniture; light-emitting diode (LED) chandeliers and electric ceiling or wall lighting fittings (brass; non-base metal; base metal other than brass); chandeliers and electric ceiling or wall lighting fittings (brass; non-base metal); chandeliers and electric ceiling or wall lighting fittings, not designed exclusively for LED, made of base metal other than brass; LED search lights and spotlights (brass; non-base metal; base metal other than brass); and, search lights and spotlights not designed exclusively for LED (duty rate

ranges from duty-free to 7.6%). The request indicates that certain materials/ components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is July 24, 2023.

A copy of the notification will be available for public inspection in the "Online FTZ Information System" section of the Board's website.

For further information, contact Juanita Chen at juanita.chen@trade.gov.

Dated: June 7, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–12597 Filed 6–12–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Belavia Belarusian Airlines, 14A Nemiga Str., Minsk, Belarus, 220004; Order Renewing Temporary Denial of Export Privileges

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (2021) ("EAR" or "the Regulations"),¹ I hereby grant the request of the Office of Export Enforcement ("OEE") to renew the temporary denial order ("TDO") issued in this matter on December 13, 2022. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations.

¹ On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 ("ECRA"). While section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. app. 2401 *et seq.* ("EAA"), (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* ("IEEPA"), and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

I. Procedural History

On June 16, 2022, I signed an order denying the export privileges of Belavia Belarusian Airlines (“Belavia”) for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to section 766.24(a) of the Regulations and was effective upon issuance.² This temporary denial order was subsequently renewed in accordance with section 766.24(d) of the Regulations.³ The renewal order issued on December 13, 2022, and was effective upon issuance.⁴

On May 18, 2023, BIS, through OEE, submitted a written request for renewal of the TDO that was issued on December 13, 2022. The written request was made more than 20 days before the TDO’s scheduled expiration. A copy of the renewal request was sent to Belavia in accordance with sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent’s export privileges upon a showing that the order is necessary in the public interest to prevent an “imminent violation” of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). “A violation may be ‘imminent’ either in time or degree of likelihood.” 15 CFR 766.24(b)(3). BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge “is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]” *Id.* A “lack of information establishing the precise time a violation may occur does not

preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

B. The TDO and BIS’s Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation’s (“Russia’s”) further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia’s access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia’s defense, aerospace, and maritime sectors and are intended to cut off Russia’s access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia’s strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (*e.g.*, Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (ECCN) 9A991 (section 746.8(a)(1) of the EAR).⁵ BIS will review any export or reexport license applications for such items under a policy of denial. *See* section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (AVS) (section 740.15 of the EAR), and as part of the same rule, imposed a license requirement for the export, reexport, or transfer (in-country) of all items controlled under CCL Categories 3 through 9 to Belarus.⁶ On April 8, 2022, BIS excluded any aircraft registered in, owned, controlled by, or under charter or lease by Belarus or a national of Belarus from eligibility to use license exception AVS for travel to Russia or Belarus.⁷ Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Belarus or a national of Belarus, is subject to a license requirement before it can travel to Russia or Belarus.

OEE’s request for renewal is based upon the facts underlying the issuance of the initial TDO and the evidence

developed over the course of this investigation, which continue to demonstrate disregard for U.S. export controls and the terms of the TDO. Specifically, the initial TDO, issued on June 16, 2022, was based on evidence that Belavia engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Belarus after April 8, 2022 from destinations including but not limited to, Moscow, Russia; St. Petersburg, Russia; Antalya, Turkey; Istanbul, Turkey; Tbilisi, Georgia; Batumi, Georgia; Sharjah, United Arab Emirates (“UAE”); and Sharm el-Sheikh, Egypt, without the required BIS authorization.⁸

As discussed in the December 13, 2022 renewal order, evidence presented by BIS indicated that, after the renewal order issued, Belavia continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Belarus and/or Russia, in violation of the Regulations and the TDO itself.⁹ The December 13, 2022 renewal order detailed Belavia’s continued operation of flights into Belarus and/or Russia in violation of the EAR, including flights from St. Petersburg and Moscow Russia; Istanbul, Turkey; and Sharjah, UAE.¹⁰

Since that time, Belavia has continued to engage in conduct prohibited by the TDO and Regulations. In its May 18, 2023 request for renewal of the TDO, BIS submitted evidence that Belavia is operating aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Belarus and/or Russia, in violation of the December 13, 2022 TDO and/or the Regulations. Specifically, BIS’s evidence and related investigation demonstrates that Belavia has continued to operate aircraft subject to the EAR, including, but not limited to, on flights into Belarus and/or Russia from/to Hurgada, Egypt; Tbilisi, Georgia; Doha,

⁸ Publicly available flight tracking information shows, for example, that on May 10, 2022, serial number (SN) 61423 flew from Moscow, Russia to Minsk, Belarus. On June 14, 2022, SN 61422 flew from Istanbul, Turkey to Minsk, Belarus and SN 40877 flew from Sharjah, United Arab Emirates to Minsk, Belarus.

⁹ Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

¹⁰ Based on publicly available flight tracking information, representative examples include, but are not limited to, the following: (1) on November 15, 2022, serial number (SN) 61421 flew from Moscow, Russia to Minsk, Belarus; (2) on December 9, 2022, SN 61423 flew from St. Petersburg, Russia to Minsk, Belarus and SN 61421 flew from Istanbul, Turkey to Minsk, Belarus; and (3) on November 12, 2022, SN 61423 flew from Sharjah, United Arab Emirates to Minsk, Belarus.

² The TDO was published in the **Federal Register** on June 22, 2022 (87 FR 37309).

³ Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order.

⁴ The December 16, 2022 renewal order was published in the **Federal Register** on December 19, 2022 (87 FR 77550).

⁵ 87 FR 12226 (Mar. 3, 2022).

⁶ 87 FR 13048 (Mar. 8, 2022).

⁷ 87 FR 22130 (Apr. 14, 2022).

Qatar; Moscow Russia; Istanbul, Turkey; and Sharjah, UAE.

Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
EW-455PA	61421	737-8ZM (B738)	Doha, QA/Minsk, BY	May 27, 2023.
EW-455PA	61421	737-8ZM (B738)	Sharjah, AE/Minsk, BY	June 2, 2023.
EW-455PA	61421	737-8ZM (B738)	Istanbul, TR/Minsk, BY	June 4, 2023.
EW-455PA	61421	737-8ZM (B738)	Moscow, RU/Minsk, BY	June 5, 2023.
EW-455PA	61421	737-8ZM (B738)	Minsk, BY/Moscow, RU	June 6, 2023.
EW-456PA	61422	737-8ZM (B738)	Kutaisi, GE/Minsk, BY	May 25, 2023.
EW-456PA	61422	737-8ZM (B738)	Hurghada, EG/Minsk, BY	June 2, 2023.
EW-456PA	61422	737-8ZM (B738)	Antalya, TR/Minsk, BY	June 3, 2023.
EW-456PA	61422	737-8ZM (B738)	Istanbul, TR/Minsk, BY	June 4, 2023.
EW-456PA	61422	737-8ZM (B738)	Antalya, TR/Minsk, BY	June 6, 2023.
EW-457PA	61423	737-8ZM (B738)	Tbilisi, GE/Minsk, BY	May 28, 2023.
EW-457PA	61423	737-8ZM (B738)	Antalya, TR/Minsk, BY	May 31, 2023.
EW-457PA	61423	737-8ZM (B738)	Moscow, RU/Minsk, BY	May 31, 2023.
EW-457PA	61423	737-8ZM (B738)	Hurghada, EG/Minsk, BY	June 4, 2023.
EW-457PA	61423	737-8ZM (B738)	Antalya, TR/Minsk, BY	June 5, 2023.
EW-254PA	26294	737-3Q8 (B733)	Baku, AZ/Minsk, BY	May 29, 2023.
EW-254PA	26294	737-3Q8 (B733)	Moscow, RU/Minsk, BY	May 30, 2023.
EW-254PA	26294	737-3Q8 (B733)	Minsk, BY/Moscow, RU	May 31, 2023.
EW-254PA	26294	737-3Q8 (B733)	Baku, AZ/Minsk, BY	June 4, 2023.
EW-254PA	26294	737-3Q8 (B733)	Baku, AZ/Minsk, BY	June 6, 2023.
EW-544PA	35139	737-8K5 (B738)	Moscow, RU/Minsk, BY	May 29, 2023.
EW-544PA	35139	737-8K5 (B738)	Tbilisi, GE/Minsk, BY	May 30, 2023.
EW-544PA	35139	737-8K5 (B738)	Istanbul, TR/Minsk, BY	May 31, 2023.
EW-544PA	35139	737-8K5 (B738)	Antalya, TR/Minsk, BY	June 1, 2023.
EW-544PA	35139	737-8K5 (B738)	Antalya, TR/Minsk, BY	June 4, 2023.

III. Findings

Under the applicable standard set forth in section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Belavia has acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Belavia in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, Belavia Belarusian Airlines, 14A Nemiga str., Minsk, Belarus, 220004, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Belavia any item subject to the EAR except directly related to safety of flight and authorized

by BIS pursuant to section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Belavia of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Belavia acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Belavia of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

D. Obtain from Belavia in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Belavia, or service any item, of whatever origin, that is owned, possessed or controlled

by Belavia if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Belavia by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of sections 766.24(e) of the EAR, Belavia may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Belavia as provided in section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Belavia, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Dated: June 7, 2023.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023–12538 Filed 6–12–23; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Hydrogen Industry Roundtable

AGENCY: International Trade Administration.

ACTION: Notice of a roundtable discussion on challenges and opportunities for strengthening the supply chain and export competitiveness of the U.S. hydrogen industry.

SUMMARY: Through this notice, the International Trade Administration (ITA) of the Department of Commerce announces a roundtable discussion with U.S. industry representatives and U.S. government officials. ITA invites applications from a wide array of industry representatives to participate in the roundtable, ranging from existing manufacturers of goods and providers of services to prospective new market entrants. Participants will have products that are or will be produced in the United States along the hydrogen value chain.

DATES:

Event: The roundtable will be held in a virtual format on June 29, 2023 from 1 p.m. to 4 p.m., eastern daylight time.

Event Registration: ITA will evaluate registrations based on the submitted information (see below) and inform applicants of selection decisions, which will be made on a rolling basis until 25 participants have been selected.

ADDRESSES: *Event:* The roundtable will be held via WebEx and the link for the meeting will be provided to registered participants.

FOR FURTHER INFORMATION CONTACT:

Maureen Clapper, Senior Advisor, ITA, at or Charles Saad, Clean Technology Trade Specialist, at Hydrogen.Economy@trade.gov.

SUPPLEMENTARY INFORMATION: The International Renewable Energy Agency (IRENA) estimates that, as of 2021, only 1% of global hydrogen output was produced with low greenhouse gas emission methods. To meet the most ambitious climate goals, including those set forth in Executive Order 14008 (“Tackling the Climate Crisis at Home and Abroad,” January 27, 2021), the use of renewable and low carbon hydrogen would need to scale dramatically. The United States holds several unique advantages that give it the potential to become a powerhouse in the global hydrogen industry, with domestic hydrogen deployment already expected to grow substantially. Despite this strong domestic capacity for hydrogen production, U.S. firms may face export competitive challenges and market access issues. The Hydrogen Council’s October 2022 report, *Global Hydrogen Flows*, draws attention to the need for “development of mutually recognized robust and tradeable certification schemes for hydrogen.”

ITA seeks individual company input and views at the June 29, 2023 roundtable regarding the hydrogen industry value chain, including on the following topics:

- The current state of upstream manufacturing for hydrogen in the

United States, including electrolyzers, fuel cells, compressors, storage tanks, and other related and enabling equipment;

- Supply chain constraints, including with respect to platinum group metals or interconnection with the electrical grid;

- The potential contribution of U.S. hydrogen producers towards the Biden Administration’s overarching clean energy goals as set out in Executive Order 14008 “Tackling the Climate Crisis at Home and Abroad” (January 27, 2021);

- Challenges facing the hydrogen industry, including those that may inhibit the export competitiveness of products derived by the U.S. hydrogen industry value chain;

- How to help ensure that the build out of the hydrogen economy, with an emphasis on hydrogen production, proceeds apace while mitigating carbon emissions; and

- Company expectations on industry readiness for exports, including any potential challenges or obstacles.

The event is closed to press and public. Industry participation is limited to 25 qualifying company representatives. Officials from the Department of Energy, Department of State, and other relevant agencies will also be invited to participate in the discussion.

Selection

Company representatives interested in applying to attend the roundtable should submit the below information to Hydrogen.Economy@trade.gov by no later than June 23, 2023. ITA will evaluate applications based on the submitted information (and based on the criteria below) on a rolling basis until 25 participants have been selected and inform applicants of selection decisions.

Participants should be at a sufficiently senior level to be knowledgeable about their company’s capabilities, interests, growth objectives, and challenges with respect to production of clean hydrogen within the U.S. hydrogen value chain. Each selected participant may invite one additional person from their company as a non-participating observer. This will be administered by reaching out before the roundtable using provided contact information to request participants submit information about their observer.

Applicants should include the following information in their request to attend the roundtable:

- Name of proposed attendee and short bio;

- Name of company and brief company description; and
 - A statement self-certifying the following criteria:
 1. The company is not majority owned by a foreign government entity (or entities).
 2. The company is an existing manufacturer, provider of services, or prospective market entrant with products or services that are or will be produced in the United States.
 3. The representative will be able to attend the entire roundtable.
- Selection will be based on the following criteria:
- Suitability of company's products and service offerings in the existing hydrogen industry value chain;
 - Suitability of the company's experience in manufacturing in the United States;
 - Suitability, based on the representative's position and biography, to be able to meaningfully engage in the conversation; and
 - Ability of the company to contribute to the roundtable's purpose of seeking individual input and views on the United States hydrogen industry value chain.
- Consideration will also be given to whether an applicant company may have conflicting interests or whether its selection could hinder the overall effectiveness of the roundtable.

Dated: June 7, 2023.

Man K. Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2023-12590 Filed 6-12-23; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-851, A-485-805]

Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4½ Inches) From Japan and Romania: Continuation of the Antidumping Duty Orders

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on carbon and alloy seamless standard, line and pressure

pipe (under 4½ inches) (small diameter pipe) from Japan and Romania would likely lead to the continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD orders.

DATES: Applicable June 6, 2023.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson, 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) 482-4929.

SUPPLEMENTARY INFORMATION:

Background

On June 26 and August 10, 2000, respectively, Commerce published in the **Federal Register** the AD orders on small diameter pipe from Japan and Romania.¹ On October 3, 2022, the ITC instituted² and Commerce initiated³ the fourth sunset reviews of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping, and therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Orders* to be revoked.⁴

On June 6, 2023, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁵

¹ See *Notice of Antidumping Duty Orders: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa*, 65 FR 39360 (June 26, 2000); and *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania*, 65 FR 48963 (August 10, 2000) (collectively, *Orders*).

² See *Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan and Romania; Institution of Five-Year Reviews*, 87 FR 59821 (October 3, 2022).

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

⁴ See *Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4½ Inches) from Japan and Romania: Final Results of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders*, 88 FR 3970 (January 23, 2023).

⁵ See *Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan and Romania*; *Determination*, 88 FR 37096 (June 6, 2023) (*ITC Final Determination*).

Scope of the Orders

The products covered by these *Orders* include small diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of these *Orders* also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of these *Orders* are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to these *Orders* are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.19.10.20, 7304.19.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A-106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A-335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A-106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard.

Determination, 88 FR 37096 (June 6, 2023) (*ITC Final Determination*).

Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A-333 or ASTM A-334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A-589) and seamless galvanized pipe for fire protection uses (ASTM A-795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A-106, ASTM A-53, API 5L-B, and API 5L-X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A-106 pressure pipes and triple or quadruple certified pipes is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A-106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or "hollow profiles" of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications.

The scope of these *Orders* includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the specific exclusions discussed below, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of the *Orders*. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A-106 applications. These specifications generally include ASTM A-161, ASTM A-192, ASTM A-210, ASTM A-252, ASTM A-501, ASTM A-523, ASTM A-524, and ASTM A-618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of these *Orders*.

Specifically excluded from the scope of these *Orders* are boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished oil country tubular goods (OCTG) are excluded from the scope of these *Orders*, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

With regard to the excluded products listed above, Commerce will not instruct Customs to require end-use certification until such time as the petitioner or other interested parties provide to Commerce a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in covered applications as described above. For example, if, based on evidence provided by the petitioner, Commerce finds a reasonable basis to

believe or suspect that seamless pipe produced to the A-161 specification is being used in a standard, line or pressure application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise under these *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders*. 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 *Orders* will be June 6, 2023.⁶ Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of these *Orders* not later than 30 days prior to the fifth anniversary of the date of the last determination by the Commission.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with

⁶ See ITC Final Determination.

section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: June 7, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–12619 Filed 6–12–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–883]

Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea) were not sold at less than normal value during the period of review (POR), October 1, 2021, through September 30, 2022. We invite interested parties to comment on these preliminary results.

DATES: Applicable June 13, 2023.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0665 or (202) 482–0410, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2016, Commerce published in the **Federal Register** an antidumping duty order on hot-rolled steel from Korea.¹ On October 3, 2022, we published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.² On December 5, 2022, based on timely requests for an administrative review,

Commerce initiated an antidumping duty administrative review of 48 companies.³

Scope of the Order

The products covered by this *Order* are hot-rolled steel from Korea. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.⁴

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum is available at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Preliminary Determination of No Shipments

One company under review, Aekyung Chemical Co., Ltd. (Aekyung),⁵ filed a statement reporting that it made no sales or exports of subject merchandise to the United States during the POR.⁶ We received no information from U.S. Customs and Border Protection (CBP) that contradicts Aekyung's no-shipments claim.⁷ Consequently, we preliminarily determine that Aekyung had no shipments during the POR. Consistent with Commerce's practice,

we find that it is not appropriate to rescind the review with respect to Aekyung, but rather to complete the review and issue appropriate instructions to CBP based on the final results of this review.⁸

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely on the basis of facts available.

However, where the dumping margins for individually examined respondents are all zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use "any reasonable method to establish the estimated all others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated." In this review, we preliminarily calculated a weighted-average dumping margin of zero for both Hyundai Steel Company (Hyundai Steel) and for POSCO.⁹ Thus, in accordance with section 735(c)(5)(B) of the Act, and consistent with the U.S. Court of Appeals for the Federal

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 74404, 74406–07 (December 5, 2022).

⁴ See Memorandum, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2020–2021," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ In the *Initiation Notice*, this company was listed as Aekyung Chemical, based on the request for review received by Commerce.

⁶ See Aekyung's Letter, "No Shipments Letter," dated January 4, 2023.

⁷ See Memorandum, "No shipment inquiry with respect to Aekyung Chemical Co., Ltd. during the period 10/01/2021 through 09/30/2022," dated March 10, 2023.

⁸ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

⁹ We initiated this review with respect to the following companies: POSCO and POSCO International Corporation. See *Initiation Notice*, 87 FR at 74407. Commerce previously treated POSCO and POSCO International Corporation as a single entity. See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020*, 86 FR 59985 (October 29, 2021), and accompanying Preliminary Decision Memorandum, at 6–13, unchanged in *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2019–2020*, 87 FR 12660 (March 7, 2022).

¹ See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders*, 81 FR 67962 (October 3, 2016) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List*, 87 FR 59775 (October 3, 2022).

Circuit's decision in *Albemarle*,¹⁰ and Commerce's practice,¹¹ we are preliminarily assigning the zero percent rate to the companies not selected for individual examination listed in Appendix II of this notice, because we calculated zero percent rates for the mandatory respondents.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margins exist for the period October 1, 2021, through September 30, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Hyundai Steel Company	0.00
POSCO; POSCO International Corporation	0.00
Companies Not Individually Examined ¹²	0.00

Disclosure and Public Comment

We intend to disclose the calculations performed to parties within five days after public announcement of the preliminary results.¹³ Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.¹⁴ Interested parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁵ Executive summaries should be limited to five pages total, including footnotes. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business

proprietary information, until further notice.¹⁶

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. If either of the respondents' weighted-average dumping margins is not zero or *de minimis* (i.e., less than 0.50 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).¹⁷ If either of the respondents' weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of review, we intend to instruct CBP to liquidate entries without regard to antidumping duties.¹⁸ The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.¹⁹

¹⁶ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹⁷ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

¹⁸ *Id.*, 77 FR at 8102–03; see also 19 CFR 351.106(c)(2).

¹⁹ See section 751(a)(2)(C) of the Act.

For entries of subject merchandise during the POR produced by either of the respondents for which they did not know that the merchandise was destined to the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.²⁰ For the companies identified in Appendix II that were not selected for individual examination, we will instruct CBP to liquidate entries at the rate established after the completion of the final results of review.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of hot-rolled steel from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the respondents will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or the original investigation but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 6.05 percent, the all-others rate established in the less-than-fair-value investigation.²¹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

²⁰ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

²¹ See *Order*, 81 FR at 67965.

¹⁰ See *Albemarle Corp v. United States*, 821 F.3d 1345 (Fed. Cir. 2016) (*Albemarle*).

¹¹ See, e.g., *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2019–2020, 87 FR 15371 (March 18, 2022).

¹² See Appendix II for a full list of companies not individually examined in this review.

¹³ See 19 CFR 351.224(b).

¹⁴ See 19 CFR 351.309(d); see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006, 17007 (March 26, 2020) (“To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect).”).

¹⁵ See 19 CFR 351.309(c)(2) and (d)(2).

Final Results of Review

Unless the deadline is otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised by interested parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: June 7, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

Appendix II

List of Companies Not Selected for Individual Examination

1. AJU Besteel Co., Ltd.
2. Ameri Source Korea
3. Chemaven Co., Ltd.
4. Cj Cheiljedang Corp.
5. Cj Global Logistics Service Inc.
6. Dongkuk Industries Co., Ltd.
7. Dongkuk Steel Mill Co., Ltd.
8. Geco Industries Co., Ltd.
9. Geumok Tech. Co., Ltd.
10. Goi Tech Industries Co., Ltd.
11. Golden State Corporation
12. Gs Global Corp.
13. Gs Holdings Corp.
14. Hanawell Co., Ltd.
15. Hanjin Gls Co., Ltd.
16. Hankook Co., Ltd.
17. HISTEEL
18. Hyosung Corporation
19. Hyosung Tnc Corporation

20. Hyundai Glovis Co., Ltd.
21. Hyundai Rb Co., Ltd.
22. Il Jin Nts Co., Ltd.
23. Inchang Electronics Co., Ltd.
24. J&K Korea Co., Ltd.
25. Jeil Industries Co., Ltd.
26. Jeil Metal Co., Ltd.
27. Jin Young Metal
28. Jun Il Co., Ltd.
29. KG Dongbu Steel Co., Ltd.
30. KG Steel Corporation
31. Kumkang Kind Co., Ltd.
32. Lg Electronics Inc.
33. Maxflex Corp.
34. Mitsubishi Corp. Korea
35. Mitsui Chemicals & Skc Polyurethane
36. Nexteel Co., Ltd.
37. Samsung Electronics Co., Ltd.
38. SeAH Steel Corporation
39. Sja Inc. (Korea)
40. Solvay Silica Korea
41. Soon Ho Co., Ltd.
42. Sumitomo Corp. Korea Ltd.
43. Sungjin Precision
44. Wintec Korea Inc.
45. Wonbangtech Co., Ltd.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC889]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Offshore of New Jersey

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Ocean Wind II, LLC (Ocean Wind II) for authorization to take marine mammals incidental to marine site characterization surveys offshore of New Jersey in the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Area OCS–A 0532 and associated export cable routes (ECRs) to landfall locations in New Jersey.

DATES: Comments and information must be received no later than July 13, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written

comments should be submitted via email to ITP.Esch@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Office of Protected Resources. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Carter Esch, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The activities described in Ocean Wind II's request, the overall survey duration, the project location, and the acoustic sources proposed for use are identical to what was previously analyzed in support of the IHA issued by NMFS to Ocean Wind II for 2022 site characterization surveys (2022 IHA) (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022). All proposed mitigation, monitoring, and reporting requirements remain the same. While Ocean Wind II's planned activity would qualify for renewal of the 2022 IHA, due to the availability of updated marine mammal density data (<https://seamap.env.duke.edu/models/Duke/EC/>), which NMFS has determined represents the best available scientific data, NMFS has determined it appropriate to provide a 30-day period for the public to comment on this proposed action.

Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to allow Ocean Wind II to incidentally take marine mammals

during the specified activities. NMFS is also requesting comments on a possible one-year Renewal IHA that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

The activities described in Ocean Wind II's request, the overall survey duration, the project location, and the acoustic sources proposed for use are identical to what was previously analyzed in support of the Incidental Harassment Authorization (IHA issued by NMFS to Ocean Wind II for 2022 site characterization surveys (2022 IHA) (87 FR 14823, March 16, 2022). All proposed mitigation, monitoring, and reporting requirements remain the same. While Ocean Wind II's planned activity would qualify for renewal of the 2022 IHA, due to the availability of updated marine mammal density data (<https://seamap.env.duke.edu/models/Duke/EC/>), which NMFS has determined represents the best available scientific data, NMFS has determined it appropriate to provide a 30-day period for the public to comment on this proposed action.

NMFS is requesting comments on its proposal to issue an IHA to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year Renewal IHA that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

The MMPA prohibits the "take" of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the

taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other "means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as "mitigation"); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notification prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On February 14, 2022, NMFS received a request from Ocean Wind II for an IHA to take marine mammals incidental to high-resolution geophysical (HRG) marine site characterization surveys offshore of New Jersey in the area of BOEM Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS-A 0532 (Lease Area) and associated ECR area. Following NMFS' review of the application, Ocean Wind II submitted a revised request on April 28, 2023. The application (the 2023 request) was deemed adequate and complete on April 28, 2023. Ocean Wind II's request is for

take of 16 species (comprising 17 stocks) of marine mammals, including 14 cetacean and two pinniped (seal) species, by Level B harassment only. Neither Ocean Wind II nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. Take by Level A harassment (injury) is considered unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use.

On October 1, 2021, NMFS received a request from Ocean Wind II for an IHA to take marine mammals incidental to HRG marine site characterization surveys offshore of New Jersey in the area of BOEM Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS Lease Area OCS-A 0532 (Lease Area) and associated ECR area. Ocean Wind II requested authorization to take small numbers of 16 species (comprising 17 stocks) of marine mammals by Level B harassment only. NMFS published a notice of the proposed IHA in the **Federal Register** on March 16, 2022 (87 FR 14823). After a 30-day public comment period and consideration of all public comments received, we subsequently issued the IHA on May 19, 2022 (87 FR 30453), which is effective from May 10, 2022 through May 9, 2023.

Ocean Wind II completed the survey work under the 2022 IHA and submitted a final monitoring report, which demonstrates that they conducted the required marine mammal mitigation and monitoring, and did not exceed the authorized levels of take under the previous IHA issued for surveys offshore of New Jersey (see 87 FR 30452, May 19, 2022). These monitoring results are available to the public on our website: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-ii-llc-marine-site-characterization-surveys-new>.

The 2023 IHA request is identical to the 2022 IHA request. However, NMFS has determined a renewal of the 2022 IHA is not appropriate because Duke University's Marine Geospatial Ecology Laboratory released updated marine mammal density information (June 20, 2022) for all species in the project area (<https://seamap.env.duke.edu/models/Duke/EC/>) after issuance of the 2022 IHA. In evaluating the 2023 request, which incorporates the updated density information, and to the extent deemed appropriate, NMFS relies on the information presented in notices associated with issuance of the 2022 IHA (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022).

Description of the Proposed Activity and Anticipated Impacts*Overview*

Ocean Wind II proposes to conduct HRG marine site characterization surveys in the BOEM Lease Area OCS-A 0532 and along potential submarine ECRs to landfall locations in New Jersey. The purpose of the proposed surveys is to obtain an assessment of seabed (geophysical, geotechnical, and geohazard), ecological, and archeological conditions within the footprint of a planned offshore wind facility development area. Surveys are also conducted to support engineering design and to map unexploded ordnance. Survey equipment would be deployed from multiple vessels or remotely operated vehicles (ROVs) during site characterization activities in the project area; however, only one vessel would operate at a time in the lease area and ECR area (two vessels total). During survey effort, the vessel would operate at a maximum speed of 4 knots (4.6 miles or 7.4 km per hour).

Underwater sound resulting from Ocean Wind II's activities has the potential to result in incidental take of marine mammals in the form of Level B harassment.

Dates and Duration

The proposed activity is estimated to require 275 survey days, and is expected to be carried out over the course of the one-year period of effectiveness beginning from the date of issuance of this IHA. A "survey day" is defined as a 24-hour (hr) activity period in which active HRG acoustic sources are used. This schedule is inclusive of any inclement weather downtime and crew transfers. The number of survey days was calculated as the number of days needed to reach the overall level of effort required to meet survey objectives assuming any single vessel covers, on average, 70 km (129.6 miles) of survey trackline per 24 hours of operations.

Specific Geographic Region

Ocean Wind II's proposed activities would occur in the Northwest Atlantic

Ocean within Federal and state waters offshore of New Jersey in BOEM Lease Area OCS-A 0532 and associated ECR area to landfall locations in New Jersey (Figure 1). As compared to the 2022 IHA (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022), Ocean Wind II revised their project area map (Figure 1) to be more representative of the actual area in which HRG surveys would occur. The revised project area description is based on updated information received from the Ocean Wind II site investigation team. The Lease Area is approximately 343.8 square kilometers (km²) and is within the New Jersey Wind Energy Area (WEA) of BOEM's Mid-Atlantic planning area. The total survey area depicted in Figure 1 (including the Lease Area and potential ECRs) encompasses 3,801 km². Water depths in the Lease Area range from 14 meters (m) (45.9 feet (ft)) to 38 m (124.6 ft), and the potential ECRs extend from the shoreline to approximately 30 m (98.4 ft) depth.

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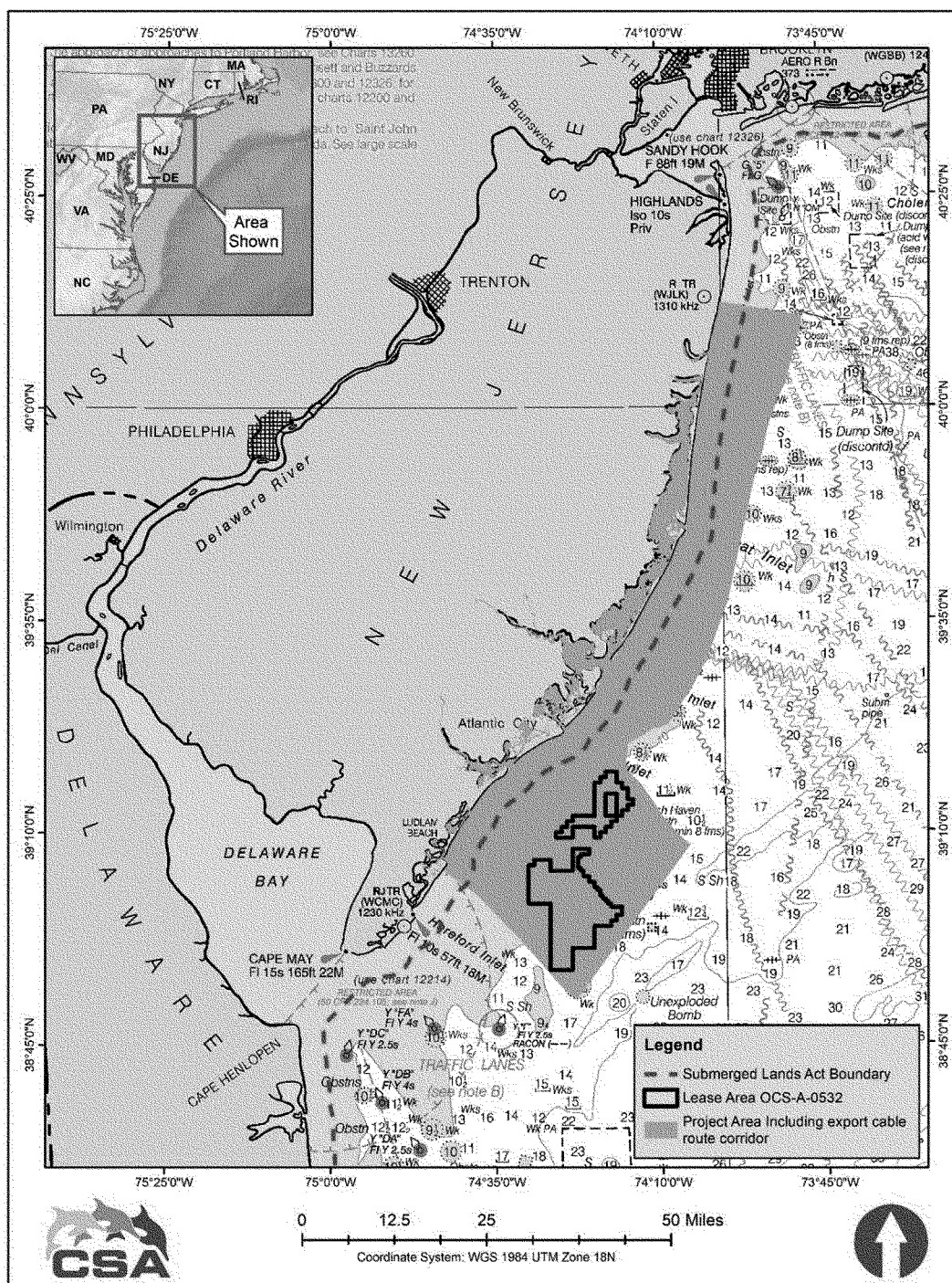


Figure 1 -- Map of the Proposed Survey Area

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Detailed Description of the Action

A detailed description of the proposed survey activities can be found in the previous **Federal Register** notices (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022) and supplementary documents, available online at: <https://www.fisheries.noaa.gov/action/>

incidental-take-authorization-ocean-wind-ii-llc-marine-site-characterization-surveys-new. The specific geographic region (except for the abovementioned slight revisions made based on information received from the Ocean Wind II site investigation team); duration (275 total survey days); and nature of the activities, including the types of HRG equipment planned for use (boomers, sparkers, and non-

parametric sub-bottom profilers); daily trackline distances (70 km per day); and number of survey vessels (one vessel operating at a time in the Lease Area and ECR Area, for a total of two vessels) are identical or nearly identical to those described in those previous notices.

Description of Marine Mammals

A description of the marine mammals in the proposed survey area can be

found in the previous documents and notices for the 2022 IHA (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022), which remains applicable to this proposed IHA. NMFS reviewed the most recent draft Stock Assessment Reports (SARs, found on NMFS' website at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>), up-to-date information on relevant Unusual Mortality Events (UMEs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events>), and recent scientific literature and determined that no new information affects our original analysis of impacts under the 2022 IHA.

NMFS notes that, since issuance of the 2022 IHA, a new SAR is available for the North Atlantic right whale (NARW). Estimated abundance for the species declined from 368 to 338. However, this change does not affect our analysis of impacts, as described under the 2022 IHA. Additionally, on August 1, 2022, NMFS announced proposed changes to the existing NARW vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered NARWs from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA

incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule would become effective immediately upon the effective date of any final vessel speed rule and, when notice is published of the effective date, NMFS would also notify Ocean Wind II if the measures in the speed rule were to supersede any of the measures in the MMPA authorization such that they were no longer applicable.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat can be found in the documents supporting the 2022 IHA (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022). At present, there is no new information on potential effects that would influence our analysis.

Estimated Take

A detailed description of the methods used to estimate take anticipated to occur incidental to the project is found in the previous **Federal Register** notices (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022). The methods of estimating take are identical to those used in the 2022 IHA. Ocean Wind II updated the marine mammal densities based on new information (Roberts *et al.*, 2016; Roberts and Halpin, 2022), available online at: <https://seamap.env.duke.edu/models/Duke/EC/>. We refer the reader to Table 2 in Ocean Wind II's 2023 IHA request for the specific density values used in the analysis. The IHA request is available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

The take that NMFS proposes to authorize can be found in Table 2, which presents the results of Ocean Wind II's density-based calculations for the survey area. For comparative purposes, we have provided the 2022 IHA authorized Level B harassment take (87 FR 30453, May 19, 2022). NMFS notes that take by Level A harassment was not requested, nor does NMFS anticipate that it could occur. Therefore, NMFS has not proposed to authorize any take by Level A harassment. Mortality or serious injury is neither anticipated to occur nor proposed for authorization.

TABLE 2—SUMMARY OF TAKE NUMBERS PROPOSED FOR AUTHORIZATION

Species	Scientific name	Stock	Abundance	2022 IHA authorized take ¹	2023 proposed IHA	
					Take proposed for authorization ¹	Max percent population
North Atlantic right whale	<i>Eubalaena glacialis</i>	Western North Atlantic	338	11	2	<1
Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic	6,802	4	4	<1
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia	6,292	0 (1)	1	<1
Minke whale	<i>Balaenoptera acutorostrata</i> ..	Canadian East Coast	21,968	1	8	<1
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	1,396	2	4	<1
Sperm whale	<i>Physeter macrocephalus</i>	North Atlantic	4,349	0 (3)	0 (3)	<1
Atlantic white-sided dolphin ..	<i>Lagenorhynchus acutus</i>	Western North Atlantic	93,233	6 (50)	12 (50)	<1
Atlantic spotted dolphin	<i>Stenella frontalis</i>	Western North Atlantic	39,921	2 (15)	1 (15)	<1
Common bottlenose dolphin ²	<i>Tursiops truncatus</i>	Western North Atlantic, Off-shore.	62,851	1,842	2,221	2.3
		Western North Atlantic, Northern Migratory Coastal.	6,639			21.4
Long-finned pilot whale ³	<i>Globicephala melas</i>	Western North Atlantic	39,215	1 (20)	1 (20)	<1
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic	35,215	0 (30)	1 (30)	<1
Common dolphin	<i>Delphinus delphis</i>	Western North Atlantic	172,974	54 (400)	67 (400)	<1
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy	95,543	90	72	<1
Seals ⁴ :						
Gray seal	<i>Halichoerus grypus</i>	Western North Atlantic	⁵ 27,300	25	13	<1
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic	61,336	25	13	<1

¹ Parentheses denote proposed take authorization where different from calculated take estimates. Increases from calculated values are based on average group size for the following species: sei whale and pilot whales, Kenney and Vigness-Raposa, 2010; sperm whale and Risso's dolphin, Barkaszi and Kelly, 2018; Atlantic white-sided dolphins, NMFS 2022a; and Atlantic spotted dolphins, NMFS 2022b. The amount of proposed common dolphin take is based on the number of individuals observed in previous HRG surveys in the area, and is identical to the amount of take authorized in the 2022 IHA.

² At this time, Ocean Wind II is not able to identify how much work would occur inshore and offshore of the 20 m isobaths, a common delineation between offshore and coastal bottlenose dolphin stocks. Because Roberts *et al.* does not provide density estimates for individual stocks of common bottlenose dolphins, the take presented here is the total estimated take for both stocks. Although unlikely, for our analysis, we assume all takes could be allocated to either stock.

³Roberts (2018) only provides density estimates for pilot whales as a guild. Given the project's location, NMFS assumes that all take will be of long-finned pilot whales.

⁴Roberts (2018) only provides density estimates for seals without differentiating by species. Harbor seals and gray seals are assumed to occur equally in the survey area; therefore, density values were split evenly between the two species, *i.e.*, total estimated take for "seals" is 24.

⁵NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,600.

Description of Proposed Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures proposed here are identical to those included in the **Federal Register** notice announcing the final 2022 IHA and the discussion of the least practicable adverse impact included in that document remains accurate. As described in the previous **Federal Register** notices (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022), NMFS determined that issuance of the 2022 IHA to Ocean Wind II was within the scope of the NOAA Fisheries Greater Atlantic Regional Office (GARFO) programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (NOAA GARFO, 2021; <https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation>). NMFS similarly concludes that the currently proposed survey activities are within scope of the consultation, and thus will require adherence to the relevant Project Design Criteria (PDC) (specifically PDCs 4, 5, and 7).

Establishment of Shutdown Zones (SZ)—Marine mammal SZs must be established around the HRG survey equipment and monitored by NMFS-approved protected species observers (PSO) during HRG surveys as follows:

- 500-m SZ for North Atlantic right whales during use of specified acoustic sources (impulsive: sparkers and boomers; non-impulsive: non-parametric sub-bottom profilers); and,
- 100-m SZ for all other marine mammals (excluding North Atlantic right whales) during operation of the sparker and boomer. The only exception for this is for pinnipeds (seals) and small delphinids (*i.e.*, those from the genera *Delphinus*, *Lagenorhynchus*, *Stenella* or *Tursiops*).

If a marine mammal is detected approaching or entering the SZs during the HRG survey, the vessel operator would adhere to the shutdown procedures described below to minimize noise impacts on the animals. During use of acoustic sources with the potential to result in marine mammal harassment (sparkers, boomers, and non-parametric sub-bottom profilers;

i.e., anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the monitoring zone (but outside the SZs) must be communicated to the vessel operator to prepare for potential shutdown of the acoustic source.

- **Visual Monitoring**—Monitoring must be conducted by qualified PSOs who are trained biologists, with minimum qualifications described in the **Federal Register** notices for the 2022 project (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022). Ocean Wind II must have one PSO on duty during the day and a minimum of two NMFS-approved PSOs must be on duty and conducting visual observations when HRG equipment is in use at night. Visual monitoring must begin no less than 30 minutes prior to ramp-up of HRG equipment and continue until 30 minutes after use of the acoustic source. PSOs must establish and monitor the applicable clearance zones, SZs, and vessel separation distances as described in the 2022 IHA (87 FR 30453, May 19, 2022). PSOs must coordinate to ensure 360-degree visual coverage around the vessel from the most appropriate observation posts, and must conduct observations while free from distractions and in a consistent, systematic, and diligent manner. PSOs are required to estimate distances to observed marine mammals. It is the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

Pre-Start Clearance—Marine mammal clearance zones (CZs) must be established around the HRG survey equipment and monitored by NMFS-approved protected species observers (PSO) prior to use of boomers, sparkers, and non-parametric sub-bottom profilers as follow:

- 500-m CZ for all ESA-listed species; and,
- 100-m CZ for all other marine mammals.

Prior to initiating HRG survey activities, Ocean Wind II must implement a 30-minute pre-start clearance period. The operator must notify a designated PSO of the planned start of ramp-up where the notification time should not be less than 60 minutes prior to the planned ramp-up to allow the PSOs to monitor the CZs for 30

minutes prior to the initiation of ramp-up. Prior to ramp-up beginning, Ocean Wind II must receive confirmation from the PSO that the CZs are clear prior to preceding. Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zones.

During this 30-minute period, the entire CZ must be visible. The exception to this would be in situations where ramp-up must occur during periods of poor visibility (inclusive of nighttime) as long as appropriate visual monitoring has occurred with no detections of marine mammals in 30 minutes prior to the beginning of ramp-up. Acoustic source activation must only occur at night where operational planning cannot reasonably avoid such circumstances.

If a marine mammal is observed within the relevant CZs during the pre-start clearance period, initiation of HRG survey equipment must not begin until the animal(s) has been observed exiting the respective CZ, or, until an additional period has elapsed with no further sighting (*i.e.*, minimum 15 minutes for small odontocetes and seals; 30 minutes for all other species). The pre-start clearance requirement includes small delphinids. PSOs must also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

- **Ramp-Up of Survey Equipment**—When technically feasible, a ramp-up procedure must be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. The ramp-up procedure must be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the project area by allowing them to detect the presence of the survey and vacate the area prior to the commencement of survey equipment operation at full power. Ramp-up of the survey equipment must not begin until the relevant SZs has been cleared by the PSOs, as described above. HRG equipment operators must ramp up acoustic sources to half power for 5 minutes and then proceed to full power. If any marine mammals are detected within the SZs prior to or during ramp-up, the HRG equipment must be shut down (as described below).

- **Shutdown Procedures**—If an HRG source is active and a marine mammal is observed within or entering a relevant SZ (as described above), an immediate shutdown of the HRG survey equipment is required. When shutdown is called for by a PSO, the acoustic source must be immediately deactivated and any dispute resolved only following deactivation. Any PSO on duty has the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable SZ. The vessel operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. Subsequent restart of the HRG equipment may only occur after the marine mammal has been observed exiting the relevant SZ, or, until an additional period has elapsed with no further sighting of the animal within the relevant SZ.

Upon implementation of shutdown, the HRG source may be reactivated after the marine mammal that triggered the shutdown has been observed exiting the applicable SZ or, following a clearance period of 15 minutes for small odontocetes (*i.e.*, harbor porpoise) and 30 minutes for all other species with no further observation of the marine mammal(s) within the relevant SZ. If the HRG equipment is shut down for brief periods (*i.e.*, less than 30 minutes) for reasons other than mitigation (*e.g.*, mechanical or electronic failure) the equipment may be re-activated as soon as is practicable at full operational level, without 30 minutes of pre-clearance, only if PSOs have maintained constant visual observation during the shutdown and no visual detections of marine mammals occurred within the applicable SZs during that time. For a shutdown of 30 minutes or longer, or if visual observation was not continued diligently during the pause, pre-clearance observation is required, as described above.

The shutdown requirement is waived for pinnipeds (seals) and certain genera of small delphinids (*i.e.*, *Delphinus*, *Lagenorhynchus*, *Stenella*, or *Tursiops*) under certain circumstances. If a delphinid(s) from these genera is visually detected within the SZ, shutdown would not be required. If there is uncertainty regarding identification of a marine mammal species (*i.e.*, whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best

professional judgment in making the decision to call for a shutdown.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the area encompassing the Level B harassment isopleth (141 m), shutdown must occur.

- **Vessel Strike Avoidance**—Ocean Wind II must comply with vessel strike avoidance measures as described in the **Federal Register** notice for the 2022 IHA (87 FR 30453, May 19, 2022). This includes speed restrictions (10 knots or less) when mother/calf pairs, pods, or large assemblages of cetaceans are spotted near a vessel; species-specific vessel separation distances; appropriate vessel actions when a marine mammal is sighted (*e.g.*, avoid excessive speed, remain parallel to animal's course, etc.); and monitoring of the NMFS North Atlantic Right Whale reporting system and Whale Alert daily.

- **Seasonal Operating Requirements**—Ocean Wind II will conduct HRG survey activities in the vicinity of a North Atlantic right whale Mid-Atlantic seasonal management area (SMA). Activities must comply with the seasonal mandatory speed restriction period for this SMA (November 1 through April 30) for any survey work or transit within this area.

Throughout all phases of the survey activities, Ocean Wind II must monitor NOAA Fisheries North Atlantic right whale reporting systems for the establishment of a dynamic management area (DMA). If NMFS establishes a DMA in the surrounding area, including the project area or export cable routes being surveyed, Ocean Wind II is required to abide by the 10-knot speed restriction.

- **Training**—Project-specific training is required for all vessel crew prior to the start of survey activities.

- **Reporting**—PSOs must record specific information as described in the **Federal Register** notice of the issuance of the 2022 IHA (87 FR 30453, May 19, 2022). Within 90 days after completion of survey activities, Ocean Wind II must provide NMFS with a monitoring report, which must include summaries of recorded takes and estimates of the number of marine mammals that may have been harassed.

In the event of a ship strike or discovery of an injured or dead marine mammal, Ocean Wind II must report the incident to the Office of Protected Resources (OPR), NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. The report must include the

information listed in the **Federal Register** notice of the issuance of the initial IHA (87 FR 30453, May 19, 2022).

Preliminary Determinations

Ocean Wind II's HRG survey activities are unchanged from those analyzed in support of the 2022 IHA. The effects of the activity, taking into consideration the proposed mitigation and related monitoring measures, remain unchanged from those evaluated in support of the 2022 IHA, regardless of the minor increases in estimated take numbers for some marine mammal species and/or stocks. NMFS expects that all potential takes would be short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.*, Southall *et al.*, 2007). In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141 m. Although this distance is assumed for all survey activity evaluated here and in estimating take numbers proposed for authorization, in reality, much of the survey activity would involve use of non-impulsive acoustic sources with a reduced acoustic harassment zone of up to 48 m, producing expected effects of particularly low severity. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and the available habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. Even considering the increased estimated take for some species, the impacts of these lower severity exposures are not expected to accrue to a degree that the fitness of any individuals would be impacted and, therefore, no impacts on the annual rates of recruitment or survival would result.

As previously discussed in the 2022 IHA (87 FR 30453, May 19, 2022), impacts from the survey are expected to

be localized to the specific area of activity and only during periods when Ocean Wind II's acoustic sources are active. There are no rookeries, mating or calving grounds, or any feeding areas known to be biologically important to marine mammals within the proposed survey area. There is no designated critical habitat for any ESA-listed marine mammals in the survey area.

As noted for the 2022 IHA (87 FR 30453, May 19, 2022), the survey area overlaps a migratory corridor biologically important area (BIA) for NARWs. Because the survey activities are temporary and the spatial extent of sound produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the BIA (269,448 km²), NMFS does not expect NARW migration to be impacted by the survey. Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during Ocean Wind II's planned activities. Additionally, Ocean Wind II requested and NMFS proposes to authorize only two takes by Level B harassment of NARWs. This amount is reduced from the 11 Level B harassment takes authorized in the 2022 IHA due to the revised Duke University density data (Roberts and Halpin, 2022). HRG survey operations are required to maintain a 500-m SZ, and shutdown if a NARW is sighted at or within the SZ. The 500-m SZ for NARWs is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.*, sparker) is estimated to be 141 m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected due to the small PTS zones associated with HRG equipment types proposed for use. NMFS does not anticipate NARWs takes that would result from Ocean Wind II's activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

We also note that our findings for other species with active UMEs that were previously described for the 2022 IHA remain applicable to this project. Therefore, in conclusion, there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily determined the following: (1) the required mitigation measures will effect the least practicable

impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Ocean Wind II's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included..

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS OPR consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize the incidental take of four species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, and sperm whale, and has determined that this activity falls within the scope of activities analyzed in NMFS GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Ocean Wind II for conducting high-resolution geophysical site characterization surveys offshore of New Jersey for a period of one year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Request for Public Comments

We request comment on our analyses (included in both this document and the referenced documents supporting the 2022 IHA (ITA application; issued IHA; and **Federal Register** notices including 87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022; 87 FR 26726,

May 5, 2022)), the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed site characterization surveys. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of the Proposed Activity and Anticipated Impacts section of this notice is planned or (2) the activities as described in the Description of the Proposed Activity and Anticipated Impacts section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);

- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: June 7, 2023.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–12604 Filed 6–12–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD026]

Western Pacific Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice of a date change of a public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Mariana Archipelago Fishery Ecosystem Plan (FEP) Guam Advisory Panel (AP) to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The meeting will be held Saturday, June 17, 2023, from 10 a.m. to 1 p.m.

ADDRESSES: The Mariana Archipelago Fishery Ecosystem Plan (FEP) Guam Advisory Panel (AP) meeting will be held in a hybrid format with in-person and remote participation (Webex) options available for the members and the public. In-person attendance for Mariana Archipelago FEP Guam AP members will be hosted at Cliff Pointe, 304 W O'Brien Drive, Hagatña, GU 96910. Instructions for connecting to the web conference and providing oral public comments will be posted on the Council website at www.wpcouncil.org. For assistance with the web conference connection, contact the Council office at (808) 522–8220.

FOR FURTHER INFORMATION CONTACT:

Contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on May 19, 2023 (88 FR 32197). This notice changes the date of the Mariana Archipelago FEP Guam AP meeting.

All other previously-published information remains the same.

Special Accommodations

The meeting is accessible to people with disabilities. Requests for sign

language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: June 7, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–12583 Filed 6–8–23; 4:15 pm]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Web-Based Frequency Coordination System

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on April 3, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Telecommunications and Information Administration (NTIA), Commerce.

Title: Web-Based Frequency Coordination System.

OMB Control Number: 0660–0018.

Form Number(s): None.

Type of Request: Extension of currently approved information collection.

Number of Respondents: 6,551.

Average Hours per Response: 0.25.

Burden Hours: 1,638.

Needs and Uses: The information is submitted to a web-based platform and is used by NTIA to ensure the mutual compatibility of proposed non-federal radio stations with existing federal radio stations and planned future use. The data is used for analysis on a continuous basis by the federal agencies to assure mutual compatibility of future government operations.

Affected Public: Applicants seeking to operate non-federal radio stations in the 70–80–90 GHz bands.

Frequency: Per application.

Respondent's Obligation: Voluntary.

Legal Authority: 47 U.S.C. 902(b)(2), NTIA Communications and Information Functions.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the collection or the OMB Control Number 0660–0018.

Sheleen Dumas,

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

[FR Doc. 2023–12594 Filed 6–12–23; 8:45 am]

BILLING CODE 3510–60–P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No. CFPB–2023–0020]

Request for Information Regarding Data Brokers and Other Business Practices Involving the Collection and Sale of Consumer Information

AGENCY: Consumer Financial Protection Bureau.

ACTION: Request for information; extension of comment period.

SUMMARY: On March 15, 2023, the Consumer Financial Protection Bureau (Bureau or CFPB) issued a request for information seeking input from the public related to data brokers. The request for information was published in the **Federal Register** on March 21, 2023, and provided for a comment period that was set to expire on June 13, 2023. To allow interested persons more time to gather the requested information and submit comments, the CFPB has determined that an extension of the comment period until July 15, 2023, is appropriate.

DATES: The end of the comment period for the Request for Information Regarding Data Brokers published on March 21, 2023 (88 FR 16951), is extended from June 13, 2023, until July 15, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2023–0020, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* DataBrokersRFI_2023@cfpb.gov. Include Docket No. CFPB–2023–0020 in the subject line of the message.

- *Mail/Hand Delivery/Courier:* Comment Intake—Request for Information Regarding Data Brokers, Consumer Financial Protection Bureau, 1700 G Street, NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically.

Instructions: The CFPB encourages the early submission of comments. All submissions should include the agency name and docket number for this request for information. Please note the number of the topic on which you are commenting at the top of each response (you do not need to address all topics.) In general, all comments received will be posted without change to <https://www.regulations.gov>. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Erie Meyer, Chief Technologist and Senior Advisor, Office of the Director; Davida Farrar, Counsel, Office of Consumer Populations, at 202–435–7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: On March 15, 2023, the Bureau issued a request for information seeking information from the public on the data broker industry. Data brokers is an umbrella term to describe firms that collect, aggregate, sell, resell, license, or otherwise share consumers' personal information with other parties. Data brokers encompass actors such as first-party data brokers that interact with consumers directly, as well as third-party data brokers with whom the consumer does not have a direct relationship. Data brokers include firms that specialize in preparing employment background screening reports and credit reports. Data brokers collect information from public and private sources for purposes including marketing and advertising, building and

refining proprietary algorithms, credit and insurance underwriting, consumer-authorized data porting, fraud detection, criminal background checks, identity verification, and people search databases.

This request for information seeks comments from the public on data brokers. The submissions in response to this request for information will serve to assist the CFPB and policymakers in understanding the current state of business practices in exercising enforcement, supervision, regulatory, and other authorities. The CFPB welcomes stakeholders to submit data, analysis, research, and other information about data brokers. The CFPB also requests input from individuals who have interacted with or have been affected by data broker business practices.

The Bureau has determined that it is appropriate to extend until July 15, 2023, the comment period on this request for information. This extension will allow interested persons more time to pull together the requested information for submission. The comment period will now close on July 15, 2023.

Paul Hannah,

Senior Counsel, Consumer Financial Protection Bureau.

[FR Doc. 2023–12550 Filed 6–12–23; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2023–HQ–0004]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, 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 July 13, 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: Program Executive Office Enterprise Information Systems (PEO EIS) Climate Survey; OMB Control Number 0702–0153.

Type of Request: Revision.

Number of Respondents: 1,618.

Responses per Respondent: 1.

Annual Responses: 1,618.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 809.

Needs and Uses: The Program Executive Office Enterprise Information Systems Climate Survey (PEO EIS) Climate Survey is seeking feedback from its civilian, military, and contractor personnel to assess how they feel about the organization and their work environment. The responses will enable PEO EIS leadership to assess and determine where changes are required. PEO EIS will distribute this Climate Survey using the MilSuite survey feature, which enables PEO EIS to create a custom survey for distribution organization-wide with advanced survey statistics to capture, review, and share the responses. Respondents will access and provide their responses to the collection instrument online. They will receive a link via email that takes them directly to the PEO EIS Climate Survey in MilSuite. The PEO EIS Operations Team will review the survey responses and provide data and subsequent analysis to PEO EIS leadership. The results will enable leadership to communicate areas for improvement, actions they plan to take or have been taken, and if the changes address the area in need of improvement with its personnel. Additionally, since the survey is annual, PEO EIS will be able to review and analyze data year to year to identify trends. This climate survey was previously fielded to only one branch of PEO EIS, but will be expanded to include the entire organization.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Sehra.

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: June 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023-12643 Filed 6-12-23; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA-2023-HQ-0006]

Submission for OMB Review; Comment Request

AGENCY: U.S. Army Corps of Engineers, 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 July 13, 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*: Red River Navigation

Transportation Rate Survey; OMB Control Number 0710-RRNS.

Type of Request: New.

Number of Respondents: 100.

Responses per Respondent: 1.

Annual Responses: 100.

Average Burden per Response: 60 minutes.

Annual Burden Hours: 100.

Needs and Uses: The U.S. Army Corps of Engineers (USACE) operates and maintains much of the nation's inland navigation infrastructure of locks, dams, and channels. Inland navigation improvement studies conducted by the Corps typically use surveys of shippers, carriers, and others to estimate the impacts on proposed waterway traffic of alternative capital and operations and maintenance investment strategies. The data are used to estimate, among other things, alternative mode cost, shipper response to changes in waterway transportation cost and reliability. This information is used in planning studies for evaluated of projected benefits associated with various plans. The USACE Tulsa District (SWT) and the Red River Waterway Commission request approval of a survey instrument that collects information from business owners to analyze potential benefits associated with a proposed navigation channel along the Red River from Denison Dam to Index, AR. The survey will assist in analyzing how businesses in the region currently transport their commodities and how the option of a navigable waterway would affect these movements. Respondents will be businesses in the study area that could use the proposed navigation channel. Respondents will be identified based on analysis of data from the Surface Transportation Board and with the assistance of the Red River Valley Association, which has numerous contacts with regional business and industry groups. These businesses will be selected based on primary types and volume of commodities shipped and surveys will be provided to respondents with the opportunity to respond. SWT will conduct follow-up phone calls if necessary. Surveys will be conducted using telephone and in-person interviews, as well as via an online survey platform. The Red River Valley Association will assist in garnering industry support for completion of the survey. Information from the questionnaire items for the collection of planning data is needed to formulate and evaluate alternative water resources development plans in accordance with the Principles and Guidelines for Water Related Land Resources Implementation Studies, promulgated by the U.S. Water

Resources Council, 1983, which specifically identifies interviews with shippers, carriers and port officials as well as commodity consultants and experts to; identify commodity types, study area, commodity flow, estimate transportation cost and forecast waterway use. In the Corps of Engineers Engineering Regulation 1105-2-100, "Planning Guidance Notebook," benefits are defined as transportation cost reduction benefits, including shift of mode and shift of origin-destination and new movement benefits. Failure to gather this information would result in Corps studies relying on incomplete or dated information regarding the cost and use of the navigation systems and the impacts of proposed capital improvements.

Affected Public: Business or other for-profit.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Matthew Oreska.

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: June 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023-12645 Filed 6-12-23; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Department of the Army, Corps of Engineers****Withdrawal of Notice of Solicitation of Applications for Stakeholder Representative Members of the Committee on Levee Safety**

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent; withdrawal.

SUMMARY: The U.S. Army Corps of Engineers is notifying interested parties that it has withdrawn the notice to solicit applications to form the Committee on Levee Safety. The original notice was published in the **Federal Register** on January 21, 2022. Due to stakeholder feedback, the approach for the Committee on Levee Safety is being reconsidered.

DATES: The notice to solicit applications and form the Committee on Levee Safety published in the **Federal Register** on January 21, 2022 (87 FR 3286), is withdrawn as of June 13, 2023.

ADDRESSES: U.S. Army Corps of Engineers, Vicksburg District, ATTN: Levee Safety Center, RM 221, 4155 East Clay Street, Vicksburg, MS 39183.

FOR FURTHER INFORMATION CONTACT: Ms. Tammy Conforti, 202-365-6586, email hq-leveesafety@usace.army.mil or visit www.leveesafety.org.

SUPPLEMENTARY INFORMATION: The Committee on Levee Safety was being established under the authority of 33 U.S.C. 3302 to support the National Levee Safety Program.

Michael. L. Connor,
Assistant Secretary of the Army (Civil Works).

[FR Doc. 2023-12527 Filed 6-12-23; 8:45 am]

BILLING CODE 3720-58-P

DEPARTMENT OF DEFENSE**Department of the Navy**

[Docket ID: USN-2023-HQ-0005]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, 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 July 13, 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: Navy CHINFO Quarterly Brand Opinion Survey; OMB Control Number 0703-GLPS.

Type of Request: Existing collection in use without an OMB Control Number.

Number of Respondents: 4,000.

Responses per Respondent: 1.

Annual Responses: 4,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 1,000.

Needs and Uses: The Navy Chief of Information (CHINFO) is required to provide public affairs advice to the Secretary of the Navy and the Chief of Naval Operations. In order to provide informed advice, it is critical that CHINFO be able to assess the current communication environment, including current public opinion of the U.S. Navy and its operations, the popular media or social influencers of that environment, and recent trends that have changed that environment. This is done by conducting recurrent surveys to determine what Americans understand about their Navy and how this understanding changes over time. This survey research is directed in OPNAV Instruction 5726.8C, “Outreach: America’s Navy.” Responses to the survey questions allow CHINFO to assess current public perceptions of the U.S. Navy. Understanding these perceptions allows CHINFO to better advise U.S. Navy senior leaders on actions to take or avoid as well as better gauge how emerging issues will be perceived by the public. This information also helps CHINFO plan its communication strategies around the release of information.

Affected Public: Individuals or households.

Frequency: Quarterly.

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: June 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023-12647 Filed 6-12-23; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION**National Committee on Foreign Medical Education and Accreditation**

AGENCY: National Committee on Foreign Medical Education and Accreditation (NCFMEA), U.S. Department of Education.

ACTION: Request for nominations for appointment to serve on the National Committee on Foreign Medical Education and Accreditation (NCFMEA).

SUMMARY: Secretary of Education, Miguel A. Cardona, is seeking nomination(s) of medical experts for appointment of members to fill four NCFMEA member positions.

DATES: Nominations must be received no later than July 13, 2023.

ADDRESSES: Interested persons, stakeholders, or organizations (including individuals seeking reappointment by the Secretary of Education to serve on the NCFMEA) may submit nomination(s), including attachments, to the Secretary via the following method: Via electronic mail to: cmtmgmtoffice@ed.gov. Please note in the email subject line, “NCFMEA Nomination 2023”.

Privacy Act Statement

Purpose: The purpose of collecting nomination information is for the Secretary of Education to review nominations. The Secretary is required

by the Higher Education Act of 1965, as amended, to establish a panel of medical experts. The nomination information will be used to evaluate, select, and appoint individuals for membership on the NCFMEA and conduct necessary ethics vetting and ethics training for nominees who are appointed to serve on the NCFMEA. Finally, the nomination information will be used to communicate with nominees and, if appointed, communicate with appointees to conduct the business of the NCFMEA.

Authorities: The collection of the nomination information is authorized by the Educational Technical Assistance Act of 2002 (ETAA) (Pub. L. 107–279; 20 U.S.C. 9605); 5 U.S.C. 301; Public Law 95–521, Ethics in Government Act of 1978; Public Law 101–194, Ethics Reform Act of 1989, as amended; and Executive Orders 12674, 12565, and 11222, as amended.

Routine Use Disclosures: Although the Department does not otherwise anticipate non-consensually disclosing the information you provide outside of the Department, the Department may non-consensually disclose such information pursuant to the published routine uses described in the following System of Records Notices: “Secretary’s Communications Control System” (18–01–01), “Employee Conduct—Government Ethics” (18–09–03), and “Executive Branch Confidential Financial Disclosure Reports” (OGE/GOVT–2), the most recent versions of which are located on the Department’s “Privacy Act System of Record Notice Issuances (SORN)” web page at www2.ed.gov/notices/ed-pia.html.

Consequences of Failure to Provide Information: Submitting nominations with the requested information in response to this notice is voluntary. You are not required to provide the personally identifiable information requested; however, if you do not, then the Department may not be able to consider the nominee for membership on the NCFMEA.

FOR FURTHER INFORMATION CONTACT:

Karen Akins, Committee Management Officer, Office of the Secretary, Office of the White House Liaison, U.S. Department of Education. Telephone: 202–401–3677. Email: cmtengmtoffice@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:

NCFMEA’s Statutory Authority and Function: The NCFMEA is authorized per section 102 of the Higher Education

Act of 1965, as amended. The Secretary of Education is required by the Higher Education Act of 1965, as amended, to establish a panel of medical experts who shall: evaluate the standards of accreditation applied to foreign medical schools; and determine the comparability of those standards to standards for accreditation applied to United States medical schools. The NCFMEA shall be comprised of 11 voting members, each appointed for a term of service as determined by the Secretary of Education. Due consideration shall be given to the appointment of individuals who are broadly knowledgeable about foreign medical education and accreditation, respected in the educational community, and representative of various constituencies. Per the authorizing legislation for the Committee, one member of the Committee will be a medical student enrolled in an accredited medical school at the time of appointment by the Secretary of Education.

Nomination Process

Interested persons, stakeholders, or organizations (including individuals seeking reappointment) may nominate one or more qualified individuals for membership on the NCFMEA. Please be sure to use the information noted in the **ADDRESSES** section of this notice. If you would like to nominate an individual or yourself for appointment, please submit the following information:

(a) A cover letter addressed to the Honorable Miguel A. Cardona, Secretary of Education. Please provide in the cover letter, the reason(s) the nominated individual is interested in being selected as a nominee for appointment by the Secretary to serve on the NCFMEA.

Attachments:

(b) A copy of the nominee’s resume/ curriculum vitae;

(c) Contact information for the nominee (name, title, mailing address, phone number, and email address).

Appointment

After nomination and completion of an ethics review conducted by the U.S. Department of Education-Ethics Division, the term of service for the four individuals appointed by the Secretary will begin on October 1, 2023, and will end on September 30, 2029. When a NCFMEA member’s term of service is not completed, the Secretary of Education appoints an individual to serve for the remainder of the term of service of her/his predecessor. No member may serve for a period in excess of three consecutive terms. Members of

the Committee will serve as Special Government Employees (SGEs), as defined in 18 U.S.C. 202(a). As SGEs, members are selected for their individual expertise, integrity, impartiality, and experience.

Accessible Format: Upon request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape or compact disc, or another accessible format.

Electronic Access to This Document: The official version of this document is 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 other documents of this Department published in the **Federal Register**, in text or 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.

Miguel A. Cardona,

Secretary of Education.

[FR Doc. 2023–12639 Filed 6–12–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2544–052]

Hydro Technology, Inc; Notice of Intent To Prepare an Environmental Assessment

On December 27, 2021, Hydro Technology, Inc filed an application for a subsequent license to continue operating the existing 1,200-kilowatt Meyers Falls Hydroelectric Project No. 2544 (Meyers Falls Project or project). The project is located on the Colville River in Stevens County, Washington. The project does not occupy Federal land.

In accordance with the Commission’s regulations, on March 28, 2023, Commission staff issued a notice that

the project was ready for environmental analysis (REA notice). Based on the information in the record, including comments filed on the REA notice, staff does not anticipate that licensing the project would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare a draft and final Environmental Assessment (EA) on the application to license the Meyers Falls Project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues Draft EA	January 2024.
Comments on Draft EA	February 2024.
Commission issues Final EA	May 2024. ¹

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Any questions regarding this notice may be directed to Maryam Zavareh at (202) 502-8474 or maryam.zavareh@ferc.gov.

Dated: June 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-12620 Filed 6-12-23; 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: EC23-93-000.

Applicants: Portland General Electric Company, Clearwater Wind East, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Portland General Electric Company.

Filed Date: 5/31/23.

Accession Number: 20230531-5429.

Comment Date: 5 p.m. ET 7/31/23.

Docket Numbers: EC23-94-000.

Applicants: Robison Energy, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Robison Energy, LLC.

Filed Date: 6/6/23.

Accession Number: 20230606-5227.

Comment Date: 5 p.m. ET 6/27/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23-178-000.

Applicants: Trinity River Solar 1, LLC.

Description: Trinity River Solar 1, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/6/23.

Accession Number: 20230606-5205.

Comment Date: 5 p.m. ET 6/27/23.

Docket Numbers: EG23-179-000.

Applicants: Champion Solar 1, LLC.

Description: Champion Solar 1, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/6/23.

Accession Number: 20230606-5207.

Comment Date: 5 p.m. ET 6/27/23.

Docket Numbers: EG23-180-000.

Applicants: Crossvine Solar 1, LLC.

Description: Crossvine Solar 1, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/6/23.

Accession Number: 20230606-5210.

Comment Date: 5 p.m. ET 6/27/23.

Docket Numbers: EG23-181-000.

Applicants: Granite Hill Solar, LLC.

Description: Granite Hill Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/6/23.

Accession Number: 20230606-5213.

Comment Date: 5 p.m. ET 6/27/23.

Docket Numbers: EG23-182-000.

Applicants: Jones City Solar, LLC.

Description: Jones City Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/6/23.

Accession Number: 20230606-5214.

Comment Date: 5 p.m. ET 6/27/23.

Docket Numbers: EG23-183-000.

Applicants: Mayapple Solar, LLC.

Description: Mayapple Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/6/23.

Accession Number: 20230606-5215.

Comment Date: 5 p.m. ET 6/27/23.

Docket Numbers: EG23-184-000.

Applicants: Mountain Daisy Solar, LLC.

Description: Mountain Daisy Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/6/23.

Accession Number: 20230606-5216.

Comment Date: 5 p.m. ET 6/27/23.

Docket Numbers: EG23-185-000.

Applicants: Mowata Solar, LLC.

Description: Mowata Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/6/23.

Accession Number: 20230606-5217.

Comment Date: 5 p.m. ET 6/27/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23-625-002.

Applicants: System Energy Resources, Inc.

Description: Compliance filing: SERI UPSA AFUDC Compliance (ER23-625) to be effective 1/1/2023.

Filed Date: 6/7/23.

Accession Number: 20230607-5132.

Comment Date: 5 p.m. ET 6/28/23.

Docket Numbers: ER23-1279-000.

Applicants: DTE Energy Services, Inc.

Description: Report Filing: DTE Energy Services Supplemental Filing to be effective N/A.

Filed Date: 6/7/23.

Accession Number: 20230607-5127.

Comment Date: 5 p.m. ET 6/28/23.

Docket Numbers: ER23-2085-000.

Applicants: Versant Power.

Description: § 205(d) Rate Filing: Changes to Depreciation Rates in MPD OATT Formula Rate to be effective 6/1/2024.

Filed Date: 6/7/23.

Accession Number: 20230607-5021.

Comment Date: 5 p.m. ET 6/28/23.

Docket Numbers: ER23-2086-000;

TS23-6-000.

Applicants: White Rock Wind West, LLC, White Rock Wind West, LLC.

Description: Request for Temporary Tariff Waiver, et al. of White Rock Wind West, LLC.

Filed Date: 6/7/23.

Accession Number: 20230607-5027.

Comment Date: 5 p.m. ET 6/28/23.

¹ The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the Federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare an EA for the Meyers Falls Project. Therefore, in accordance with CEQ's regulations, the Final EA must be issued within 1 year of the issuance date of this notice.

Docket Numbers: ER23–2087–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Services Company.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2023–06–07 SA 2880 Att A Proj Spec No. 11–WVPA–Mineral Switching Station to be effective 8/7/2023.

Filed Date: 6/7/23.

Accession Number: 20230607–5034.

Comment Date: 5 p.m. ET 6/28/23.

Docket Numbers: ER23–2088–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–06–07 SA 4071 Duke Energy–Lowland Solar Park GIA (J1390) to be effective 8/7/2023.

Filed Date: 6/7/23.

Accession Number: 20230607–5037.

Comment Date: 5 p.m. ET 6/28/23.

Docket Numbers: ER23–2090–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Attachment AF Tariff Records Modification to be effective 8/7/2023.

Filed Date: 6/7/23.

Accession Number: 20230607–5062.

Comment Date: 5 p.m. ET 6/28/23.

Docket Numbers: ER23–2091–000.

Applicants: Goleta Energy Storage, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 6/8/2023.

Filed Date: 6/7/23.

Accession Number: 20230607–5106.

Comment Date: 5 p.m. ET 6/28/23.

Docket Numbers: ER23–2092–000.

Applicants: RE Gaskell West 2 LLC.

Description: Initial rate filing: RE Gaskell West 2 Amended LGIA Co-Tenancy Agreement to be effective 6/8/2023.

Filed Date: 6/7/23.

Accession Number: 20230607–5148.

Comment Date: 5 p.m. ET 6/28/23.

Docket Numbers: ER23–2093–000.

Applicants: RE Gaskell West LLC.

Description: Tariff Amendment: RE Gaskell West LLC Cancellation of CTA to be effective 6/8/2023.

Filed Date: 6/7/23.

Accession Number: 20230607–5158.

Comment Date: 5 p.m. ET 6/28/23.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF23–284–000.

Applicants: WED Coventry Five, LLC.
Description: Revised Refund Report of WED Coventry Five, LLC.

Filed Date: 6/7/23.

Accession Number: 20230607–5118.

Comment Date: 5 p.m. ET 6/28/23.

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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or OPP@ferc.gov.

Dated: June 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12628 Filed 6–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1660–000]

Cleco Power LLC; Notice Shortening Comment Period

1. On June 6, 2023, Cleco Power LLC (Cleco) filed an Unopposed Second Motion for Extension of Comment Period and Limited Abeyance (Motion).

Cleco's Motion requests an extension of time from June 8, 2023 to June 29, 2023, to comment on its Request for Limited Waiver and Expedited Consideration, requesting waiver of the Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff to allow it to extend its expected Commercial Operation Date under the MISO Generator Replacement Process, filed on April 18, 2023, in the above-captioned proceeding. Cleco requests that the Commission shorten the period for responses to this motion to one business day.

2. Upon consideration, notice is hereby given that the deadline for filing answers to Cleco's June 6, 2023 Motion is shortened to 12:00 p.m., EST, on Thursday June 8, 2023.

Dated: June 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12629 Filed 6–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: June 15, 2023, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: Agenda. *

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kimberly D. Bose, Secretary. Telephone (202) 502–8400.

For a recorded message listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's website at <https://elibrary.ferc.gov/elibrary/search> using the eLibrary link.

1102ND—MEETING

[Open Meeting; June 15, 2023, 10:00 a.m.]

Item No.	Docket No.	Company
Administrative		
A-1	AD23-1-000	Agency Administrative Matters.
A-2	AD23-2-000	Customer Matters, Reliability, Security and Market Operations.
A-3	AD23-8-000	FERC-NERC-Regional Entity Joint Inquiry into Winter Storm Elliot.
Electric		
E-1	RM22-10-000	Transmission System Planning Performance Requirements for Extreme Weather.
E-2	RM22-16-000; AD21-13-000	One-Time Informational Reports on Extreme Weather Vulnerability Assessments Climate Change, Extreme Weather, and Electric System Reliability.
E-3	RM22-13-000	Credit-Related Information Sharing in Organized Wholesale Electric Markets.
E-4	ER22-2467-000; ER22-2468-000	ISO New England Inc.
E-5	ER22-2357-000	ISO New England Inc.
E-6	ER22-2363-000	Midcontinent Independent System Operator, Inc.
E-7	ER22-2161-001	Golden Spread Electric Cooperative, Inc.
E-8	ER22-2341-000	Alabama Power Company, Georgia Power Company, and Mississippi Power Company.
E-9	ER22-2361-000	Puget Sound Energy, Inc.
E-10	ER22-2292-000	Idaho Power Company.
E-11	ER22-2335-000	Public Service Company of New Mexico.
E-12	EL23-23-001	<i>Coalition of Eastside Neighborhoods for Sensible Energy v. Puget Sound Energy, Inc.</i>
E-13	EL21-3-001	NextEra Energy Seabrook, LLC.
	EL21-6-001	<i>NECEC Transmission LLC and Avagrid, Inc. v. NextEra Energy Resources, LLC and NextEra Seabrook, LLC.</i>
	EL21-94-000 (not consolidated)	ISO New England Inc.
Gas		
G-1	CP23-5-000	Northern Indiana Public Service Company LLC.
Hydro		
H-1	P-2701-065	Erie Boulevard Hydropower, L.P.
H-2	P-13123-032	Eagle Crest Energy Company.
H-3	P-12715-014	Fairlawn Hydroelectric Company, LLC.
H-4	P-2318-053; P-12252-035;	Hudson River-Black River Regulating District
	P-2318-054; P-12252-036	Erie Boulevard Hydropower, L.P.
Certificates		
C-1	CP22-44-000	Equitrans, L.P.
C-2	CP20-528-000; CP20-528-001; CP20-529-000.	Stingray Pipeline Company, L.L.C.
C-3	CP16-22-007	NEXUS Gas Transmission, LLC.

A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502-8680 or email customer@ferc.gov if you have any questions.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely

at Commission headquarters but will not be telecast.

Issued: June 8, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-12738 Filed 6-9-23; 4:15 pm]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP23-809-000]

LSP University Park, LLC; University Park Energy, LLC; Notice of Petition for Declaratory Order

Take notice that on May 23, 2023, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, LSP University Park, LLC and University Park Energy, LLC hereby petition the Commission for a declaratory order related to ANR Pipeline Company's recent actions during Winter Storm Elliott.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioners.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original copy of the pleading by U.S. mail to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions by any other courier in docketed proceedings should be delivered to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 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://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 TTY, (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to

contact OPP at (202)502-6595 or OPP@ferc.gov.

Comment Date: 5:00 p.m. Eastern time on June 23, 2023.

Dated: June 7, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-12627 Filed 6-12-23; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2023-0307; FRL-11027-01-OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA or the Act), the Environmental Protection Agency (EPA or the Agency) is providing notice of a proposed consent decree in *Environmental Defense Fund, et al. v. EPA*, No. 3:22-cv-7731-WHO (N.D. Cal.). On December 7, 2022, Plaintiffs Environmental Defense Fund and Sierra Club filed a complaint in the United States District Court for the Northern District of California alleging that EPA has failed to perform its nondiscretionary duty to "review and, if appropriate, revise" New Source Performance Standard ("NSPS") emission limits for new stationary combustion turbines, at least every 8 years. The proposed consent decree would establish deadlines for EPA to sign a proposed and final rule for this action.

DATES: Written comments on the proposed consent decree must be received by *July 13, 2023*.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0307, online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Additional Information about Commenting on the Proposed Consent Decree" heading under the

SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Schramm, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 564-3377; email address Schramm.Daniel@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2023-0307) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search."

II. Additional Information About the Proposed Consent Decree

On December 7, 2022, Plaintiffs Environmental Defense Fund and Sierra Club (collectively "Plaintiffs") filed a complaint in the United States District Court for the Northern District of California alleging that EPA has failed to perform its nondiscretionary duty under CAA section 111(b)(1)(B) to "review and, if appropriate, revise" New Source Performance Standard ("NSPS") nitrogen oxides (NO_x) limits for new stationary combustion turbines, 40 CFR part 60, subpart KKKK ("NSPS Subpart KKKK"), at least every 8 years. The proposed consent decree, would require that EPA: (i) sign a determination under CAA section 111(b)(1)(B), 42 U.S.C. 7411(b)(1)(B) that "review" of NSPS Subpart KKKK "is not appropriate in light of readily available information on the efficacy of [the] standard"; or (ii) review NSPS Subpart KKKK under CAA

section 111(b)(1)(B), 42 U.S.C. 7411(b)(1)(B), and sign either: (A) a proposed rulemaking containing revisions to NSPS Subpart KKKK; or (B) a proposed determination not to revise NSPS Subpart KKKK by November 7, 2024. In addition, the proposed consent decree would require EPA to sign one or a combination of the following: (i) a final rule containing revisions to NSPS Subpart KKKK pursuant to 42 U.S.C. 7411(b)(1)(B); or (ii) a final determination pursuant to 42 U.S.C. 7411(b)(1)(B) not to revise Subpart KKKK by November 12, 2025.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0307, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. 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 additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION**

CONTACT section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be

received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Gautam Srinivasan,
Associate General Counsel.

[FR Doc. 2023-12626 Filed 6-12-23; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL ELECTION COMMISSION

[Notice 2023—10]

Filing Dates for the Rhode Island Special Election in the 1st Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Rhode Island has scheduled special elections on September 5, 2023, and November 7, 2023, to fill the U.S. House of Representatives seat in the 1st Congressional District vacated by the Representative David N. Cicilline. Committees required to file reports in connection with the Special Primary Election on September 5, 2023, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special

Primary and Special General Election on November 7, 2023, shall file a 12-day Pre-Primary, a 12-day Pre-General, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 1050 First Street NE, Washington, DC 20463; Telephone: (202) 694-1100; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Rhode Island Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on August 24, 2023; a 12-day Pre-General Report on October 26, 2023; and a 30-day Post-General Report on December 7, 2023. (See charts below for the closing date for each report.)

Note that these reports are in addition to the campaign committee's regular quarterly filings. (See charts below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees not filing monthly are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Rhode Island Special Primary or Special General Election by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Rhode Island Special Primary or Special General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information for the Rhode Island special elections may be found on the FEC website at <https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/>.

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registant PACs that aggregate in excess of \$21,800 during the special election reporting periods. (See charts below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b), 110.17(e)(2), (f).

CALENDAR OF REPORTING DATES FOR RHODE ISLAND SPECIAL ELECTIONS

Report	Close of books ¹	Reg./cert. & overnight mailing deadline	Filing deadline
Campaign Committees Involved in Only the Special Primary (09/05/2023) Must File			
Pre-Primary	08/16/2023	08/21/2023	08/24/2023
October Quarterly	09/30/2023	10/15/2023	² 10/15/2023
PACs and Party Committees Not Filing Monthly Involved in Only the Special Primary (09/05/2023) Must File			
Pre-Primary	08/16/2023	08/21/2023	08/24/2023
Year-End	12/31/2023	01/31/2024	01/31/2024
Campaign Committees Involved in Both the Special Primary (09/05/2023) and the Special General (11/07/2023) Must File			
Pre-Primary	08/16/2023	08/21/2023	08/24/2023
October Quarterly	09/30/2023	10/15/2023	² 10/15/2023
Pre-General	10/18/2023	10/23/2023	10/26/2023
Post-General	11/27/2023	12/07/2023	12/07/2023
Year-End	12/31/2023	01/31/2024	01/31/2024
Pacs and Party Committees Not Filing Monthly Involved in Both the Special Primary (09/05/2023) and the Special General (11/07/2023) Must File			
Pre-Primary	08/16/2023	08/21/2023	08/24/2023
Pre-General	10/18/2023	10/23/2023	10/26/2023
Post-General	11/27/2023	12/07/2023	12/07/2023
Year-End	12/31/2023	01/31/2024	01/31/2024
Campaign Committees Involved in Only the Special General (11/07/2023) Must File			
Pre-General	10/18/2023	10/23/2023	10/26/2023
Post-General	11/27/2023	12/07/2023	12/07/2023
Year-End	12/31/2023	01/31/2024	01/31/2024
Pacs and Party Committees Not Filing Monthly Involved in Only the Special General (11/07/2023) Must File			
Pre-General	10/18/2023	10/23/2023	10/26/2023
Post-General	11/27/2023	12/07/2023	12/07/2023
Year-End	12/31/2023	01/31/2024	01/31/2024

¹ The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

² Notice that this filing deadline falls on a weekend or federal holiday. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed on paper by methods other than registered, certified or overnight mail must be received before the Commission's close of business on the last business day before the deadline.

Dated: June 7, 2023.

On behalf of the Commission,

Dara S. Lindenbaum,
Chair, Federal Election Commission.

[FR Doc. 2023-12542 Filed 6-12-23; 8:45 am]

BILLING CODE 6715-01-P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS23-07]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of special meeting.

Description: In accordance with section 1104(b) of title XI of the Financial Institutions Reform, Recovery,

and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) met for a special meeting on this date.

Location: Virtual meeting via Webex.

Date: May 30, 2023.

Time: 5:30 p.m. ET.

Action and Discussion Item

Supplemental Budget Authority Request

The ASC convened a special meeting to vote on a budget amendment in the amount of \$910,500 to the ASC's fiscal year 2023 budget. The vote passed 6-0. FDIC was not present at the meeting.

James R. Park,

Executive Director.

[FR Doc. 2023-12533 Filed 6-12-23; 8:45 am]

BILLING CODE 6700-01-P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS23-08]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with section 1104(b) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: This will be a virtual meeting via Webex. Please visit the Agency's homepage (www.asc.gov) and access the provided registration link in

the News and Events section. You MUST register in advance to attend this meeting.

Date: June 14, 2023.

Time: 10:00 a.m. ET.

Status: Open.

Reports

Chair
Executive Director
Grants
Financial
Notation Votes

Action and Discussion Items

Approval of Minutes

March 15, 2023 Quarterly Meeting

Minutes

April 12, 2023 Special Meeting

Minutes

April 17, 2023 Special Meeting

Minutes

April 19, 2023 Special Meeting

Minutes

May 3, 2023 Special Meeting Minutes

May 30, 2023 Special Meeting

Minutes

Staffing Proposal

How To Attend and Observe an ASC Meeting

The meeting will be open to the public via live webcast only. Visit the Agency's homepage (www.asc.gov) and access the provided registration link in the News and Events section. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

James R. Park,

Executive Director.

[FR Doc. 2023-12534 Filed 6-12-23; 8:45 am]

BILLING CODE 6700-01-P

FEDERAL TRADE COMMISSION

FTC Collaboration Act of 2021 Study

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The FTC Collaboration Act of 2021 directs the Federal Trade Commission ("FTC" or "Commission") to "provide opportunity for public comment and advice" relevant to the production of a study concerning certain specified topics related to "efforts with State Attorneys General to prevent, publicize, and penalize frauds and scams being perpetrated on

individuals in the United States." The Commission is soliciting written comments from interested persons, entities, and organizations on one or more of the topics described in the **SUPPLEMENTARY INFORMATION** section below.

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

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Public Comments portion of the **SUPPLEMENTARY INFORMATION** section below. Write "FTC Collaboration Act of 2021 Study (Project No. P238400)" on your comment and file your comment online through <https://www.regulations.gov>.

If you prefer to file a comment in hard copy, please write "FTC Collaboration Act of 2021 Study (Project No. P238400)" on your comment and on the envelope and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex R), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Robert J. Quigley, Attorney, (310) 824-4334, and Miles D. Freeman, Attorney, (310) 824-4332, Western Region Los Angeles, Bureau of Consumer Protection, Federal Trade Commission, 10990 Wilshire Blvd., Ste. 400, Los Angeles, CA 90024.

SUPPLEMENTARY INFORMATION:

I. General Background Information

The mission of the Federal Trade Commission is to protect the public from deceptive or unfair business practices and from unfair methods of competition through law enforcement, advocacy, research, and education. Many State Attorneys General have similar missions within their States, in addition to other responsibilities. These complementary missions present numerous opportunities for the Commission and State Attorneys General to share information and collaborate on matters involving consumer protection.

On October 10, 2022, President Biden signed into law the FTC Collaboration Act of 2021.¹ The Act directs the Commission to "conduct a study on facilitating and refining existing efforts with State Attorneys General to prevent, publicize, and penalize frauds and scams being perpetrated on individuals in the United States."² The results of this study will inform a report, which

the Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.³ In addition to setting forth the results of the study, the report shall contain "[r]ecommended best practices to enhance collaboration efforts between the Commission and State Attorneys General with respect to preventing, publicizing, and penalizing fraud and scams"; "[q]uantifiable metrics by which enhanced collaboration can be measured"; and "[l]egislative recommendations, if any, to enhance collaboration efforts between the Commission and State Attorneys General to prevent, publicize, and penalize fraud and scams."⁴

The Commission welcomes the comments of State Attorneys General, other law enforcement and regulatory agencies, public interest organizations, industry representatives, consumers, economists, lawyers, academics, information technology professionals, and other interested parties.⁵

II. Topics for Public Comment

Commenters are invited to address one or more of the following topics generally, or with respect to a specific industry or area of consumer protection.⁶

(A) The roles and responsibilities of the Commission and State Attorneys General that best advance collaboration and consumer protection.

Of particular interest to the Commission:

(1) What do commenters view as the respective roles and responsibilities of the Commission and State Attorneys General as they relate to consumer protection and preventing, publicizing, and penalizing frauds and scams?

(2) How, in practice, do the Commission and State Attorneys General effectively collaborate and support each other's consumer protection missions, in the context of: (a) investigating potential frauds and scams; (b) bringing joint or parallel law

³ *Id.* at sec. 2(b).

⁴ *Id.* at sec. 2(b)(2) through 2(b)(4).

⁵ In addition to providing this notification and opportunity for public comment, the Commission has been directed to consult with the National Association of Attorneys General, public interest organizations dedicated to consumer protection, relevant private sector entities, and any other Federal or State agency that the Commission considers necessary. *Id.* at sec. 2(a)(3).

⁶ See *id.* at sec. 2(a)(2). The Commission shall also examine in the study the "policies, procedures, and mechanisms that facilitate cooperation and communications across the Commission," *id.* at sec. 2(a)(2)(B), which the Commission intends to do primarily through communications with relevant parts of the agency.

¹ Public Law 117-187, 136 Stat. 2201 (2022).

² *Id.* at sec. 2(a)(1).

enforcement actions to prevent and penalize frauds and scams; and (c) reaching out to specific consumer audiences or the community as a whole to raise awareness and prevent and publicize frauds and scams? How could existing practices be improved to enhance effective collaboration?

(3) How, if at all, has the United States Supreme Court's decision in *AMG Capital Management, LLC v. Federal Trade Commission*⁷ impacted effective collaboration between the Commission and State Attorneys General or otherwise impacted enforcement programs?

(4) How does the work of State and local consumer protection law enforcement agencies or regulators outside of State Attorneys General, such as State financial services regulators and City Attorneys, facilitate and refine efforts between the Commission and State Attorneys General to prevent, publicize, and penalize frauds and scams? Similarly, how does the work of federal agencies that enforce laws prohibiting unfair and deceptive acts and practices (UDAP), such as the Consumer Financial Protection Bureau and the Department of Transportation, facilitate and refine efforts between the Commission and State Attorneys General to prevent, publicize, and penalize frauds and scams? How do these organizations effectively collaborate with and support State Attorneys General and the Commission in fulfilling their respective consumer protection missions? How could existing practices be improved to enhance effective collaboration?

(5) To what extent has federal law that has preempted State jurisdiction affected the ability of State Attorneys General to protect consumers from unlawful business practices?

(6) To what extent do differences or similarities between the FTC Act and State UDAP laws affect the respective abilities of the Commission and State Attorneys General to collaborate on preventing, publicizing, and penalizing frauds and scams? To what extent does the private right of action available under many State UDAP laws affect collaboration between the Commission and State Attorneys General? What differences are there between the remedies that the Commission and State Attorneys General may obtain under the statutes that they respectively enforce, and to what extent do these differences affect the respective law enforcement

priorities of the Commission and State Attorneys General, and collaborative efforts between them?

(7) How can the Commission maximize use of, and contributions to, the Consumer Sentinel Network?

(B) How resources should be dedicated to best advance such collaboration and consumer protection.

Of particular interest to the Commission:

(1) How should resources be dedicated to best advance collaboration and consumer protection missions between the Commission and State Attorneys General in the context of: (a) investigating potential frauds and scams; (b) bringing joint or parallel law enforcement actions to prevent and penalize frauds and scams; and (c) reaching out to specific consumer audiences, industry stakeholders, or the community as a whole to raise awareness and prevent and publicize frauds and scams?

(2) Are there any strategic, logistical, or technical challenges arising from such collaboration between the Commission and State Attorneys General?

(3) Has the exchange of technical or subject-matter expertise between the Commission and Attorneys General when collaborating on consumer protection matters been effective? Why or why not? Would States benefit from technical assistance from Commission staff, such as technologists and economists, in consumer protection matters? Are there any legal or practical restrictions on the Commission providing, and State Attorneys General receiving, technical assistance of this nature?

(4) How can information-sharing practices and technologies between the Commission and State Attorneys General be improved?

(5) What new resources or authority may be needed to enhance the Commission's collaboration with State Attorneys General?

(C) The accountability mechanisms that should be implemented to promote collaboration and consumer protection.

Of particular interest to the Commission:

(1) With respect to the Commission, one of the Commission's Strategic Objectives is to "[c]ollaborate with domestic and international partners to enhance consumer protection."⁸ The Commission currently reports on certain performance indicators and metrics

bearing on this Objective that relate to collaboration with State Attorneys General.⁹ Are there any additional performance indicators or metrics that the Commission should consider reporting, or other mechanisms that should be implemented?

(2) Do any of the changes in practices, new resources, or authority recommended by commenters warrant new reporting requirements or other mechanisms to promote accountability and transparency? If so, what kinds of reporting requirements or mechanisms are recommended?

III. Public Comments

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before August 14, 2023, 2023. Write "FTC Collaboration Act of 2021 Study (Project No. P238400)" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write "FTC Collaboration Act of 2021 Study (Project No. P238400)" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex R), Washington, DC 20580. If possible, submit your paper comment to the Commission by overnight service.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely

⁷ See *AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341, 1352 (2021) (holding that equitable monetary relief, including consumer redress, is unavailable under Section 13(b) of the FTC Act).

⁸ *Federal Trade Commission Annual Performance Report for Fiscal Year 2021 and Annual Performance Plan for Fiscal Years 2022 to 2023*, at 8, available at https://www.ftc.gov/system/files/ftc_gov/pdf/21apr_22-23app.pdf.

⁹ *Id.* at 13 (Indicator 1.1.IND.3: "Number of contributors to the Consumer Sentinel Network (CSN)"); *id.* at 65 (Performance Metric 1.3.1: "Number of investigations or cases in which the FTC and other U.S. federal, state and local government agencies shared evidence or information that contributed to FTC law enforcement actions or enhanced consumer protection").

responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 14, 2023. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission.

April J. Tabor,
Secretary.

Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro M. Bedoya

The FTC Collaboration Act of 2021 directs the FTC to examine how we can improve collaboration with state attorneys general to prevent, publicize, and penalize fraudulent business practices. As we undertake this inquiry, we are issuing a Request for Information to gather public input.

State regulators and attorneys general play an essential role in protecting Americans from unlawful business practices. For decades they have initiated key lawsuits and filled in regulatory gaps, often paving the way for broader federal efforts. State governments have also trailblazed a variety of important consumer protection laws—from banning certain uses of facial recognition technologies to protecting Americans’ right to repair their products.

Unfortunately, federal agencies at times have sought to block consumer protection efforts by states. For example, in the leadup to the subprime mortgage crisis in 2007, some federal regulators sought to cripple states’ oversight function by wiping out their anti-predatory lending laws.¹ States still took action against non-bank subprime lenders, protecting the public at a time when federal actors were slow to mobilize.²

The FTC is committed to working closely with state partners to maximize our collective efficacy in combatting unlawful business practices and protecting Americans. States bring to cases not only an important set of remedial tools, but also more direct visibility into business practices that are harming their citizens.

Led by our regional offices, the FTC has a long history of collaborating with state enforcers. Over the last year alone, for example, we have partnered with states to bring:

- our largest-ever fair lending action against a multistate auto dealer;³
- our first action under the Military Lending Act;⁴
- a major action against Google for airing deceptive ads;⁵

¹ WookBai Kim, *Challenging the Roots of the Subprime Mortgage Crisis: The OCC’s Operating Subsidiaries Regulations and Waters v. Wachovia Bank*, 21 Loy. Consumer L. Rev. 278 (2009).

² Press Release, State of Conn. Dep’t of Banking, Ameritrust to Pay \$325 Million for Predatory Lending Practices that Bilked Consumers (Jan. 23, 2006), [https://portal.ct.gov/DOB/Newsroom/2006/Ameritrust-to-Pay-\\$325-Million-in-Nationwide-Settlement](https://portal.ct.gov/DOB/Newsroom/2006/Ameritrust-to-Pay-$325-Million-in-Nationwide-Settlement).

³ Press Release, Fed. Trade Comm’n, FTC Takes Action Against Multistate Auto Dealer Napleton for Sneaking Illegal Junk Fees onto Bills and Discriminating Against Black Consumers (Apr. 1, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-takes-action-against-multistate-auto-dealer-napleton-sneaking-illegal-junk-fees-bills>.

⁴ Press Release, Fed. Trade Comm’n, FTC and 18 States Sue to Stop Harris Jewelry from Cheating Military Families with Illegal Financing and Sales Tactics (July 20, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-18-states-sue-stop-harris-jewelry-cheating-military-families-illegal-financing-sales-tactics>.

⁵ Press Release, Fed. Trade Comm’n, FTC, States Sue Google and iHeartMedia for Deceptive Ads Promoting the Pixel 4 Smartphone (Nov. 28, 2022),

- an action against pesticide giants who used illegal pay-to-block schemes to inflate farmers’ costs;⁶ and
- our first-ever lawsuit with California’s Division of Financial Protection and Innovation to shut down a mortgage relief operation that preyed on struggling homeowners.⁷

In addition to filing these joint lawsuits, the FTC has supported states against efforts to undermine their consumer protection authorities. For example, we recently filed an amicus brief refuting Google’s argument that all state-law claims involving children’s online privacy are nullified because they are “inconsistent” with the Children’s Online Privacy Protection Act (COPPA), a federal privacy law.⁸ Last year we filed an amicus brief explaining that companies cannot use the FTC’s Franchise Rule to circumvent state-level labor protections.⁹ We have also supported efforts to strengthen state-level consumer protections. For example, FTC staff recently testified before a California State Senate committee in support of legislation that would expressly grant people a right to repair several types of consumer products.¹⁰

Many thanks to the FTC team who crafted this RFI.¹¹ I look forward to receiving and reviewing public comments on how we can deepen our

<https://www.ftc.gov/news-events/news/press-releases/2022/11/ftc-states-sue-google-iheartmedia-deceptive-ads-promoting-pixel-4-smartphone>.

⁶ Press Release, Fed. Trade Comm’n, FTC and State Partners Sue Pesticide Giants Syngenta and Corteva for Using Illegal Pay-to-Block Scheme to Inflate Prices for Farmers (Sept. 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-state-partners-sue-pesticide-giants-syngenta-corteva-using-illegal-pay-block-scheme-inflate>.

⁷ Press Release, Fed. Trade Comm’n, Federal Trade Commission, California Take Action To Shut Down Mortgage Relief Operation that Preyed on Struggling Homeowners (Sept. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/federal-trade-commission-california-take-action-shut-down-mortgage-relief-operation-preyed>.

⁸ Press Release, Fed. Trade Comm’n, FTC Files Brief in Jones v. Google in Support of Appeals Court Ruling that COPPA Does Not Preempt Plaintiffs’ State Privacy Claims (May 22, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-files-brief-jones-v-google-support-appeals-court-ruling-coppa-does-not-preempt-plaintiffs-state>.

⁹ Press Release, Fed. Trade Comm’n, FTC Files Amicus Brief in Patel, v. 7-Eleven, Inc. (Dec. 6, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/12/ftc-files-amicus-brief-patel-v-7-eleven-inc>.

¹⁰ Press Release, Fed. Trade Comm’n, FTC Testifies Before California State Senate on Right to Repair (Apr. 11, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-testifies-california-state-senate-right-repair>.

¹¹ In particular, I am grateful to Maricela Segura, Faye Barnouw, Robert Quigley, and Miles Freeman in the Western Region Los Angeles Office, as well as Dotan Weinman and Lois Greisman in the Division of Marketing Practices.

partnership with state enforcers to protect Americans from fraudulent business practices.

[FR Doc. 2023–12507 Filed 6–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–576 and CMS–576A]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the Agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

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

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following

address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: __, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–576/576A Organ Procurement Organization (OPO) Request for Designation as an OPO, Health Insurance Benefits Agreement, and Supporting Regulations

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Organ Procurement Organization (OPO) Request for Designation as an OPO, Health Insurance Benefits Agreement, and Supporting Regulations; *Use:* We are seeking reinstatement of a revised version of the CMS–576 form. We are

also seeking reinstatement for the CMS–576A form. The CMS–576 and CMS–576A forms have been updated to a fillable .pdf format. In addition, multiple changes were made to the CMS–576 and CMS–576A forms.

Organizations seeking designation from CMS as a qualified and approved Organ Procurement Organization (OPO), as per sections 371(a) and 1138 of the Social Security Act ("the Act") must complete and submit the CMS–576 form. After designation as an OPO, the organization must sign CMS–576A form in order to be reimbursed by Medicare for their services. The CMS–576A form requires the OPO "to maintain compliance with the requirements of titles XVIII and XIX of the Act, section 1138 of the Act, applicable regulations including the conditions set forth in part 486, subpart G, title 42 of the Code of Federal Regulations, those conditions of the Organ Procurement and Transplantation Network established under section 372 of the Public Health Service Act that have been approved by the Secretary, and to report promptly to CMS. *Form Number:* CMS–576 and 576A (OMB Control Number: 0938–0512); *Frequency:* Occasionally; *Affected Public:* Private sector (business or other for-profit and not-for-profit institutions); *Number of Respondents:* 16; *Total Annual Responses:* 16; *Total Annual Hours:* 32. (For policy questions regarding this collection contact Caroline Gallaher at 410–786–8705.)

Dated: June 7, 2023.

William N. Parham, III,
Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–12535 Filed 6–12–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1929]

Agency Information Collection Activities; Proposed Collection; Comment Request; Orphan Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are

required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with orphan drug requirements.

DATES: Either electronic or written comments on the collection of information must be submitted by August 14, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 14, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management

Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2023-N-1929 for "Orphan Drug Designation." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint

North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-3794, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Orphan Drugs—21 CFR Part 316

OMB Control Number 0910-0167—Extension

This information collection helps support implementation of sections 525, 526, 527, and 528 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360aa, 360bb, 360cc, and 360dd), as well as related guidance and Agency forms. Sections 525, 526, 527, and 528 of the FD&C Act pertain to the development of drugs for rare diseases or conditions, including biological products and antibiotics, otherwise known or referred to as "orphan drugs." Specifically, section 525 of the FD&C Act requires written recommendations on studies required for approval of a marketing application for a drug for a rare disease or condition. Section 526 of

the FD&C Act provides for designation of drugs as orphan drugs when certain conditions are met; section 527 provides conditions under which a sponsor of an approved orphan drug enjoys exclusive FDA marketing approval for that drug for the orphan indication for a period of 7 years; and, finally, section 528 is intended to encourage sponsors to make investigational orphan drugs available for treatment of persons in need on an open protocol basis before the drug has been approved for general marketing. Open protocols may permit patients who are not part of the formal clinical investigation to obtain treatment where adequate supplies exist and no alternative effective therapy is available.

Agency regulations in part 316, subpart A (21 CFR part 316, subpart A) (§§ 316.1 through 316.4) identify the scope of coverage, applicable definitions, and statutory provisions applicable to orphan drugs. The regulations in part 316, subpart B (§§ 316.10 through 316.14) set forth content and format elements for written recommendation requests and discuss FDA providing or refusing to provide the requested written recommendations. Similarly, regulations in part 316, subpart C (§§ 316.20 through 316.30) prescribe content and format elements for requesting orphan drug designation; identify submission schedules for requisite information including amendments, updates, and reports; and provide for publication and revocation of orphan drug designation. Regulations in part 316, subparts D and E (§§ 316.31 through 316.40) address orphan drug exclusive approval and open protocols for investigations, respectively. Finally, regulations in part 316, subpart F (§§ 316.50 through 316.52) provide for the issuance of guidance documents that apply to the orphan drug provisions of the FD&C Act and regulations in part 316. The list is maintained on the internet and guidance documents are issued in accordance with our good

guidance practices regulation in 21 CFR 10.115, which provide for public comment at any time.

The information collection includes the Agency guidance document entitled “Meetings with the Office of Orphan Products Development: Guidance for Industry, Researchers, Patient Groups, and Food and Drug Administration Staff” (July 2015), available for download at: <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/meetings-office-orphan-products-development>. It provides recommendations to industry, researchers, patient groups, and other stakeholders interested in requesting a meeting, including a teleconference, with the Office of Orphan Products Development (OOPD) on issues related to orphan drug designation requests, humanitarian use device designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related topics of concern. It is also intended to assist OOPD staff in addressing such meeting requests. The guidance describes procedures for requesting, preparing, scheduling, conducting, and documenting such meetings and discusses background information we recommend be included in such requests.

The information collection includes Form FDA 3671, Common EMEA/FDA Application for Orphan Medicinal Product, and Form FDA 4035, FDA Orphan Drug Designation Request Form, intended to benefit sponsors who desire to seek orphan designation of drugs intended for rare diseases or conditions from FDA. The form is a simplified method for sponsors to provide only the information required by § 316.20 for FDA decision making. Orphan drug designation requests and related submissions (amendments, annual

reports, etc.), humanitarian use device designation, and rare pediatric disease designation requests and submissions may be submitted electronically by email to the OOPD.

As communicated on our website at <https://www.fda.gov/industry/medical-products-rare-diseases-and-conditions/designating-orphan-product-drugs-and-biological-products>, respondents may submit orphan drug designation requests electronically through the Center for Drug Evaluation and Research (CDER) NextGen portal, or by emailing the required information to orphan@fda.hhs.gov; or by mailing the required information to the OOPD at the address found on our website. New users of the CDER NextGen Portal must register for an account. For designation requests submitted by email, the Agency recommends using automated read receipt to verify receipt of the email.

Sponsors and others who plan to email information to FDA that is private, sensitive, proprietary, or commercial confidential are strongly encouraged to send it from an FDA-secured email address so the transmission is encrypted. The Agency will assume the addresses of emails received or email addresses provided as a point of contact are secure when responding to those email addresses. Sponsors and others can establish a secure email address link to FDA by sending a request to SecureEmail@fda.hhs.gov. There may be a fee to a commercial enterprise for establishing a digital certificate before encrypted emails can be sent to FDA.

Respondents to the information collection are sponsors who develop investigational drugs and biologicals for commercial use and who seek orphan drug designation, and upon approval or licensure, orphan drug exclusivity.

We estimate the burden of this collection of information as follows based on data from 2022:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

21 CFR part or section; activity	Number of respondents	Number of records per recordkeeper	Total annual records	Average burden per record	Total hours
Part 316 associated records	780	1.25	975	135	131,625
§§ 316.20, 316.21, 316.26 (Form FDA 4035)	780	1.25	975	32	31,200
§ 316.22; Notifications of changes in agents	300	1	300	0.5	150
§ 316.24(a); Deficiency letters and granting orphan-drug designation	20	1	20	2	40
§ 316.27; Submissions to change ownership of orphan-drug designation	90	1	90	3	270
§ 316.30; Annual reports	2,039	1	2,039	3	6,117
§ 316.36; Assurance of the availability of sufficient quantities of the orphan drug; holder's consent for the approval of other marketing applications for the same drug	1	3	3	15	45

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹—Continued

21 CFR part or section; activity	Number of respondents	Number of records per recordkeeper	Total annual records	Average burden per record	Total hours
Guidance Recommendations: Meeting requests to OOPD and related submission packages	807	1.5	1,211	4	4,842
Total .....	.....	.....	5,613	.....	174,289

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Our burden estimate includes those activities related to: (1) requesting orphan drug designation; (2) responding to deficiencies letters with submissions of amendments; (3) keeping files current with contact information for agents and transfer of ownership, when applicable; (4) submitting annual reports while products have designation status; and (5) requesting and preparing for both informal and formal meetings. Because the PRA defines a recordkeeping requirement to include reporting those records to the Federal government, we account for these activities cumulatively in table 1 above. Upon a recent evaluation of the information collection, we adjusted our burden estimate to reflect an overall increase of 50,616 hours and an increase of 766 records annually. We attribute this adjustment to an increase in the number of submissions, amendments, and annual reports.

Dated: June 7, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–12547 Filed 6–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–1083]

Insanitary Conditions in the Preparation, Packing, and Holding of Tattoo Inks and the Risk of Microbial Contamination; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled “Insanitary Conditions in the Preparation, Packing, and Holding of Tattoo Inks and the Risk of Microbial Contamination.” The draft guidance, when finalized, will provide our current

view of insanitary conditions of tattoo ink preparation, packaging, or holding that may render the inks injurious to health because of microbial contamination.

DATES: Submit either electronic or written comments on the draft guidance by September 11, 2023 to ensure that FDA considers your comment on the draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management

Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2023–D–1083 for “Insanitary Conditions in the Preparation, Packing, and Holding of Tattoo Inks and the Risk of Microbial Contamination.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

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

electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Office of Colors and Cosmetics, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Elizabeth Anderson, Office of Colors and Cosmetics, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-1130; or Deirdre Jurand, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2378.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a draft guidance for industry entitled "Insanitary Conditions in the Preparation, Packing, and Holding of Tattoo Inks and the Risk of Microbial Contamination." We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

Tattooing has become increasingly popular in the United States: about 30 percent of all Americans, and 40 percent of those aged 18 to 34 years, have at least one tattoo (Refs. 1 and 2). State and local jurisdictions generally regulate the practice of intradermal tattooing, including permanent makeup. FDA regulates, among other things, the inks used in that practice. These inks are cosmetics as defined by section 201(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321(i)) because they are articles intended to be introduced into or otherwise applied to

the human body for beautifying, promoting attractiveness, or altering the appearance. Section 301(a) of the FD&C Act (21 U.S.C. 331(a)) prohibits the introduction, or delivery for introduction, into interstate commerce of cosmetics that are adulterated or misbranded. Cosmetics are adulterated within the meaning of section 601(c) of the FD&C Act (21 U.S.C. 361(c)) if they have been prepared, packed, or held under insanitary conditions whereby they may have become contaminated with filth, or whereby they may have been rendered injurious to health.

Microbes normally regarded as nonpathogenic when introduced in certain ways (e.g., topically) may become opportunistically pathogenic and virulent when introduced in other ways (e.g., in wounds, or via cosmetics introduced into or through the skin). Tattoo inks bypass the body's primary physical barrier against pathogens because they are inserted below the epidermis. We have received multiple reports of illness caused by microbially contaminated tattoo inks, and subsequent testing has found many sealed tattoo inks in the United States with microbial contamination. Among other things, between 2003 and 2019, tattoo ink firms conducted 15 ink recalls, 14 of which resulted from findings of microbial contamination. Eight of these recalls (Refs. 3 to 7) occurred after FDA conducted multiple surveys of tattoo inks available in the U.S. market and tested them for microbial contamination. Many of these inks were heavily contaminated with a variety of microorganisms, some of which can cause serious infections (Refs. 8 and 9).

This draft guidance, when finalized, will help tattoo ink manufacturers and distributors understand examples of what could adulterate a tattoo ink because it has been prepared, packed, or held under insanitary conditions that could render it injurious to health. We also recommend certain steps that manufacturers and distributors could take to help prevent the occurrence of these conditions, or to identify and remediate insanitary conditions that already exist during manufacturing and distribution.

II. Paperwork Reduction Act of 1995

FDA tentatively concludes that this draft guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/CosmeticGuidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

IV. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at <https://www.regulations.gov>. References without asterisks are not on public display at <https://www.regulations.gov> because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Giubudagian, M., I. Schreiver, A.V. Singh, et al., "Safety of Tattoos and Permanent Make-up: A Regulatory View." *Archives of Toxicology*, 94: 357-369 (2020).
2. Ipsos poll. "More Americans Have Tattoos Today than Seven Years Ago," August 29, 2019. Available at: <https://www.ipsos.com/en-us/news-polls/more-americans-have-tattoos-today> (accessed January 19, 2023).
- * 3. Food and Drug Administration, "Fusion Ink": Recall, posted November 30, 2017; available at <https://www.accessdata.fda.gov/scripts/ires/index.cfm?Product=158974> (accessed January 19, 2023).
- * 4. Food and Drug Administration, "Radiant Colors": Recall, posted December 21, 2017; available at <https://www.accessdata.fda.gov/scripts/ires/index.cfm?Product=160130> (accessed January 19, 2023).
- * 5. Food and Drug Administration, "Solid Ink": Recall, posted June 20, 2018; available at <https://www.accessdata.fda.gov/scripts/ires/index.cfm?Product=164628> (accessed January 19, 2023).
- * 6. Food and Drug Administration, "Intenze Ink": Recall, posted July 31, 2018; available at <https://www.accessdata.fda.gov/scripts/ires/index.cfm?Product=165649> (accessed January 19, 2023).
- * 7. Food and Drug Administration, "Eternal Ink": Recall, posted October 24, 2018; available at <https://www.accessdata.fda.gov/scripts/ires/index.cfm?Product=167698> (accessed

January 19, 2023).

- * 8. Nho, SW, S-J. Kim, O. Kweon, et al. "Microbiological Survey of Commercial Tattoo and Permanent Makeup Inks Available in the United States." *Journal of Applied Microbiology*, 124: 1294–1302 (2018).
- * 9. Food and Drug Administration, "FDA Advises Consumers, Tattoo Artists, and Retailers to Avoid Using or Selling Certain Tattoo Inks Contaminated with Microorganisms"; available at <https://www.fda.gov/cosmetics/cosmetics-recalls-alerts/fda-advises-consumers-tattoo-artists-and-retailers-avoid-using-or-selling-certain-tattoo-inks> (accessed January 19, 2023).

Dated: June 6, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–12380 Filed 6–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection

Activities: Proposed Collection: Public Comment Request: Information Collection Request Title: Evaluation of the Maternal and Child Health Bureau's Autism CARES Act Initiative, OMB No. 0915–0335–Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than July 13, 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 Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, contact Samantha Miller, the HRSA Information Collection Clearance Officer, at paperwork@hrsa.gov or call 301–443–3938.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Evaluation of the Maternal and Child Health Bureau's Autism CARES Act Initiative, OMB No. 0915–0335—Revision.

Abstract: HRSA's Maternal and Child Health Bureau (MCHB) provides funds to support several programs related to autism, as authorized by 42 U.S.C. 280i–1 (title III, section 399BB of the Public Health Service Act), as amended by the Autism Collaboration, Accountability, Research, Education, and Support (CARES) Act of 2019 (Pub. L. 116–60). The Autism CARES Act of 2019 emphasizes improving health outcomes and the well-being of individuals with Autism Spectrum Disorder and Developmental Disabilities across the lifespan.

MCHB's programs related to autism fall within three distinct but complementary areas—research, state systems, and training. The awards advance research on early screening and interventions for autism and developmental disabilities; improve the capacity of state public health agencies to build and maintain coordinated systems of services for individuals with autism and developmental disabilities; and train the health care workforce to screen, refer, and provide services for children and youth with autism and developmental disabilities. MCHB currently funds 12 programs and 95 awardees. HRSA seeks to implement annual comprehensive evaluations of MCHB's Autism CARES Initiative investments.

This ICR is a revision to an existing package; this study is the fifth evaluation of HRSA's autism activities and employs similar data collection methodologies as the prior studies. Grantee interviews remain the primary form of data collection. Minor proposed revisions to the data collection process include modifications to the interview questions and grantee survey based on current legislation and HRSA's Notices of Funding Opportunity for programs authorized under the Autism CARES Act. In addition, the previous data collection compiled survey responses from all grantees, whereas this revised

data collection will only seek survey responses from the Research and State Systems grantees. The previous data collection also included a quantitative data collection form for the Research grantees that the current data collection will not collect. These changes result in fewer burden hours estimated across all primary data collection activities.

A 60-day notice published in the **Federal Register** on March 21, 2023, vol. 88, No. 54; pp. 16995–16996. There were no public comments.

Need and Proposed Use of the Information: The purpose of this data collection is to implement a comprehensive evaluation that describes the activities, accomplishments, outcomes, barriers, and challenges of the grant programs in implementing the provisions of the Autism CARES Act. The data will be used to (1) conduct performance monitoring of the programs; (2) provide credible and rigorous evidence of program effectiveness; (3) meet program needs for accountability, decision-making, and quality assurance; and (4) strengthen the evidence base for best practices.

Likely Respondents: The survey respondents will include Principal Investigators/Project Directors from the research programs and networks (Autism Intervention Research Network on Physical Health, Autism Intervention Research Network on Behavioral Health, MCHB Secondary Data Analysis Research Program, Autism Field-Initiated Innovative Research Studies Program, Autism Single Investigator Innovation Program, the Developmental-Behavioral Pediatrics Research Network, and the Healthy Weight Research Network for Children with Autism and Other Developmental Disabilities); and state systems programs (State Innovations) and coordinating center (State Public Health Coordinating Center for Autism). The respondents for the interviews will include Principal Investigators/Project Directors from the research and state systems programs above, and the training programs (Leadership Education in Neurodevelopmental and Related Disabilities program, the Developmental Behavioral Pediatrics program, and the National Interdisciplinary Training Resource Center).

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying

information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to

a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the

information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Grant program/instrument	Number of respondents	Average number of responses per respondent	Total responses	Average burden per response (in hours)	Total hour burden
Research: Survey for individual grantees	12	1	12	0.5	6.0
Research: Survey for research networks	4	1	4	0.5	2.0
Research: Interview guide for individual grantees	12	1	12	1.5	18.0
Research: Interview guide for research networks	4	1	4	1.5	6.0
State Systems: Survey for state innovation grants	5	1	5	0.5	2.5
State Systems: Interview guide for the state innovation grants	5	1	5	1.5	7.5
State Systems: Interview guide for the state coordinating center	1	1	1	1.5	1.5
Training: Interview guide for the individual training grantees	72	1	72	1.5	108.0
Training: Interview Guide for the Resource Center	1	1	2	1.5	3.0
Total	116	.....	116	.....	154.5

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023-12608 Filed 6-12-23; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics; Meeting and Request for Information

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice of meeting. Notice of request for information (RFI).

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting and related Request for Information (RFI). The meeting is open to the public. The public is invited and welcome to obtain the link to attend this meeting by following the instructions posted on the Committee website: <https://ncvhs.hhs.gov/meetings-meeting/>.

DATES: The meeting will be held Thursday, August 3, 2023: 10:00 a.m.–5:30 p.m. EDT.

To submit comments in response to the RFI, please send by close of business June 30, 2023, to NCVHSmal@cdc.gov, and include on the subject line: Response from [your organization or name] regarding ICD-11 RFI.

ADDRESSES: Virtual open meeting.

FOR FURTHER INFORMATION CONTACT: Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, via electronic mail to vgh4@cdc.gov; or by telephone (301) 458-4715. Summaries of meetings and a roster of Committee members are available on the home page of the NCVHS website <https://ncvhs.hhs.gov/>, where further information including an agenda and instructions to access the broadcast of the meeting will be posted.

Should you require reasonable accommodation, please telephone the CDC Office of Equal Employment Opportunity at (770) 488-3210 as soon as possible.

SUPPLEMENTARY INFORMATION:

Name: National Committee on Vital and Health Statistics (NCVHS).

Meeting of the Workgroup on Timely and Strategic Action to Inform ICD-11 Policy.

The National Committee on Vital and Health Statistics was established by Congress to serve as the statutory [42 U.S.C. 242k(k)] advisory body to the Secretary of Health and Human Services

for health data, statistics, privacy and national health information policy and the Health Insurance Portability and Accountability Act (HIPAA).¹ In that capacity, the Committee provides advice and assistance to the Department and serves as a forum for interaction with interested private sector groups on health data issues. It fulfills important review and advisory functions regarding health data and administrative standards of national and international scope, conducts studies of prevailing current topics, and makes recommendations for improvement of the Nation's health statistics and information systems.

Purpose: The purpose of the International Classification of Diseases (ICD-11) expert roundtable meeting is to gather information and identify gaps in currently available information and research essential for analysis and policy decisions on the U.S. approach to support adoption and implementation of ICD-11 for morbidity. A supplemental goal is to enable coordination of public and private entities that may affect ICD-11 integration into U.S. health information environments by obtaining broad stakeholder input on studies or assessments HHS should undertake to inform the transition and on what timeline. Together with comments received in response to the RFI, the input received at the roundtable will inform the Workgroup's findings to be provided to the full Committee in

¹ Public Law 104-191, 110 Stat. 1936 (Aug 21, 1996), available at: <https://www.congress.gov/104/plaws/pub191/PLAW-104publ191.pdf>.

contemplation of recommendations to the Secretary of HHS. The agenda for the meeting will include time for public comment. Meeting times and topics are subject to change.

Background on ICD-11: The International Classification of Diseases (ICD) is the global standard for health data, clinical documentation, and statistical aggregation. It provides a common language for recording, reporting, and monitoring diseases, allowing the world to compare and share data in a consistent and standard way—among hospitals, regions, and countries, and over periods of time. It facilitates the collection and storage of data for analysis and evidence-based decision-making by enabling systematic recording, reporting, analysis, interpretation, and comparison of mortality and morbidity data.

ICD-11 allows countries to count and identify their most pressing health issues using an up-to-date and clinically relevant classification system.^{2,3,4} Governments assign ICD-11 codes to health conditions and accidents so data can be used to design effective public health policies and measure their impacts, or so that clinicians can use the data for recording encounters with patients in a standard way.

Request for Information: This Notice also serves as a Request for Information (RFI) addressing the potential use of ICD-11 for morbidity coding in the U.S. We welcome responses from industry stakeholders, interested individuals and organizations, or any members of the public in advance of the August 3, 2023, expert roundtable meeting. The following questions are a guide to information the Workgroup would find particularly helpful, but respondents are invited to comment on any aspect of ICD-11 that they wish.

1. What would be the benefits of implementing ICD-11 for morbidity in your setting or organization?

2. What information or research will your organization need in order to inform assessments of cost, benefits, implementation approaches, communications, and outreach regarding the transition to ICD-11?

Respondents may choose to refer to NCVHS' most recent recommendations to HHS for proposed research questions, many of which HHS has not yet addressed.⁵

3. What considerations affect the impact of ICD-11 on clinical documentation, payment processes including risk adjustment, public health, population health, or research?

4. What unique U.S. coding or terminology considerations are essential? For example, coding or terminology related to community health, social determinants of health, essential human needs, sexual orientation, gender identity and expression, obesity, external cause of injury, and information about mental, behavioral, or neurodevelopmental disorders including alignment with the Diagnostic And Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)?

5. How should HHS implement ICD-11 in the U.S. for morbidity coding?

6. The World Health Organization (WHO) recommends establishing a national center for ICD-11 implementation. What entity should be responsible for coordinating overall national implementation of ICD-11 for morbidity coding, and how should the implementation be managed?

7. ICD-11 uses an open process in which WHO encourages requests for updates and changes, thus eliminating the main drivers of national clinical modifications. What entity should be responsible for coordinating U.S. requests for updates or changes to ICD-11? How should this process be managed?

8. What resources, tools, or support will your organization need for implementation?

9. What kinds of technical resources, guidance, or tools should the U.S. Federal Government make available?

10. What workforce, workforce planning, or training will your organization need to support implementation?

11. What are your organization's requirements for ICD-11 mapping to other coding systems and terminologies, including value sets?

12. What other operational impacts of ICD-11 adoption and implementation should HHS consider?

The Committee will compile submitted responses in advance of the August 3, 2023, meeting and consider

them together with input from subject matter experts during the meeting. To submit comments in response to the RFI, please send by June 30, 2023, to NCVHSmal@cdc.gov and include on the subject line: Response from [your organization or name] regarding ICD-11 RFI.

Sharon Arnold,

Associate Deputy Assistant Secretary, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2023-12617 Filed 6-12-23; 8:45 am]

BILLING CODE 4150-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cell and Molecular Biology.

Date: July 11–12, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Megan L. Goodall, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-8334, megan.goodall@nih.gov.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Cardiovascular and Respiratory Diseases Study Section.

Date: July 11–12, 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: Mohammed F.A. Elfaramawi, Ph.D., MD, Scientific Review Officer, Center for Scientific Review,

² ICD-11 was adopted at the World Health Assembly in May 2019 and Member States committed to start using it for mortality and morbidity reporting in 2022. Since 2019, early adopter countries, translators, and scientific groups have recommended further refinements to produce the version that is posted online today. World Health Organization (WHO) Press Release. (February 11, 2022): <https://paho.org/en/news/11-2-2022-whos-new-international-classification-diseases-icd-11-comes-effect>.

³ WHO ICD-11 website: <https://icd.who.int/en>.

⁴ WHO ICD-11 Fact Sheet: https://icd.who.int/en/docs/icd11factsheet_en.pdf.

⁵ NCVHS Letter to HHS Secretary, "Updated Recommendations for Immediate Action on ICD-11 (September 10, 2021): <https://ncvhs.hhs.gov/wp-content/uploads/2021/09/NCVHS-ICD-11-recommendations-for-HHS-Sept-10-2021-Final-508.pdf>.

National Institutes of Health, 6701 Rockledge Drive, Room 1007F, Bethesda, MD 20892, (301) 480-1142, elfaramawimf@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Diagnostics and Treatment (CDT).

Date: July 11–12, 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 (Virtual Meeting).

Contact Person: Victor A. Panchenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 802B2, Bethesda, MD 20892, (301) 867-5309, victor.panchenko@nih.gov.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group, HIV Coinfections and HIV Associated Cancers Study Section.

Date: July 11–12, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Washington, DC, Downtown, 1199 Vermont Ave. NW, Washington, DC 20005.

Contact Person: Joshua D. Powell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892, (301) 594-5370, josh.powell@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Health Services Research.

Date: July 11–12, 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 (Virtual Meeting).

Contact Person: Mary Kate Baker, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-5117, katie.baker2@nih.gov.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group, HIV Comorbidities and Clinical Studies Study Section.

Date: July 11–12, 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: Michael L. Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7804, Bethesda, MD 20892, 301-451-0132, bloommm2@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Endocrine and Metabolic Systems.

Date: July 11, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Victoria Martinez Virador, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-4703, victoria.virador@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: HIV Clinical Care and Health Interventions.

Date: July 11, 2023.

Time: 10:00 a.m. to 4:00 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: Abu Saleh Mohammad Abdullah, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1003-L, Bethesda, MD 20892, (301) 827-4043, abuabdullah.abdullah@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: HIV/AIDS Biological Review Panel.

Date: July 11, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anthony Chan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 496-9392, anthony.chan@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: June 7, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-12605 Filed 6-12-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Transmission of Vector-Borne and Zoonotic Diseases Study Section (TVZ), June 12, 2023, 10:00 a.m. to June 13, 2023, 08:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on May 15, 2023, 88 FR 30998 Doc 2023-10263.

This notice is being amended to change the meeting start time from 9:30 a.m. to 8:00 p.m. to 10:00 a.m. to 8:00 p.m. The meeting is closed to the public.

Dated: June 7, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-12606 Filed 6-12-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, NCI Program Project (P01) Review SEP-E, July 19, 2023, 12:00 a.m. to 5:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W126, Rockville, Maryland 20850 which was published in the **Federal Register** on June 06, 2023, FR Doc 2023-11973, 88 FR 37079.

This notice is being amended to change the meeting start time from 12:00 a.m. to 12:00 p.m. The meeting end time, date, and location will stay the same. The meeting is closed to public.

Dated: June 7, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-12568 Filed 6-12-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7070-N-31]

30-Day Notice of Proposed Information Collection: Title: Capital Needs Assessment (CNAs); OMB Control No.: 2502-0505

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* July 13, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be submitted 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. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette Pollard at Colette.Pollard@hud.gov or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on November 18, 2022 at 87 FR 69289.

A. Overview of Information Collection

Title of Information Collection: Capital Needs Assessment (CNAs).
OMB Approval Number: 2502–0505.
OMB Expiration Date: 08/31/2023.
Type of Request: Revision of a currently approved collection.
Form Number: N/A.

Description of the need for the information and proposed use: A Capital Needs Assessment is a detailed review of a property’s expected capital expenditures over future years. It is

needed to appropriately value a project/property, to determine financial sustainability, and to plan for funding of an escrow account to be used for capital repair and replacement needs during the estimate period. It is used by external parties, and HUD for valuation, underwriting, and asset management purposes.

Respondents: Assessor firms, lender originator, lender servicer, Participating Administrative Entity (PAE), Public Housing Agency (PHA) for RAD Projects, and the Project Rental Assistance Contract (PRAC) owner.

Estimated Number of Respondents: 2,041.

Estimated Number of Responses: 2,041.

Frequency of Response: Once periodically.

Average Hours per Response: 36 hours.

Total Estimated Burden: 73,476 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in section A on the following:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of the agency’s estimate of the burden of the proposed collection of information;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.
- (5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–12530 Filed 6–12–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–33]

30-Day Notice of Proposed Information Collection: HUD-Owned Real Estate Sales Contract and Addendums; OMB Control No. 2502–0306

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD
ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* July 13, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be submitted 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. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette Pollard at Colette.Pollard@hud.gov or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 4, 2023 at 88 FR 19972.

A. Overview of Information Collection

Title of Information Collection: HUD-Owned Real Estate Sales Contract and Addendums.

OMB Approval Number: 2502–0306.

OMB Expiration Date: June 30, 2023.

Type of Request: Revision of currently approved collection.

Form Numbers: HUD–9544, HUD–9548, HUD–9548–B, HUD–9548–C, HUD–9548–G, HUD–9548–H, HUD–9545–Y, HUD–9545–Z, SAMS–1101, SAMS–1103, SAMS–1108, SAMS–1110, SAMS–1111, SAMS–1111–A, SAMS–1117, SAMS–1120, SAMS–1204.

Description of the need for the information and proposed use: This collection of information consists of the primary sales contract and addenda that support the HUD Real Estate Owned (REO) program. The Asset Disposition and Management System is the case management system and repository for most of the documents included in this collection and tracks the activity of an REO property from HUD's acquisition through its final sale. The forms in this collection are used as part of the collection effort. The collection also supports the requirements of the Lead Disclosure Rule relative to the disclosure of known lead-based paint and lead-based paint hazards in the sale of properties built before 1978. With each form, the Public Burden Statement is updated. A revision was made to Model Document, Exclusive Listing Period Purchase Addendum for Governmental Entities and HUD-Approved Nonprofits to form HUD–9548 Sales Contract, eliminating 12 months occupancy requirement. And revisions were made to Form HUD–9548, Sales Contract Property Disposition Program, to clarify language and where the paper/manual information collection process is replaced with electronic and digital signature processes.

Respondents: Individuals or households, Business or other for profit, Not-for-profit institutions, state, local or tribal government.

Estimated Number of Respondents: 83,606.

Estimated Number of Responses: 83,606.

Frequency of Response: 1.

Average Hours per Response: 0.23
Total Estimated Burden: 18,894.78.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or (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 other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Colette Pollard,

*Department Reports Management Officer,
Office of Policy Development and Research,
Chief Data Officer.*

[FR Doc. 2023–12611 Filed 6–12–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–32]

30-Day Notice of Proposed Information Collection: Application for Resident Opportunity and Self Sufficiency (ROSS) Grant Forms; OMB Control No.: 2577–0229

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD
ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice

is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* July 13, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be submitted 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. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email at Colette.Pollard@hud.gov or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 10, 2023 at 88 FR 21204.

A. Overview of Information Collection

Title of Information Collection: Application for the Resident Opportunities and Self Sufficiency (ROSS) Program.

OMB Approval Number: 2577–0229.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–52768, HUD–52752, HUD–52753, HUD–52755.

Description of the need for the information and proposed use: The forms are used to evaluate capacity and

eligibility of applicants to the ROSS program.

Estimated Number of Respondents: 350.

Estimated Number of Responses: 350.

Frequency of Response: 1.

Average Hours per Response: 3.37.

Total Estimated Burdens: 1,180.5.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

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

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

*Department Reports Management Officer,
Office of Policy Development and Research,
Chief Data Officer.*

[FR Doc. 2023-12613 Filed 6-12-23; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-HQ-MB-2023-N038; FF09M21200-234-FXMB1231099BPP0; OMB Control Number 1018-0022]

Agency Information Collection Activities; Submission to the Office of Management and Budget; Federal Fish and Wildlife Permit Applications and Reports—Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an existing information collection, with revisions.

DATES: Interested persons are invited to submit comments on or before July 13, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of publication of this notice at <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041-3803 (mail); or by email to Info_Coll@fws.gov. Please reference “1018-0022” in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT:

Madonna L. Baucum, Service Information Collection Clearance Officer, by email at Info_Coll@fws.gov, or by telephone at (703) 358-2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA; 44 U.S.C. 3501 *et seq.*) and its implementing regulations in the Code of Federal Regulations (CFR) at 5 CFR 1320, all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

On May 17, 2022, we published in the **Federal Register** (87 FR 29872) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on July 18, 2022. In a continued effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests,

the Service also published the **Federal Register** notice on [Regulations.gov](https://www.regulations.gov) (Docket No. FWS-HQ-MB-2022-0056) to provide the public with an additional method to submit comments (in addition to the typical *Info Coll@fws.gov* email and U.S. mail submission methods). We received the following comments in response to that notice:

Comment 1: Electronic comment received May 17, 2022, via [Regulations.gov](https://www.regulations.gov) (FWS-HQ-MB-2022-0056-0002) from Jean Publiee.

Agency Response to Comment 1: The commenter did not address the information collection requirements. No response is required.

Comment 2: Anonymous electronic comment received July 18, 2022, via [Regulations.gov](https://www.regulations.gov) (FWS-HQ-MB-2022-0056-0003).

Agency Response to Comment 2: The commenter did not address the information collection requirements. No response is required.

Comment 3: Electronic comment received July 18, 2022 via [Regulations.gov](https://www.regulations.gov) (FWS-HQ-MB-2022-0056-0004) from Laura Bies, on behalf of the Ornithological Council. The commenter explained that their organization works with many individuals that must secure Migratory Bird Treaty Act (MBTA) permits from the U.S. Fish and Wildlife Service. Given this, ensuring that the process of applying for, renewing, and amending MBTA permits is efficient and predictable is of the utmost concern to the commenter. They commented about slow response times on permit processing and helpdesk inquiries and encouraged the agency to continue working to reduce processing times, including hiring and training additional permit staff, as needed. In addition, they urged the agency to move forward quickly with digitization of section E in the ePermits system. They also expressed that while the official policy allows permittees to continue their work without their renewal in hand if they submit a renewal request 30 days or more before permit expiration, they will feel more confident if they have written evidence of this from the agency. Another concern of the commenter was regarding internal USFWS guidance that resulted in regional permit offices requiring that MBTA permits for import/export list each individual shipment in detail.

Agency Response to Comment 3: We shared these comments with the permits and ePermits teams who are already working to address many of the commenter's concerns. Between a recent influx of funding to improve the ePermits system and a push to hire more

staff, we expect that wait times for permits and responses will continue to decrease significantly over the next few years. Regarding the comment about the written evidence of the authorization to continue activities if submitting the request 30 days or more before your permit expires, we are sending that language out with the automatic renewal notice generated by the ePermits system (sent 60 days before your permit expiration date). If the permittee wishes to print this out and keep it with their permit, along with evidence of their renewal submission date (e.g., a screenshot of the permittee's dashboard showing they submitted their renewal application during the 30-day window), this should be sufficient to demonstrate the permittee's authority to continue their activities legally, should that come into question.

Comments regarding the import/export permits were referred to the Service's International Affairs (IA) program for a response in the Supporting Statement for their collection, since those comments pertain to an IA permit and process. A copy of the International Affairs program response to that concern is as follows:

"We are pleased to see that the commenter is in support of our ePermits system with the acknowledgement that we continue to build and improve the system. We continue to work to improve our responsiveness to our customers' questions. For Wild Bird Conservation Act (WBCA; 16 U.S.C. 4901–4916) permits, the Service's position is that this exemption is only allowed for those specimens that are accessioned into a museum or scientific institution's collection. Specimens that are subject to collection under a researcher's activities and are not accessioned into an institution's collection would not be eligible for this exemption and the researcher should apply for the necessary import permits.

Migratory birds require authorization to import and export under the MBTA; bald and golden eagles require authorization to import and export under the Bald and Golden Eagle Protection Act (BGEPA; 16 U.S.C. 668 et seq). Some of those migratory birds are listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and by association, the WBCA. Museums or scientific institutions that hold a Certificate for Scientific Exchange (COSE) may continue to use this certificate for activities that involve specimens that are accessioned into a museum or scientific institution's collection as they always have done.

This certificate authorizes activities under the WBCA as well. As conditioned on this certificate, activities under the MBTA and BGEPA are not authorized and require separate permits exclusive from the CITES/WBCA portion of their activities. Those permits are issued by the Regional Directors through the Migratory Bird Permit Offices. The COSE certificate only requires that the institution's assigned code and the foreign institution's assigned code must appear on the Customs Declaration label over the name of the sending official. Specimens that are subject to collection under a researcher's activities and are not accessioned into an institution's collection would not be able to use the COSE and the researcher should apply for the necessary import or export permits under CITES and the WBCA.

For CITES permit endorsements, Resolution Conf. 12.3 (Rev CoP19) provides that "export permits and re-export certificates be endorsed, with quantity, signature, and stamp, by an inspecting official, such as Customs, in the export endorsement block of the document. If the export document has not been endorsed at the time of export, the Management Authority of the importing country should liaise with the exporting country's Management Authority, considering any extenuating circumstances or documents, to determine the acceptability of the document". As this is a regulatory requirement and recommendation under a CITES resolution, the commenter has continued to experience barriers to obtaining the required endorsements; consequently, they submitted a petition requesting we eliminate this requirement from our regulations. These regulations are currently being updated at this time and may address the Ornithological Society's concerns. For application Form 3–200–47, based on our discussion above, this change would preclude researchers that obtain dead specimens that are not accessioned into a museum or scientific institution no means of applying for a permit. Therefore, we will not make this change."

On October 28, 2022, we published in the **Federal Register** (87 FR 65233) a notice to extend the comment period for this renewal. In that notice, we solicited comments for an additional 60 days, ending on December 27, 2022. In a continued effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on *Regulations.gov* (Docket No. FWS–HQ–MB–2022–0056)

to provide the public with an additional method to submit comments (in addition to the typical *Info Coll@fws.gov* email and U.S. mail submission methods). We received the following comments in response to that notice:

Comment 4: Electronic comment received October 29, 2022, via *Regulations.gov* (FWS–HQ–MB–2022–0056–0006) from Jean Publiee. The commenter did not address the information collection requirements.

Agency Response to Comment 4: The commenter did not address the information collection requirements. No response is required.

Comment 5: Anonymous electronic comment received December 26, 2022, via *Regulations.gov* (FWS–HQ–MB–2022–0056–0007). The commenter did not address the information collection requirements.

Agency Response to Comment 5: The commenter did not address the information collection requirements. No response is required.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

- (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal

identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The U.S. Fish and Wildlife Service's regional migratory bird permit offices use information that we collect on permit applications to determine the eligibility of applicants for permits requested in accordance with the criteria in various Federal wildlife conservation laws and international treaties, including:

(1) Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*).

(2) Lacey Act (18 U.S.C. 42; 16 U.S.C. 3371 *et seq.*).

(3) Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*).

Service regulations implementing these statutes and treaties are in chapter I, subchapter B of title 50 of the Code of Federal Regulations (CFR), parts 10, 13, 20, and 21. These regulations stipulate general and specific requirements that, when met, allow us to issue permits to authorize activities that are otherwise prohibited.

Generally, with the exception of forms 3–186 and 3–186a, all Service migratory bird permit application and report forms are in the 3–200 and 3–202 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits. The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity.

In accordance with Federal regulations at 50 CFR 13.12, we collect standard identifier information for all permit applications, such as:

- Applicant's full name and address (street address, city, county, State, and zip code; and mailing address if different from street address); home and work telephone numbers; and a fax number and email address (if available), and

- If the applicant resides or is located outside the United States, an address in the United States, and, if the applicant is applying for permission to conduct commercial activities, the name and address of his or her agent that is located in the United States; and

- If the applicant is an individual, the date of birth, occupation, and any

business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by the license or permit; or

- If the applicant is a business, corporation, public agency, or institution, the tax identification number; description of the business type, corporation, agency, or institution; and the name and title of the person responsible for the permit (such as president, principal officer, or director);

- Location where the requested permitted activity is to occur or be conducted;

- Certification containing the following language:

"I hereby certify that I have read and am familiar with the regulations contained in title 50, part 13, of the Code of Federal Regulations and the other applicable parts in subchapter B of chapter I of title 50, Code of Federal Regulations, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to the criminal penalties of 18 U.S.C. 1001."

- Requested effective date of permit (except where issuance date is fixed by the part under which the permit is issued);

- Current date;
- Signature of the applicant;
- Such other information as the Director determines relevant to the processing of the application, including but not limited to

- Information on the environmental effects of the activity consistent with 40 CFR 1506.5 and Departmental procedures at 516 DM 8; and

- Additional information required on applications for other types of permits may be found by referring to table 1 to paragraph (b) in 50 CFR 13.12.

Standardization of general information common to the application forms makes the filing of applications easier for the public, as well as expediting our review of applications. The information that we collect on applications and reports is the minimum necessary for us to determine whether the applicant meets/continues to meet issuance requirements for the particular activity.

Proposed Revisions to This Information Collection

With this submission, we are proposing the following revisions to the existing information collection:

Revisions to Section E in Permit Applications—In 2020, the Service implemented a new automated permit application called ePermits. The ePermits system allowed the Service to move towards a streamlined permitting process to reduce the information collection burden on the public, particularly small businesses. Public burden reduction is a priority for the Service; the Assistant Secretary for Fish and Wildlife and Parks; and senior leadership at the Department of the Interior. The intent of the ePermits system is to fully automate the permitting process to improve the customer experience and to reduce time burden on respondents. This system enhances the user experience by allowing users to enter data from any device that has internet access, including personal computers, tablets, and smartphones. It also links the permit applicant to the *Pay.gov* system for payment of the associated permit application fee.

Users of the ePermits system register for and use an account which will then automatically populate the forms they complete with the required identification information. The system eliminates the need for applicants to enter their information multiple times when they apply for separate permits, thereby reducing burden on the applicant. The account registration process will also provide private sector users an opportunity to self-identify as a small business, which will enable the Service to more accurately report burden associated with information collection requirements placed on them.

Section E of each permit application is customized based on the permit type.

At this time, the ePermits system is unable to fully automate section E of the permit application process. As a result of challenges with the development of forms within the ePermits system, we do not have a timeline for full automation of section E. However, we anticipate beginning the digitization of the report forms contained in this collection during 2023 and believe that the digitization of section E on application forms should be finalized by fiscal year 2024, as funding and resources become available.

We do not anticipate changes to the questions within section E of each application form. We also do not plan to make changes to the annual report forms contained in this collection. However, we do anticipate proposing the following changes to certain permit application forms contained in this collection, to include:

- Applicants will be able to select the type of business they manage (for-profit,

small business, farm, not-for-profit, or government entity).

- Requesting businesses using ePermits to provide email addresses for both the principal officer and the business.
- The signature block will be replaced by with electronic submission of the online application.
- The ePermits system will also:
 - Allow a user to apply on behalf of another individual or business, as a new way to identify if a consultant is applying for a client.
 - Ask for the name of the authorized individual to include on the permit and allow a business to nickname their applications.
 - Ask the applicant to identify the location where the majority of the authorized activities will occur.
 - Ask the applicant to identify the physical address of the preparer of application.
 - Ask the applicant to identify if they are tax exempt.
 - Prompt the applicant to provide their preferred contact method.
 - Prompt the applicant to describe changes associated with amendments or renewals (with changes) of their permit.
 - Prompt the applicant to opt in or out of releasing their information for all applications except migratory bird rehabilitation permits (businesses are automatically opted in).
 - Prompt the applicant to provide a parent permit number, which allows the ePermits System to direct the user to the correct version of their permit for renewals or amendments to a permit.

Falconry Program—We propose to modify FWS Form 3–186A to update the field “USFWS Band Number” to say “USFWS/State/Tribe/Territory band number” and to update the field “USFWS Permit Number” to say “USFWS/State/Tribe/Territory permit number.”

Migratory Bird Permit Program Service Manual Chapters—With this submission, we will seek OMB approval of the Migratory Bird Permit Program Handbook (Handbook) and associated Service Manual chapters at 724 FW 1 (“Overview of Migratory Bird Permitting”) and 724 FW 2 (“Migratory Bird Permits”), all of which contain information collections. The Handbook provides detailed procedures and other operational information to implement the Service Manual chapters in part 724 (“Migratory Bird Permits”) and more generally in part 720 (“Migratory Bird Management”).

New and existing information collections contained in the Handbook

requiring OMB approval include the following:

- Renewal procedures associated with the reauthorization of an existing permit (with or without changes to the conditions);
- Reinstatement procedures associated with the reauthorization of an existing permit (with or without changes to the conditions);
- Discontinuance procedures at the permittee’s request to discontinue a valid permit;
- Solicitation of appropriate documentation from entities authorized to act on behalf of State, local, Tribal, and Federal government agencies to verify their exempt status for fee exemption purposes;
- Fee waiver request process as outlined in 50 CFR 13.11(d)(3)(iii);
- Requests for reconsideration of a denial, partial denial, suspension, or revocation of a permit (requiring submission of a written request with the required information in 50 CFR 13.29(b) within 45 days after the permit decision); and
- Appeals of reconsideration request decisions (requiring the permittee submit a written request to the Regional Director (see 50 CFR 13.29(e)) within 45 days of the reconsideration decision).

Information Collection Requirements for Double Crested Cormorants—With this submission, we are proposing to merge the currently approved information collections from OMB Cont. No. 1018–0175, “Federal Fish and Wildlife Permit Applications and Reports—Special Double-Crested Cormorants; 50 CFR 21” (exp. 01/31/2024), into this collection. We will discontinue 1018–0175 upon OMB approval of this submission. The following information collection requirements are being transferred:

FWS Form 3–200–90, Special Double-Crested Cormorant Permit Application (and Amendments, as Appropriate)

This new permit would be available only to State or Tribal fish and wildlife agencies responsible for migratory bird management on lands and in waters managed by those agencies within their jurisdictions. Under this permit, the Service would authorize State and Tribal fish and wildlife agencies to conduct lethal take to reduce conflicts involving depredation at State- and Tribal-owned or operated aquaculture facilities (including hatcheries); impacts to health and human safety; impacts to threatened and endangered species (as listed under the Endangered Species Act and listed species identified in State- or Tribal-specific legislation as threatened or endangered) or those listed as Species

of Greatest Conservation Need in State Wildlife Action Plans; damage to State- or Tribal-owned property and assets; and depredations of wild and publicly stocked fish managed by State fish and wildlife agencies or federally recognized Tribes and accessible to the public or all Tribal members. Take activities to prevent depredation on aquatic Species of Greatest Conservation Need may occur only in natural or public waters.

Any State or Tribal fish and wildlife agency wishing to obtain a permit must submit FWS Form 3–200–90, “Federal Fish and Wildlife Permit Application Form—Special Double-Crested Cormorant,” to the appropriate Regional Director, containing the general information and certification required by 50 CFR 13.12(a). All Service permit applications are in the 3–200 series of forms, each tailored to a specific activity based on the regulatory requirements for specific types of permits. Sections A through D on the applications are the same for all permit types. These sections collect standard identifier information, such as the name and address, telephone and fax numbers, tax identification number, and email address for the applicant. Regulations at 50 CFR 13.12, “General information requirements on applications for permits,” require submission of this information. Standardizing general information common to the application forms makes filing of applications easier for the public as well as expedites our review of applications. We use this information to establish a permit record that is unique to the applicant. These annual permits, managed by calendar year, allow for alignment with permit processing cycles and the need to evaluate allocation at the beginning of a calendar year.

Section E of each application collects information specific to the activity the applicant wishes to conduct, as well as information concerning:

(1) A brief description of the State’s or Tribe’s double-crested cormorant conflicts, including physical locations and types of conflict;

(2) A detailed description of the nonlethal methods (*i.e.*, active hazing, passive hazing, habitat management, and changes in management practices) that the applicant has implemented or will implement, and how these activities will address one or more of the issues;

(3) The requested annual take of double-crested cormorants by life-stage, including eggs and nests;

(4) A description of long-term plans to eliminate or significantly reduce continued need to take double-crested cormorants;

(5) A statement indicating that the State or Tribe will inform and brief all employees and subpermittees of the requirements of these regulations and permit conditions;

(6) A list of all subpermittees who may conduct activities under the Special Double-Crested Cormorant Permit, including their names, addresses, and telephone numbers; and

(7) The name and telephone number of the individual in the applicant's agency who will oversee the double-crested cormorant management activities authorized under the permit.

FWS Form 3–202–56, Annual Report—Special Double-Crested Cormorant

In conjunction with issuance of the Special Double-Crested Cormorant permit, we will require the permittee submit Form 3–202–56, “Annual Report—Special Double-Crested Cormorant,” detailing activities, including the date, numbers, and locations and life stages of birds, eggs, and nests taken and nonlethal techniques utilized, by January 31 for activities conducted during the preceding calendar year. The Service will require an annual report by the State or Tribe prior to any permit renewal. We will collect the following information via Form 3–202–56 to ensure the applicant remains in compliance with the terms of their permit:

(1) Permittee contact information, permit number, permit calendar year, and permit report due date;

(2) Description of non-lethal techniques utilized;

(3) Month and location of activity;

(4) Purpose;

(5) Numbers of birds killed, nests oiled, and/or nests destroyed;

(6) Final Disposition (what they did with the birds, eggs, carcasses [e.g., buried; incinerated; euthanized and donated]); and

(7) Take of non-target birds species, including numbers of birds.

Recordkeeping—Any State or Tribal agency, when exercising the privileges of this permit, must keep records of all activities, including those of subpermittees, carried out under the authority of the special permit.

Designation of Subpermittees—States and Tribes may designate subpermittees who must operate under the conditions of the permit. Subpermittees must be at least 18 years of age and can be employees of State and Tribal fish and wildlife agencies, U.S. Department of Agriculture–Wildlife Services employees, and employees of other Federal, State, or Tribal agencies or private companies licensed to conduct wildlife damage abatement. The permittee must provide the Service with the name of any subpermittees who will be conducting activities under their permit.

Landowner Notifications—If a State or Tribe must enter private property to access State and Tribal lands or waters where take is approved in their permit, the State or Tribe must obtain

authorization from the private property owner.

The public may request copies of any form or document contained in this information collection by sending a request to the Service Information Collection Clearance Officer in **ADDRESSES**, above.

Title of Collection: Federal Fish and Wildlife Permit Applications and Reports—Migratory Birds; 50 CFR 10, 13, 20, and 21.

OMB Control Number: 1018–0022.

Form Numbers: FWS Forms 3–186, 3–186A, 3–200–6 through 3–200–9, 3–200–10a through 3–200–10c, 3–200–10e, 3–200–10f, 3–200–12 through 3–200–13, 3–200–67, 3–200–79, 3–200–81, 3–202–1 through 3–202–10, 3–202–12, 3–202–17, 3–200–90 (new), and 3–202–56 (new).

Type of Review: Revision of an existing information collection.

Respondents/Affected Public: Individuals; private sector (including zoological parks, museums, universities, scientists, taxidermists, businesses, and utilities); and State, local, and Tribal governments.

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

Frequency of Collection: On occasion for applications; annually or on occasion for reports.

Total Estimated Annual Nonhour Burden Cost: \$639,715 (primarily associated with application processing fees in OMB Control No. 1018–0022).

OMB control No.	Average number of annual respondents	Average number of annual responses	Average completion time per response	Estimated annual burden hours
1018–0022	30,578	56,058	Varies from 15 minutes to 260 hours	404,463
1018–0175	700	700	Varies from 1 minute to 17 hours	4,563
Totals	31,278	56,758	.....	409,026

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–12602 Filed 6–12–23; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS–R1–ES–2023–N052;
FXES11130100000–234–FF01E00000]**

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the

propagation and survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before July 13, 2023.

ADDRESSES: *Document availability and comment submission:* Submit a request for a copy of the application and related documents and submit any comments by one of the following methods. All requests and comments should specify

the applicant name and application number (e.g., Dana Ross, ES001705):

- *Email:* permitsR1ES@fws.gov.
- *U.S. Mail:* Marilet Zablan, Regional

Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT:

Karen Colson, Regional Recovery Permit Coordinator, Ecological Services, (503) 231–6283 (telephone); permitsR1ES@fws.gov (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications

for permits under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of "take" includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and

collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
ES64600C	Else Demeulenaere, University of Guam, Mangilao, GU.	<i>Eugenia bryanii</i> (no common name (NCN)), <i>Hedyotis megalantha</i> (paodedo), <i>Heritiera longipetiolata</i> (Ufa hãlom tâno'), <i>Phyllanthus saffordii</i> (NCN), <i>Psychotria malaspinae</i> (aplokating palao'an), <i>Serianthes nelsonii</i> (Hâyun Lâgu (Guam)—trongkon guâfi (Rota)), <i>Solanum guamense</i> (Biringenas halumtanu), <i>Tinospora homosepala</i> (NCN).	Hawaii	Remove/reduce to possession—survey; collect seeds, fruits, and vegetative material; whole plant rescue; propagate; outplant; monitor; genetic analysis; salvage.	Renew.
PER2813018 ..	G. Curt Fiedler, University of Guam, Mangilao, GU.	Mariana eight-spot butterfly (<i>Hypolimnas octocula marianensis</i>).	Hawaii	Harass by capture, handle, and release.	New.
PER2682557 ..	Fletcher Linton, Bureau of Land Management, Medford District, OR.	<i>Fritillaria gentneri</i> (Gentner's fritillary) and <i>Lomatium cookii</i> (Cook's lomatium).	Oregon	Remove/reduce to possession—collect bulblets and seed; nursery propagate; outplant; and salvage.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves

as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to the applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of

1973, as amended (16 U.S.C. 1531 *et seq.*).

Marilet A. Zablan,

Regional Program Manager for Restoration and Endangered Species Classification, Pacific Region.

[FR Doc. 2023–12598 Filed 6–12–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[BLM AK FRN MO4500171105; F-22186; F-22190; F-22262; F-22266; F-22267; F-22283; F-22291; F-22301]

Alaska Native Claims Selections

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface and subsurface estates in certain lands to NANA Regional Corporation, Inc., an Alaska Native regional corporation, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA), as amended.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513-7504.

FOR FURTHER INFORMATION CONTACT:

Cameron Means, Land Law Examiner, BLM Alaska State Office, 907-271-3152 or cmeans@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to NANA Regional Corporation, Inc. The decision approves conveyance of the surface and subsurface estates in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*), as amended.

The lands are located in the vicinity of Selawik National Wildlife Refuge, in the following townships, and aggregate 82.33 acres: T. 11 N., R. 8 W., Kateel River Meridian (KRM); T. 14 N., R. 11 W., KRM; T. 11 N., R. 12 W., KRM; T. 14 N., R. 12 W., KRM; T. 12 N., R. 14 W., KRM; T. 14 N., R. 16 W., KRM. The

decision addresses public access easements, if any, to be reserved to the United States pursuant to Sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands approved for conveyance. The BLM will also publish notice of the decision once a week for four consecutive weeks in the "The Arctic Sounder" newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until July 13, 2023 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Cameron G. Means,

Land Law Examiner, Adjudication Section.

[FR Doc. 2023-12584 Filed 6-12-23; 8:45 am]

BILLING CODE 4331-10-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[234.LLHQ220000.L10200000.PK0000; OMB Control Number 1004-0041]

Agency Information Collection Activities; Authorizing Grazing Use

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 14, 2023.

ADDRESSES: Send your written comments on this information collection request (ICR) by mail to Darrin King, Information Collection Clearance Officer, U.S. Department of the Interior, Bureau of Land Management, Attention PRA Office, 440 W 200 S #500, Salt Lake City, UT 84101;

or by email to BLM_HQ_PRA_Comments@blm.gov. Please reference Office of Management and Budget (OMB) Control Number 1004-0041 in the subject line of your comments. Please note that the electronic submission of comments is recommended.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jessica Phillips by email at jmphilips@blm.gov, or by telephone at 406-490-5654. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

- (1) Whether 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) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) How the agency might minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Taylor Grazing Act of 1934 (43 U.S.C. 315) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) authorize the Bureau of Land Management (BLM) to administer the livestock grazing program consistent with land use plans, multiple use objectives, sustained yield, environmental values, economic considerations, and other factors. Maintaining accurate records of permittee and lessee qualifications for a grazing permit or lease, base property used in conjunction with public lands, and the actual use made by livestock authorized to graze on the public lands, is an important and integral part of the program administration and grazing management. The regulations at 43 CFR 4110.1 and 43 CFR 4110.2 require application and notice to the BLM to transfer grazing preference and to apply for a permit or lease in conjunction with a preference transfer. The regulations at 43 CFR 4130.1 require existing permittees and lessees to apply to the BLM for changes in their authorized grazing. The regulations at 43 CFR 4130.3–2(d) allow the BLM to require permittees or lessees operating under a grazing permit or lease to submit an actual grazing use report within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease. The regulations at 43 CFR 4130.6–1 allow BLM to enter into “exchange-of-use” agreements with applicants who own or control lands that are unfenced and intermingled with public lands within an allotment. The BLM requires applicants, permittees, and lessees to submit the required information on Forms 4130–1, 4130–1a, 4130–1b, 4130–3a, 4130–4, and 4130–5. This OMB Control Number is currently scheduled to expire on April 30, 2024. The BLM plans to request that OMB renew this OMB Control Number for an additional three years.

Title of Collection: Authorizing Grazing Use (43 CFR subparts 4110 and 4130).

OMB Control Number: 1004–0041.

Form Numbers: 4130–1, 4130–1a, 4130–1b, 4130–3a, 4130–4, and 4130–5.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Any U.S. citizen or validly licensed business may apply for a BLM grazing permit or lease. The BLM administers nearly 18,000 permits and leases for grazing domestic livestock, at least part of the year on public lands.

Total Estimated Number of Annual Respondents: 18,010.

Total Estimated Number of Annual Responses: 33,810.

Estimated Completion Time per Response: Varies from 10 to 35 minutes, depending on activity.

Total Estimated Number of Annual Burden Hours: 7,855.

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

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: \$30,000.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin A. King,

Information Collection Clearance Officer.

[FR Doc. 2023–12622 Filed 6–12–23; 8:45 am]

BILLING CODE P

INTERIOR DEPARTMENT

National Indian Gaming Commission

Notice of Approved Class III Tribal Gaming Ordinance

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of the approval of Leech Lake Band of Ojibwe (Band) Class III gaming ordinance by the Chairman of the National Indian Gaming Commission.

DATES: This notice is applicable June 13, 2023.

FOR FURTHER INFORMATION CONTACT: Dena Wynn, Office of General Counsel at the National Indian Gaming Commission, 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, established the National Indian Gaming Commission (Commission). Section 2710 of IGRA authorizes the Chairman of the Commission to approve Class II and Class III tribal gaming ordinances. Section 2710(d)(2)(B) of IGRA, as implemented by NIGC regulations, 25 CFR 522.8, requires the Chairman to publish, in the **Federal Register**, approved Class III tribal gaming ordinances and the approvals thereof.

IGRA requires all tribal gaming ordinances to contain the same requirements concerning tribes' sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission.

Thus, the Commission believes that publishing a notice of approved Class III tribal gaming ordinances in the **Federal Register**, is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Every ordinance and approval thereof is posted on the Commission's website (www.nigc.gov) under General Counsel, Gaming Ordinances within five (5) business days of approval.

On May 22, 2023, the Chairman of the National Indian Gaming Commission approved Leech Lake Band of Ojibwe (Band) Class III Gaming Ordinance. A copy of the approval letter is posted with this notice and can be found with the approved ordinance on the NIGC's website (www.nigc.gov) under General Counsel, Gaming Ordinances. A copy of the approved Class III ordinance will also be made available upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, Attn: Dena Wynn, 1849 C Street NW, MS #1621, Washington, DC 20240 or at info@nigc.gov.

National Indian Gaming Commission.

Dated: June 8, 2023.

Rea Cisneros,

General Counsel (Acting).

May 22, 2023

VIA EMAIL

Faron Jackson, Sr., Chairman

Leech Lake Band of Ojibwe

190 Sailstar Drive NW

Cass Lake, MN 56633

Re: Leech Lake Band of Ojibwe Amended Gaming Ordinance

Dear Chairman Jackson:

This letter responds to your request of April 12, 2023 on behalf of the Leech Lake

Band of Ojibwe (Band) for the National Indian Gaming Commission (NIGC) to review and approve amendments to the Band's Gaming Ordinance. The amended Gaming Ordinance was approved by the Reservation Business Committee in Resolution 2023–75 on April 6, 2023.

We understand that these amendments reflect changes in tribal law and ensure consistency with federal and state law as may be required by regulation or the Band's gaming compacts with the State of Minnesota. The amended ordinance appears to be a comprehensive update, with substantive changes made regarding key definitions, authorization of individually owned gaming and charitable gaming, restructuring of the Leech Lake Gaming Regulatory Authority, vendor and facility licensing, and licensing for key employees and primary management officials.

Thank you for bringing this ordinance amendment to our attention. The amended ordinance is approved as it is consistent with the requirements of the Indian Gaming Regulatory Act and NIGC regulations. If you have any questions or require anything further, please contact Logan Takao Cooper at (503) 318–7524 or Logan.Takao-Cooper@nigc.gov.

Sincerely,
E. Sequoyah Simermeyer,
Chairman

[FR Doc. 2023–12648 Filed 6–12–23; 8:45 am]

BILLING CODE 7565–01–P

INTERIOR DEPARTMENT

National Indian Gaming Commission

Notice of Approved Class III Tribal Gaming Ordinance

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of the approval of Table Mountain Rancheria (Rancheria) Class III gaming ordinance by the Chairman of the National Indian Gaming Commission.

DATES: This notice is applicable June 13, 2023.

FOR FURTHER INFORMATION CONTACT:

Dena Wynn, Office of General Counsel at the National Indian Gaming Commission, 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, established the National Indian Gaming Commission (Commission). Section 2710 of IGRA authorizes the Chairman of the Commission to approve Class II and Class III tribal gaming ordinances. Section 2710(d)(2)(B) of IGRA, as implemented by NIGC regulations, 25

CFR 522.8, requires the Chairman to publish, in the **Federal Register**, approved Class III tribal gaming ordinances and the approvals thereof.

IGRA requires all tribal gaming ordinances to contain the same requirements concerning Tribes' sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission.

Thus, the Commission believes that publishing a notice of approved Class III tribal gaming ordinances in the **Federal Register**, is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Every ordinance and approval thereof is posted on the Commission's website (www.nigc.gov) under General Counsel, Gaming Ordinances within five (5) business days of approval.

On May 22, 2023, the Chairman of the National Indian Gaming Commission approved Table Mountain Rancheria (Rancheria) Class III Gaming Ordinance. A copy of the approval letter is posted with this notice and can be found with the approved ordinance on the NIGC's website (www.nigc.gov) under General Counsel, Gaming Ordinances. A copy of the approved Class III ordinance will also be made available upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, Attn: Dena Wynn, 1849 C Street NW, MS #1621, Washington, DC 20240 or at info@nigc.gov.

National Indian Gaming Commission.

Dated: June 8, 2023.

Rea Cisneros,
General Counsel (Acting).

May 22, 2023
VIA EMAIL
Beverly J. Hunter, Chairperson
Table Mountain Rancheria
23736 Sky Harbour Road
P.O. Box 410
Friant, CA 93626

Re: Table Mountain Rancheria's Amended Gaming Ordinance

Dear Chairperson Hunter:

This letter responds to your request of April 14, 2023 on behalf of the Table Mountain Rancheria (Rancheria) for the National Indian Gaming Commission (NIGC) to review and approve amendments to the Rancheria's Gaming Ordinance. The amended Gaming Ordinance was approved by the Tribal Council in Resolution 2023–11 on April 13, 2023.

We understand that these amendments reflect changes in tribal law and ensure

consistency with federal and state law as required by regulation or the Rancheria's gaming compact with the State of California. The amendments authorize mobile gaming, address licensing and backgrounding of key employees and primary management officials, removes provisions relating to individually owned gaming, as well as other matters.

Thank you for bringing this ordinance amendment to our attention. The amended Gaming Ordinance is approved as it is consistent with the requirements of the Indian Gaming Regulatory Act and NIGC regulations. If you have any questions or require anything further, please contact Logan Takao Cooper at (503) 318–7524 or Logan.Takao-Cooper@nigc.gov.

Sincerely,
E. Sequoyah Simermeyer, Chairman
cc: Michelle A. Carr, Counsel

[FR Doc. 2023–12644 Filed 6–12–23; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bytecode Alliance Foundation

Notice is hereby given that, on May 12, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Bytecode Alliance Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Nornor, Örebro, SWEDEN, has been added as a party to this venture.

Also, Google, Mountain View, CA; AsmNext, Incheon, REPUBLIC OF KOREA; and Tangram, Brookline, MA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Bytecode Alliance Foundation intends to file additional written notifications disclosing all changes in membership.

On April 20, 2022, Bytecode Alliance Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 2022 (87 FR 29379).

The last notification was filed with the Department on March 3, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 27, 2023 (88 FR 18182).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12563 Filed 6–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open RF Association, Inc.

Notice is hereby given that, on April 27, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Open RF Association, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Silvers Semiconductors, Chatham, NJ has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open RF Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On February 21, 2020, Open RF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 11, 2020 (85 FR 14247).

The last notification was filed with the Department on February 2, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 27, 2023 (88 FR 18183).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12541 Filed 6–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Integrated Photonics Institute for Manufacturing Innovation Operating Under the Name of the American Institute for Manufacturing Integrated Photonics

Notice is hereby given that, on May 10, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), the Integrated Photonics Institute for Manufacturing Innovation operating under the name of the American Institute for Manufacturing Integrated Photonics (“AIM Photonics”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Mosaic Microsystems LLC, Rochester, NY; Sandia National Laboratories, National Technology and Engineering Solutions of Sandia, LLC, Albuquerque, NM; UT- Battelle, LLC, Oak Ridge, TN; and Washington University in St. Louis, Saint Louis, MO, have been added as parties to this venture.

Also, HRL Laboratories LLC, Malibu, CA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AIM Photonics intends to file additional written notifications disclosing all changes in membership.

On June 16, 2016, AIM Photonics filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 25, 2016 (81 FR 48450).

The last notification was filed with the Department on February 14, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 27, 2023 (88 FR 18182).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12556 Filed 6–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Senior Healthcare Innovation Consortium

Notice is hereby given that, on April 11, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Senior Healthcare Innovation Consortium (“SHIC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bioncia Labs LLC, Richmond, VA; Chitozan Health LLC, Summerville, SC; FitChimp Inc dba FitRankings, Austin, TX; Kinis HealthTech, Richmond, VA; Krampade LLC, Grand Forks, ND; Meditek LLC, Brooklyn, NY; Rubitection, Pittsburgh, PA; Symtera Analytics & Wellness LLC, Grand Forks, ND; TheraTec, Inc., Horace, ND; and Z-Field Technologies LLC, Los Angeles, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SHIC intends to file additional written notifications disclosing all changes in membership.

On November 02, 2022, SHIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 23, 2022 (87 FR 71677).

The last notification was filed with the Department on January 17, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 27, 2023 (88 FR 18180).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12543 Filed 6–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Institute of Electrical and Electronics Engineers, Inc.

Notice is hereby given that, on April 11, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), The Institute of Electrical and Electronics Engineers, Inc. (“IEEE”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 46 new standards have been initiated and 14 existing standards are being revised. More detail regarding these changes can be found at: <https://standards.ieee.org/about/sasb/sba/feb2023/>, <https://standards.ieee.org/about/sasb/sba/mar2023/>.

The following pre-standards activities associated with IEEE Industry Connections Activities were launched or renewed: <https://standards.ieee.org/about/bog/cag/approvals/march2023/>.

The following conformity assessment programs associated with published IEEE standards and supporting their promulgation were initiated: <https://standards.ieee.org/products-programs/icap/programs/ieee-2621-standards/>, <https://standards.ieee.org/products-programs/icap/programs/icap-drone-program/>.

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on December 14, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 25, 2023 (88 FR 4847).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12536 Filed 6–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Naval Surface Technology & Innovation Consortium

Notice is hereby given that, on April 7, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Naval Surface Technology & Innovation Consortium (“NSTIC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Analex Corporation dba Arcfield, Huntsville, AL; Aqua IT, LLC, Arnold, MO; Compendium Federal Technology (CFT), Lexington Park, MD; Dark Horse Technologies, LLC, Marshall, VA; Defense Industry Advisors, LLC, Dayton, OH; Elinor Coatings, LLC, Fargo, ND; Forward Slope, Inc., San Diego, CA; GE Energy Power Conversion USA, Inc., Imperial, PA; Parry Labs, LLC, Alexandria, VA; Razorleaf Government Solutions, LLC, Stow, OH; SCHOTT North America New Ventures, Duryea, PA; and Storage Strategies, Inc., Manassas Park, VA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSTIC intends to file additional written notifications disclosing all changes in membership.

On October 8, 2019, NSTIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 12, 2019 (84 FR 61071).

The last notification was filed with the Department on January 5, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 25, 2023 (88 FR 4848).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12551 Filed 6–12–23; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Odva, Inc.

Notice is hereby given that, on June 2, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), ODVA, Inc. (“ODVA”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, PLIEM (Shanghai) Intelligent Technology Co., Ltd., Shanghai, PEOPLE’S REPUBLIC OF CHINA; Optris GmbH, Berlin, GERMANY; Zhejiang Hechuan Technology Co., Ltd., Quzhou, PEOPLE’S REPUBLIC OF CHINA; Indusol GmbH, Schmoelln, GERMANY; and FOCUS-ON VoF, Dordrecht, NETHERLANDS, have been added as parties to this venture.

Also, Vanderlande Industries B.V., Veghel, NETHERLANDS; nLIGHT, Inc., Vancouver, WA; and Perle Systems Limited, Markham, CANADA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on March 20, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 2023 (88 FR 30784).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12564 Filed 6–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Electrified Vehicle and Energy Storage Evaluation**

Notice is hereby given that, on April 13, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Electrified Vehicle and Energy Storage Evaluation (“EVESE”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Brunswick, Mettawa, IL, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and EVESE intends to file additional written notifications disclosing all changes in membership.

On September 24, 2020, EVESE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 15, 2020 (85 FR 65423).

The last notification was filed with the Department on December 21, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 13, 2022 (87 FR 2182).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12555 Filed 6–12–23; 8:45 am]

BILLING CODE P

simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Absolute Business Solutions, Inc., McLean, VA; Advanced Technology Systems Company of Virginia, McLean, VA; Ascension Engineering Group, Colorado Springs, CO; Colossal Contracting LLC, Annapolis, MD; Command Post Technologies, Inc., Suffolk, VA; Compendium Federal Technology LLC, Lexington Park, MD; Concurrent Technologies Corporation, Johnstown, PA; Descartes Labs Government, Inc., Santa Fe, NM; Edge Case Research, Inc., Pittsburgh, PA; Electromagnetic Systems, Inc., El Segundo, CA; Frequentis Defense, Inc., Columbia, MD; Guided Particle Systems, Inc., Pensacola, FL; Inmarsat Government, Inc., Reston, VA; Kairos Research, LLC, Dayton, OH; KGS, LLC, Arlington, VA; KITCO Fiber Optics, Inc., Norfolk, VA; Lepton Global Solutions LLC dba Kymeta Government & Defense, McLean, VA; NEXCEPTA, Inc., Gaithersburg, MD; nou Systems, Inc., Huntsville, AL; Optimal Satcom, Inc., Herndon, VA; Optimal Solutions and Technologies, Inc., McLean, VA; PatchPlus Consulting, Inc., Medford, NJ; Peerless Technologies Corporation, Fairborn, OH; Premier Federal, Inc., Atlanta, GA; Pyramid Systems, Inc., Fairfax, VA; Quantum Research International, Huntsville, AL; Rackner, Inc., Silver Spring, MD; RKF Engineering Solutions LLC, Bethesda, MD; Royce Geospatial Consultants, Inc., Arlington, VA; Strategic Technology Consulting, LLC, Toms River, NJ; Titan Technologies, LLC, Destin, FL; Torrey Pines Logic, Inc., San Diego, CA; Ultra Electronics Advanced Tactical Systems, Inc., Austin, TX; Ultralight Industries Corporation, Cincinnati, OH; ZCTS LLC, Arlington, VA have been added as parties to this venture.

Also, 3Sphere Innovation, Inc., Huntington Beach, CA; Acumen Solutions, Inc., McLean, VA; AM Pierce & Associates, Inc., California, MD; Arganteal Corp., Austin, TX; Big Metal Additive, Inc., Evergreen, CO; Blank Slate Solution, Mount Pleasant, SC; Cobalt Solutions, Inc. Austin, TX; Disruptiv Technologies LLC, Edgewater, MD; FutureGen Robotics LLC, Boca Raton, FL; GreenSight, Inc., Boston, MA; Integration Group of Americas, Inc., Spring, TX; ISPA Technology LLC, Lithia, FL; Kapsuun Group, Lorton, VA;

Leapfrog AI dba Defense Unicorns, Colorado Springs, CO; Mobilestack, Inc., Dublin, CA; Mythics, Inc., Virginia Beach, VA; Novetta, Inc., McLean, VA; NTT DATA Federal Services, Inc., Herndon, VA; Nutronics, Inc., Longmont, CO; Omega-KR LLC, Austin, TX; Otava, Inc., Moorestown, NJ; Panasonic Corp. of North America, Newark, NJ; Presence Product Group LLC, San Francisco, CA; Ravn, Inc., San Francisco, CA; Saab Barracuda LLC, Lillington, NC; Segue Technologies, Inc., Arlington, VA; Service Robotics & Technologies, Springfield, VA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IWRP intends to file additional written notifications disclosing all changes in membership.

On October 15, 2018, IWRP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 23, 2018 (83 FR 53499).

The last notification was filed with the Department on January 11, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 25, 2023 (88 FR 4851).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12540 Filed 6–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rust Foundation**

Notice is hereby given that, on May 12, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Rust Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Appflowy PTE. LTD., Singapore, SINGAPORE; and Traverse Research, Breda, NETHERLANDS, have been added as parties to this venture.

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Information Warfare Research Project Consortium**

Notice is hereby given that, on April 12, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Information Warfare Research Project Consortium (“IWRP”) has filed written notifications

Also, Tabnine, Tel Aviv-Yafo, ISRAEL, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Rust Foundation intends to file additional written notifications disclosing all changes in membership.

On April 14, 2022, Rust Foundation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 2022 (87 FR 29384).

The last notification was filed with the Department on March 1, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 27, 2023 (88 FR 18184).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023-12557 Filed 6-12-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Training & Readiness Accelerator II

Notice is hereby given that, on February 17, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Training & Readiness Accelerator II (“TReX II”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identity of the party to the venture are: 5–D Systems, Inc., Round Rock, TX; A10 Systems LLC dba AiRANACULUS, Chelmsford, MA; Aalyria Technologies, Inc., Livermore, CA; Acquisition Systems Associates, Inc., Great Falls, VA; Acutronic USA, Inc., Pittsburgh, PA; Aero Simulation, Inc., Tampa, FL; Alion Science and Technology, McLean, VA; Alluvionic, Inc., Melbourne, FL; Amentum Services, Inc., Germantown, MD; American Rheinmetall Systems

LLC, Biddeford, ME; American Systems, Chantilly, VA; Ampersand Solutions Group, Inc., Huntsville, AL; Applied Research Associates, Orlando, FL; Appliedinfo Partners, Inc., Somerset, NJ; Aptima, Inc., Woburn, MA; ARCTOS Technology Solutions LLC, Dayton, OH; A-Tech LLC dba BlueHalo Labs, Albuquerque, NM; Athena Technologies LLC, Orlando, FL; Atlantic Drone Pros LLC, Richmond, VA; Baker Street Scientific, Rome, GA; Basic Engineering Concepts and Technologies, Inc., Alexandria, VA; Battelle Memorial Institute, Columbus, OH; BCG Federal Corp, Bethesda, MD; Beast Code LLC, Ft. Walton Beach, FL; Bell Textron, Inc., Fort Worth, TX; Bigelow Family Holdings LLC DBA Mettle Ops, Sterling Heights, MI; Blue Force Technologies, Inc., Morrisville, NC; BlueHalo LLC, Huntsville, AL; Boarhog LLC, San Diego, CA; Booz Allen Hamilton, McLean, VA; Boston Engineering Corporation, Waltham, MA; Breault Research Organization, Tucson, AZ; CAE USA, Inc., Tampa, FL; CFD Research Corporation, Huntsville, AL; Charles River Analytics, Cambridge, MA; Chesapeake Technology International Corp, California, MD; CHI Systems, Inc., Plymouth Meeting, PA; Chip Design Systems, Hockessin, DE; Cignal LLC, Reedsville, PA; Clarity Cyber, Linthicum, MD; CMA Technologies, Inc., Orlando, FL; CodeMettle LLC, Atlanta, GA; Cole Engineering Services, Inc., Orlando, FL; Colorado Engineering, Inc., Colorado Springs, CO; Command Post Technologies, Inc., Suffolk, VA; Concurrent Real-Time, Inc., Pompano Beach, FL; Concurrent Technologies Corporation, Johnstown, PA; Conflict Kinetics Corporation, Sterling, VA; CORASCloud, Inc., McLean, VA; Corvid Technologies LLC, Moorestown, NC; Cubic Defense Applications, Inc. (CDAI), San Diego, CA; CUBRC, Inc., Buffalo, NY; Cyber DI LLC, Great Falls, VA; CyOne, Inc., Aberdeen, MD; Daniel H. Wagner Associates, Inc., Exton, PA; deciBel Research, Inc., Huntsville, AL; Decryptor, Inc., Richardson, TX; Defense Engineering Services LLC (DES), North Charleston, SC; Deloitte Consulting LLP, Arlington, VA; Dignitas Technologies LLC, Orlando, FL; DiSTI LLC, Orlando, FL; DKW Consulting LLC, Tallahassee, FL; DRS Laurel Technologies Partnership, Johnstown, PA; dSPACE, Inc., Wixom, MI; Dynamic Dimension Technologies LLC, Westminster, MD; Dynetics, Inc., Huntsville, AL; Elcomm LLC, Sugar Hill, GA; Engineering & Computer Simulations, Inc., Orlando, FL; Epirus, Inc., Hawthorne, CA; EWA Government

Systems, Inc., Herndon, VA; ExoAnalytic Solutions, Inc., Foothill Ranch, CA; EZ–A Consulting, LLC, Bel Air, MD; FAAC Incorporated, Ann Arbor, MI; FactualVR, Inc., Jersey City, NJ; Fairbanks Morse Defense, Beloit, WI; Fenix Group, Inc., Chantilly, VA; FN America LLC, Columbia, SC; Fox Valley Metal-Tech, Inc., Green Bay, WI; GaN Corporation, Huntsville, AL; GBL Systems Corporation, Camarillo, CA; GenXComm, Austin, TX; GIRD Systems, Inc., Cincinnati, OH; GS Engineering, Inc., Houghton, MI; GSD LLC, Williamsburg, VA; Herley Industries, Inc. dba Ultra Intelligence & Communications, Lancaster, PA; Hill Technical Solutions LLC, Huntsville, AL; Huckworthy LLC, Cape Charles, VA; IERUS Technologies, Inc., Huntsville, AL; Infinity Systems Engineering LLC, Colorado Springs, CO; Inhance Digital Corporation, Los Angeles, CA; Integrated Solutions for Systems, Inc., Huntsville, AL; Integration Innovation Inc (i3), Huntsville, AL; Inter-Coastal Electronics (ICE) LLC, Mesa, AZ; Intuitive Research and Technology Corp., Huntsville, AL; JF Taylor, Inc., Great Mills, MD; Joint Research and Development, Inc., Stafford, VA; Keysight Technologies, Inc., Colorado Springs, CO; Kinetics, Inc., Cook, WA; KnowledgeBridge International, Inc., Chantilly, VA; Kord Technologies LLC, Huntsville, AL; Kratos SRE, Inc., Birmingham, AL; Kratos Technology & Training Solutions, Inc., San Diego, CA; Kratos Unmanned Aerial Systems, Inc., Sacramento, CA; Kutta Technologies LLC, Phoenix, AZ; L2 Defense, Inc., Baltimore, MD; L3 Technologies, Inc., Communication Systems-East, Camden, NJ; Leidos, Inc., Reston, VA; Leonardo Electronics US, Inc., Arlington, VA; Liberty Business Associates LLC, Ladson, SC; Life Cycle Engineering, Inc., North Charleston, SC; Link to Learn LLC dba SimWerx, Denver, CO; LinQuest Corporation, Los Angeles, CA; Lockheed Martin Corporation, Orlando, FL; Logistic Services International, Inc., Jacksonville, FL; Luna Labs USA LLC, Charlottesville, VA; MAK Technologies, Cambridge, MA; Maplewell, Inc., Broomfield, CO; Maxar Intelligence, Inc., Westminster, CO; MaXentric Technologies LLC, Fort Lee, NJ; MEPSS LLC, Indian Harbor Beach, FL; Mercury Systems, Inc., Andover, MA; Mercury Systems, Inc., Cypress, CA; Metateq, Inc., Eugene, OR; Micro Systems, Inc., Fort Walton Beach, FL; Miltope Corporation, Hope Hull, AL; Mistral, Inc., Bethesda, MD; MORSECORP, Inc., Cambridge, MA; MRIGlobal, Kansas City, MO; MuniRem Environmental

LLC, Duluth, GA; Naval Systems, Inc., Lexington Park, MD; Netrist Solutions LLC, Charleston, SC; NEXCEPTA, Inc., Gaithersburg, MD; Next Earth LLC, Ashburn, VA; Next Tier Concepts, Inc., Vienna, VA; NI—National Instruments Corporation, Austin, TX; NIRSense LLC dba Bionica Labs LLC, Richmond, VA; Noble Supply & Logistics LLC, Boston, MA; Nostromo LLC, Kennebunk, ME; NTELX, INC., Asheville, NC; Onyx Aerospace LLC, Huntsville, AL; Optical Sciences Corporation, Huntsville, AL; Optimization Technologies, Inc. (dba OptTek Systems, Inc.), Boulder, CO; Outpost Technologies, Inc., Huntsville, AL; Peerless Technologies Corporation, Fairborn, OH; Peraton Labs, Inc., Basking Ridge, NJ; Persistent Systems LLC, New York, NY; PHELPS2020, INC., Knoxville, TN; Phoenix Logistics LLC dba Phoenix Defense LLC, Gilbert, AZ; Polaris Alpha Advanced Systems, Inc., Fredericksburg, VA; Polaris Sensor Technologies, Inc., Huntsville, AL; Pratt & Miller Engineering & Fabrication LLC, New Hudson, MI; QinetiQ, Inc., Lorton, VA; Quantum Research International, Inc., Huntsville, AL; QuesTek Innovations, Evanston, IL; Radiance Technologies, Inc., Huntsville, AL; RadioSoft, Inc. dba LS telcom US, a RadioSoft operation, Clarkesville, GA; Rafael Systems Global Sustainment, Bethesda, MD; Raytheon Technologies/Raytheon Company, Dulles, VA; RDA Technical Services, Fort Meyers, FL; R-DEX Systems, Inc., Woodstock, GA; Rebellion Defense, Inc., Washington, DC; Red River Technology LLC, Claremont, NH; Reed Integration, Inc., Suffolk, VA; Rincon Research Corporation, Tucson, AZ; Rocket Communications, San Francisco, CA; Rocket Technology, Richmond, VA; Rocky Mountain Scientific Laboratory, Littleton, CO; Sabre Systems, Inc., Warminster, PA; Santa Barbara Infrared, Inc., Santa Barbara, CA; SAVIT Corporation, Rockaway, NJ; Science Applications International Corporation, Reston, VA; Science, Engineering, Management Solutions, LLC (Sem-Sol), Albuquerque, NM; Scientific Research Corporation (SRC), Atlanta, GA; Sellers & Associates LLC, Chesapeake, VA; SGSD Partners, LLC dba Elevate Government Solutions, Washington, DC; Sierra Technical Services, Inc., Tehachapi, CA; Simulation Technologies, Inc., Huntsville, AL; SimX, Inc., San Jose, CA; SIPPA Solutions LLC, Bayside, NY; SitScape Inc., Vienna, VA; Southwest Research Institute, San Antonio, TX; SparkCognition Government Systems, Austin, TX; Spectral Labs Incorporated, San Diego, CA; SRI International, Menlo

Park, CA; Steiner eOptics, Inc., Miamisburg, OH; STELEX LLC, Pikesville, MD; Stottler Henke Associates, Inc., San Mateo, CA; SURVICE Engineering Company, Belcamp, MD; Syncopated Engineering, Inc., Ellicott City, MD; Syntex LLC, Purcellville, VA; Synthetik Applied Technologies, Pierre, SD; Technica Corporation, Sterling, VA; Technology Service Corporation, Arlington, VA; Technology Solution Providers, Inc., Reston, VA; Technology Unlimited Group, San Diego, CA; Textron Systems Corporation dba Textron Systems, Hunt Valley, MD; The EXPANSIA Group LLC, Nashua, NH; The Henry M. Jackson Foundation for the Advancement of Military Medicine, Bethesda, MD; The Informatics Applications Group, Inc., Reston, VA; Tiami LLC, Elk Grove, CA; TLC Solutions, Inc., Saint Augustine, FL; Torch Technologies, Inc., Huntsville, AL; Toyon Research Corporation, Goleta, CA; TrustedQA, Inc., Reston, VA; Universal Technical Resource Services, Inc., Cherry Hill, NJ; University of Arizona Applied Research Corporation, Tucson, AZ; Uptake Technologies, Inc., Chicago, IL; VAE, Inc., Springfield, VA; Vectrus Systems Corporation, Colorado Springs, CO; Vertex Aerospace LLC, Madison, MS; VISTology, Inc., Framingham, MA; W R Systems, Ltd., Fairfax, VA; XL Scientific LLC dba Verus Research, Albuquerque, NM; XR 2 LEAD LLC, Dumfries, VA; and Yulista Integrated Solutions LLC, Huntsville, AL.

The nature and objectives of the venture are to provide leading-edge modeling, simulation, and training solutions to increase warfighter readiness and enhance national security through the use of Other Transaction Authority.

The general area of TRex II's planned activities are to respond to requirements from the Army's Program Executive Officer for Simulation, Training, and Instrumentation (PEO STRI) to increase warfighter readiness via modeling, simulation, education, training, experimental validation, and military readiness focused projects. TRex II's planned activity is to conduct research, development, and prototyping of projects and projects in the following technology areas: Modeling; Simulation; Education and Training; Experimental Validation; Readiness; and Information Operations. The consortium was formed effective November 2, 2022.

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023-12539 Filed 6-12-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OpenJS Foundation

Notice is hereby given that, on April 10, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), OpenJS Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Living Spec Inc., Gilbert, AZ; and Meta Platforms, Inc., Menlo Park, CA, have been added as parties to this venture.

Also, Coil Technologies Inc., San Francisco, CA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OpenJS Foundation intends to file additional written notifications disclosing all changes in membership.

On August 17, 2015, OpenJS Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 28, 2015 (80 FR 58297).

The last notification was filed with the Department on January 12, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 2023 (88 FR 16460).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023-12529 Filed 6-12-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on In-Situ Measurement of H₂s To Validate Thermodynamic Calculations ("Seed Project")

Notice is hereby given that, on April 3, 2023 pursuant to Section 6(a) of the National Cooperative Research and

Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Cooperative Research Group on In-situ Measurement of H₂S To Validate Thermodynamic Calculations ("Seed Project") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ExxonMobil Technology and Engineering Company (EMTEC), Spring, TX, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Seed Project intends to file additional written notifications disclosing all changes in membership.

On December 9, 2022, Seed Project filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 24, 2023, (88 FR 4210).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023-12531 Filed 6-12-23; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum (TM Forum)

Notice is hereby given that, on April 13, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), TM Forum, a New Jersey Non-Profit Corporation ("the Forum") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Nart Bilisim Hizmetleri Ltd. Sti., Ankara, TURKEY; WolfTech, Eindhoven, NETHERLANDS; avataa

GmbH, Berlin, GERMANY; Upp Corporation Limited, London, UNITED KINGDOM; VANTIQ, Walnut Creek, CA; Splunk, San Francisco, CA; RoboCorp, San Francisco, CA; Blautech, CORAL GABLES, FL; Oneweb, London, UNITED KINGDOM; Tupl, Bellevue, WA; WindUp Software, Tashkent, UZBEKISTAN; Iqual Networks Inc, Miami, FL; Iterato, Vilnius, LITHUANIA; Everywhere Wireless LLC DBA Zentro, Chicago, IL; Barnet Communication Ltd., Tel-Aviv, ISRAEL; University of Strathclyde, Glasgow, UNITED KINGDOM; Bahçesehir University, Faculty of Engineering and Natural Sciences, Besiktas, TURKEY; Tsinghua University, Beijing, PEOPLE'S REPUBLIC OF CHINA; GlobalLogic, San Jose, CA; Evergent Technologies, Inc., Sunnyvale, CA; Lumen, Monroe, LA; GTS TechLabs, Singapore, SINGAPORE; Skyvera, Austin, TX; Espresso Telecom Group, Dakar, SENEGAL; Sudatel Telecom Group co. Ltd., Khartoum, SUDAN; and Xidian University, Xi'an, PEOPLE'S REPUBLIC OF CHINA, have been added as members of the Forum.

Also, Bartr Technologies Limited, Birmingham, UNITED KINGDOM; Beeson Technologies, Fort Lauderdale, FL; Birmingham City University, Birmingham, UNITED KINGDOM; Brytlyt Limited, Maidstone, UNITED KINGDOM; Carnegie Mellon University, Moffett Field, CA; Cross Network Intelligence s.r.o, Prague 1, CZECH REPUBLIC; CanGo Networks Private Ltd, Chennai, INDIA; Datapply.ai, Nicosia, CYPRUS; DFG CONSULTING, d.o.o., Ljubljana, SLOVENIA; GG Media Resources Ltd, Corsham, UNITED KINGDOM; MyRepublic Group Limited, Singapore, SINGAPORE; Net AI Tech Ltd, Edinburgh, UNITED KINGDOM; Netcomp Peru, Lima, PERU; Networking Technology Laboratory (BUTE), Budapest, HUNGARY; PCCW Solutions Limited, Kowloon, HONG KONG—CHINA; Salamanca Solutions International, Cochabamba, BOLIVIA; Sarathi Softech Pvt. Ltd., Pune, INDIA; Software AG (UK) Ltd, Derby, UNITED KINGDOM; Sterlite Technologies Limited, Ahmedabad, INDIA; STS Arabia, Amman, JORDAN; Swim, Campbell, CA; TrexTel, Duluth, GA; University of Szeged, Szeged, HUNGARY; VizuaMatix Private Limited, Rajagiriya, SRI LANKA; and Wavemaker, Mountain View, CA, have withdrawn as members of the Forum.

Additionally, Liberty Networks Germany GmbH has changed its name to HelloFiber GmbH, Koln, GERMANY; Covalense Digital Solutions Pvt Ltd, to COVALENSE DIGITAL SOLUTIONS LLC, Karnataka, INDIA; Google, to Google Cloud, Mountain View, CA;

Network Access Associates Limited, to Oneweb, London, UNITED KINGDOM; and NETCOMPANY-INTRASOFT S.A., to NETCOMPANY-INTRASOFT S.A., Luxembourg, LUXEMBOURG.

No other changes have been made to either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on January 18, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 2023 (88 FR 16459).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023-12548 Filed 6-12-23; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Source Imaging Consortium, Inc.

Notice is hereby given that, on May 23, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Source Imaging Consortium, Inc. ("Open Source Imaging Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, National Jewish Health, Denver, CO; and University of Florida, Gainesville, FL, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open Source Imaging Consortium intends to file additional written notifications disclosing all changes in membership.

On March 20, 2019, Open Source Imaging Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 12, 2019 (84 FR 14973).

The last notification was filed with the Department on November 22, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 24, 2023 (88 FR 4211).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12565 Filed 6–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on April 14, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the “Act”), Pistoia Alliance, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Amgen, Thousand Oaks, CA; QuEra, Boston, MA; BioNTech, Mainz, Germany; Parexel, Durham, NC; Syngenta, Basel, Switzerland; Brandon Wall (individual), Austin, TX; National Cancer Center Hospital, Kashiwa, Japan; Vortex Biosciences, Cambridge, United Kingdom; Suzanne Studinger (individual), Basel, Switzerland; Rancho Biosciences, Rancho Santa Fe, CA; and Cepheus Consultancy Limited, Canterbury, United Kingdom have been added as parties to this venture.

Also, IOS Press, Amsterdam, The Netherlands; Sanofi, Cambridge, MA; Atom Computing, Berkeley, CA; Uncountable, San Francisco, CA; Elemental Machines, Cambridge, MA; Biogen, Cambridge, MA; Consource, Tokyo, Japan; Dotmatics Limited, Bishop Stortford, United Kingdom; PRISM, Cambridge, MA; Causaly, London, United Kingdom; Scitara, Marlboro, MA; Intelligencia, New York, NY; Perkin Elmer, Boston, MA; and Result Works, Somerville, MA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published the initial notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on January 17, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 27, 2023 (88 FR 18179).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12528 Filed 6–12–23; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Automotive Cybersecurity Industry Consortium

Notice is hereby given that, on March 31, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the “Act”), the Automotive Cybersecurity Industry Consortium (“ACIC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ford Motor Company, Dearborn, MI; American Honda Co., Inc., Torrance, CA; and Toyota Motor North America, Inc., Saline, MI, have withdrawn as parties to this venture. With the withdrawal of these parties, ACIC has no remaining members and will dissolve effective June 1, 2023.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ACIC intends to file additional written notifications disclosing all changes in membership.

On January 11, 2017, ACIC filed its original notification pursuant to Section 6(a) of the Act. The Department of

Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 27, 2017 (82 FR 11942).

The last notification was filed with the Department on May 29, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 8, 2020 (85 FR 35124).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12554 Filed 6–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Homeland Security Technology Consortium

Notice is hereby given that, on April 26, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the “Act”), Homeland Security Technology Consortium (“HSTech Consortium”) formerly known as (fka) Border Security Technology (“BSTC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Vectrus Systems Corporation, Colorado Springs, CO; D’Angelo Technologies, Beavercreek, PA; and SensiPass, Inc., Arlington, VA, have been added as parties to this venture.

Also, AirRobot US, Inc., Arlington, VA; Ball Aerospace & Technologies Corp., Arlington, VA; Carolina Unmanned Vehicles, Raleigh, NC; Colvin Run Networks, Inc., Leesburg, VA; Drone Co-Habitation Services LLC, Fairfax, VA; Epigen Technology Corp., McLean, VA; Georgia Tech Applied Research Corp., Atlanta, GA; Global Justice Systems LLC, San Antonio, TX; Gray Zone LLC, Burke, VA; ICF Incorporated LLC, Fairfax, VA; International Electronic Machines Corp., Troy, NY; LiveView Technologies, Orem, UT; nMeta LLC, New Orleans, LA; Old Dominion University Research Foundation, Norfolk, VA; RadiaBeam Technologies, Santa Monica, CA; Redstone Aviation Group LLC, Huntsville, AL; Rhombus Power, Inc., Moffett Field, CA; Secure Planet, Inc., Arlington, VA; Sentrillion Corp.,

Reston, VA; Shield AI, Inc., San Diego, CA; SNA International LLC, Alexandria, VA; Spatial Integrated Systems, Inc., Virginia Beach, VA; StrongWatch Corp, Tucson, AZ; TerraHawk LLC, Dallas, TX; Ventera, Reston, VA; and XLA Associates, Springfield, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HSTech Consortium (fka BSTC) intends to file additional written notifications disclosing all changes in membership.

On May 30, 2012, HSTech Consortium (fka BSTC) filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 18, 2012 (77 FR 36292).

The last notification was filed with the Department on January 26, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 2023 (88 FR 16459).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12559 Filed 6–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Z-Wave Alliance, Inc.

Notice is hereby given that, on May 12, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the “Act”), Z-Wave Alliance, Inc. (the “Joint Venture”) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Motorola Solutions Inc., Chicago, IL; ZoneSystems.est, Khobar City, SAUDI ARABIA; ALLTERCO ROBOTICS EOOD, Sofia, BULGARIA; Shenzhen Shyugj Technology Co., Ltd., Guangdong, PEOPLE’S REPUBLIC OF CHINA; and HAB Home Intelligence, LLC, North Richland Hills, TX have joined as parties to the venture.

Also, Confio Technologies Private Limited, Bangalore, INDIA; Trim Energy Ltd., Espoo, FINLAND; Ningbo Dooya

Mechanic & Electronic Technology Co., Ltd., Ningbo, PEOPLE’S REPUBLIC OF CHINA; LivingLab Development Co., Ltd., New Taipei City, TAIWAN; AMPER, Madrid, SPAIN; Rehau AG + Co, Rehau, GERMANY; Black Nova Italia srl, Central, HONG KONG; Toledo & Co., Dorado, PUERTO RICO; ottosystem GmbH, Darmstadt, GERMANY; Boundary Technologies Ltd., Edinburgh, UNITED KINGDOM; Somfy Systems, Inc., Dayton, NJ; Alarm Grid, Inc., Lighthouse Point, FL; IOTAS Inc., Portland, OR; and Telldus Technologies, Varberg, SWEDEN have withdrawn as parties to the venture.

In addition, an existing member, Nortek Security & Control, has changed its name to Nice North America LLC, Carlsbad, CA.

No other changes have been made in either the membership or the planned activity of the venture. Membership in this venture remains open, and the Joint Venture intends to file additional written notifications disclosing all changes in membership.

On November 19, 2020, the Joint Venture filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 1, 2020 (85 FR 77241).

The last notification was filed with the Department on February 14, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 27, 2023 (88 FR 18184).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12562 Filed 6–12–23; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—America’s DataHub Consortium

Notice is hereby given that, on April 13, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), America’s DataHub Consortium (“ADC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, GT Digital Ltd., New York, NY; Storage Strategies, Inc., Manassas Park, VA; Consortium of Universities for the Advancement of Hydrologic Science, Inc., Arlington, MA; ZCTS LLC, Arlington, VA; Social Data Science Center, University of Maryland, College Park, MD; and rockITdata LLC, Philadelphia, PA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ADC intends to file additional written notifications disclosing all changes in membership.

On November 11, 2021, ADC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 22, 2021 (86 FR 72628).

The last notification was filed with the Department on January 11, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 2023 (88 FR 16461).

Suzanne Morris,

Deputy Director, Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12537 Filed 6–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Rare Earth Technologies

Notice is hereby given that, on May 1, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Consortium for Rare Earth Technologies (“CREaTe”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, FIPR Institute, Florida Polytechnic University, Bartow, FL; Graphite One, Inc., Anchorage, AK; Great Plains Partners, Topeka, KS; Hamilton Mining & Marketing, Columbia, MD; Hudson Sterling LLC, Charleston, SC; Koch Modular Process Systems, Paramus, NJ; Lockheed Martin Missiles and Fire Control, Orlando, FL;

Metatomic, Inc., Greenville, SC; Prairie State Generating Company, Marissa, IL; Rio Tinto Services, Inc., South Jordan, UT; YMC America, Devens, MA; and Serlocc, Chihuahua, MEXICO, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CREaTe intends to file additional written notifications disclosing all changes in membership.

On April 22, 2022, CREaTe filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 2022 (87 FR 29384).

The last notification was filed with the Department on February 24, 2023. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 17, 2023 (88 FR 23472).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–12549 Filed 6–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0355]

Agency Information Collection Activities; Proposed eCollection eComments Requested; 2023 National Census of Victim Service Providers

AGENCY: Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information was published in the **Federal Register** on April 5, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until July 13, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Rachel Morgan, Statistician,

Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: Rachel.Morgan@usdoj.gov; telephone: 202–598–9237).

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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the information collection or the OMB Control Number 1121–0355. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection.

(2) *The Title of the Form/Collection:* 2023 National Census of Victim Service Providers (NCVSP).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is N/A. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Programs and organizations that have been identified as providing services to victims of crime or abuse will be asked to respond. Abstract: The 2023 NCVSP will be the second administration of this data collection. The NCVSP provides national data on all programs and organizations that served victims of crime or abuse within the year prior to the survey. The NCVSP identifies the size and scope of the victim service provider (VSP) field, including the number of VSPs, where they are located, the number of victims they serve, and information about funding and staffing. Information from the NCVSP provides a sampling frame for follow-up surveys on victim service providers, including BJS's National Survey of Victim Service Providers.

(5) *Obligation to Respond:* Voluntary.

(6) *Total Estimated Number of Respondents:* 20,000.

(7) *Estimated Time per Respondent:* 30 minutes.

(8) *Frequency:* Once.

(9) *Total Estimated Annual Time Burden:* 8,750 hours.

(10) *Total Estimated Annual Other Costs Burden:* \$212,012.50.

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 20530.

Dated: June 7, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–12585 Filed 6–12–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE**[OMB Number 1140-0097]****Agency Information Collection Activities; Proposed eCollection Comments Requested; Supplemental Information on Water Quality Considerations****AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.**ACTION:** 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on March 23, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until July 13, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Shawn Stevens, Explosives Industry Liaison, Federal Explosives Licensing Center, by mail at 244 Needy Road, Martinsburg, WV 25427, email at FELC@atf.gov, or telephone at 304-616-440.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering either the title of the information collection or the OMB Control Number 1140-0097. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection**1. Type of Information Collection:**

Extension of a previously approved collection.

2. Title of the Form/Collection:

Supplemental Information on Water Quality Considerations.

3. Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:

ATF Form 5000.30. 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 a brief abstract:

Affected Public: Private Sector—businesses or other for-profit. Abstract: A person engaged in manufacturing explosives is required to have a license under 18 U.S.C. 843 and the Federal Water Pollution Control Act, 33 U.S.C. 1341.

5. Obligation to Respond:

Required to obtain or retain a benefit.

6. Total Estimated Number of Respondents:

680.

7. Estimated Time per Respondent:

30 minutes.

8. Frequency:

Once a year/annually.

9. Total Estimated Annual Time Burden:

340 hours.

10. Total Estimated Annual Other Costs Burden:

\$0.

If additional information is required, contact: John R. Carlson, Department

Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC 20530.

Dated: June 6, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023-12586 Filed 6-12-23; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE**Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act**

On June 6, 2023, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Illinois in the lawsuit entitled *United States and Illinois v. Great Lakes Synergy Corp.*, Civil Action No. 3:23-cv-01934 (S.D. Ohio).

The proposed Consent Decree (1) resolves the liability of Great Lakes Synergy Corporation ("Great Lakes") under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, for releases and threatened releases of hazardous substances at Area 7 of the Additional and Uncharacterized Sites Operable Unit of the Crab Orchard National Wildlife Refuge NPL Site ("Area 7 Pesticides Site"), located near Marion, Illinois, and (2) resolves potential counterclaims by Great Lakes against the United States. Under the proposed Consent Decree, Great Lakes would perform the Removal Action to clean up the Area 7 Pesticides Site, reimburse future response costs incurred by the United States, and reimburse \$830,890 in past response costs incurred by the United States. To resolve Great Lakes' potential CERCLA contribution counterclaims, the United States will reimburse \$484,185 of Great Lakes' past costs and will reimburse 28% of the costs Great Lakes incurs performing the Removal Action and paying future response costs on a "pay-as-you-go" basis.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Illinois v. Great Lakes Synergy Corp.*, D.J. Ref. No. 90-11-3-643/6. All comments must be

submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	<i>pubcomment-ees.enrd@usdoj.gov.</i>
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 proposed 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 \$33.00 (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 \$11.50.

Patricia S. McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–12603 Filed 6–12–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Student Experience Assessment of Job Corps Centers

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-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 July 13, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Department of Labor’s Office of Job Corps administers the Student Experience Assessment Survey. The collection of information through this assessment is necessary for program evaluation to gauge active students’ satisfaction with the program. The Department of Labor’s (DOL) Office of Job Corps (OJC) is seeking approval from the Office of Management and Budget (OMB) for the Student Experience Assessment (SEA) Survey. The collection of information through this assessment is necessary for program evaluation to gauge active students’ satisfaction with the program. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 9, 2023 (88 FR 8479).

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–ETA.

Title of Collection: Student Experience Assessment of Job Corps Centers.

OMB Control Number: 1205–0543.

Affected Public: Private Sector—Individuals or Households.

Total Estimated Number of Respondents: 29,934.

Total Estimated Number of Responses: 119,736.

Total Estimated Annual Time Burden: 39,513 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–12593 Filed 6–12–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the “ATUS Leave and Job Flexibilities Module”. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before August 14, 2023.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division

of Management Systems, Bureau of Labor Statistics, Room G225, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to BLS_PRA_Public@bls.gov.

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, at 202-691-7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The American Time Use Survey (ATUS) is the Nation's first federally administered, continuous survey on time use in the United States. It measures, for example, time spent with children, working, sleeping, or doing leisure activities. In the United States, several existing Federal surveys collect income and wage data for individuals and families, and analysts often use such measures of material prosperity as proxies for quality of life. Time-use data substantially augment these quality-of-life measures. The data also can be used in conjunction with wage data to evaluate the contribution of non-market work to national economies. This enables comparisons of production between nations that have different mixes of market and non-market activities.

The ATUS is used to develop nationally representative estimates of how people spend their time. This is done by collecting a time diary about the activities survey respondents did over a 24-hour period "yesterday," from 4 a.m. on the day before the interview until 4 a.m. on the day of the interview. In the one-time interview, respondents also report who was with them during the activities, where they were, how long each activity lasted, and if they were paid. All of this information has numerous practical applications for sociologists, economists, educators, government policymakers, businesspersons, health researchers, and others.

The Leave and Job Flexibilities Module supports the mission of the Bureau of Labor Statistics by providing relevant information on economic and social issues. The data from the proposed module can be used for research on the relationships between work schedules, job flexibilities, access to leave, and time use. These data enhance the understanding of people's overall well-being. The module surveys employed wage and salary workers, except those who are self-employed, aged 15 and up from a nationally representative sample.

The proposed Leave and Job Flexibilities Module will collect data

about workers' access to and use of paid and unpaid leave, job flexibility, and their work schedules. This includes questions about shift work, advance notice of work schedules, workers' control over their schedules, flexible start and stop times, and work at home arrangements. These questions will provide an additional dimension to analyses of workers' job flexibility data.

II. Current Action

Office of Management and Budget clearance is being sought for a 2024 Leave and Job Flexibilities Module of questions to follow the American Time Use Survey (ATUS). The proposed 2024 module will be included in the ATUS through December 2024.

The data from the proposed Leave and Job Flexibilities Module will support the BLS mission of providing relevant information on economic and social issues. The data will add to the ATUS by providing a richer description of work, specifically workers' access to paid leave, the reasons for which workers are able to take leave, and information about the availability and use of flexible and alternative work schedules. The module will also provide more information on the relationships between work schedules, job flexibilities, and time use.

The collection of the Leave and Job Flexibilities Module in 2024 is another effort to gather data on workers' access to paid and unpaid leave. A Leave Module similar to the one being proposed was attached to the ATUS in 2011 (OMB Number 1220-0175) and in 2017-18 (OMB Number 1220-0191). The 2024 ATUS Leave and Job Flexibilities Module will accomplish similar objectives as the 2011 and 2017-18 modules. Although many questions remain the same, some have been dropped and some have been added to obtain better information about the availability and use of flexible and alternative work schedules.

The information in the proposed Leave and Job Flexibilities Module is important for understanding the current nature of work and how people balance work and personal needs. The proposed Leave and Job Flexibilities questions can also be tied to previous modules to show any changes over time. Changes in workers' job flexibility and work schedules before and after the COVID-19 pandemic are of particular interest to many researchers and policy makers.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Title of Collection: ATUS Leave and Job Flexibilities Module.

OMB Number: 1220-0191.

Type of Review: Reinstatement, with change.

Affected Public: Individuals or Households.

Total Respondents: 4,761.

Frequency: Annually.

Total Responses: 4,761.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 397 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on June 7, 2023.

Leslie A. Bennett,

Chief, Division of Management Systems.

[FR Doc. 2023-12596 Filed 6-12-23; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Miner's Claim for Benefits Under the Black Lung Benefits Act CM-911 and Employment History CM-911a

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed revision to the information collection request (ICR) titled, "Miner's Claim for Benefits under the Black Lung Benefits Act CM-911

and Employment History CM-911a". This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by August 14, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202-354-9660 or by email at suggs.anjanette@dol.gov.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Program, Division of Coal Mine Workers' Compensation, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: suggs.anjanette@dol.gov.

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202-354-9660 or by email at suggs.anjanette@dol.gov.

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Black Lung Benefits Act (BLBA), (30 U.S.C. 901 *et seq.*) provides benefits to coal miners who are totally disabled due to pneumoconiosis (black lung disease) and to certain survivors of miners. Miners entitled to benefits also receive medical benefits for treatment related to their pneumoconiosis and resulting disability. A miner who applies for black lung benefits must complete the CM 911 (application form). The completed form gives basic identifying information about the applicant and is the beginning of the development of the black lung claim. 20 CFR 725.304(a) authorizes this information collection. The CM-911a, when completed, provides a complete history of the miner's employment and

helps to establish whether the individual currently or formerly worked in the nation's coal mines and how long that employment lasted. 20 CFR 725.404(a) authorizes this information collection. This information collection is currently approved for use through April 30, 2025. In addition, the proposed CM-911a combines the current CM-911a and the current CM-913 (Description of Coal Mine Work and Other Employment). When a miner has been identified as having performed non-coal mine work subsequent to coal mine employment, the miner or the miner's survivor is asked to complete a CM-913 to compare coal mine work to non-coal mine work. This employment information, along with medical information, is used to establish whether the miner is totally disabled due to black lung disease caused by coal mine employment. The Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*, and 20 CFR 718.204(b)(1) authorize this information collection. If proposed CM-911a is approved, DOL plans to discontinue the current CM-913. This change would eliminate the burden on the respondents from having to complete two separate employment forms and allow them to complete just one form instead. 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 under the PRA 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 Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1240-0038.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected; 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.

Agency: DOL-OWCP-DCMWC.

Type of Review: Revision.

Title of Collection: Miner's Claim for Benefits under the Black Lung Benefits Act and Employment History.

Form: CM-911 and CM-911a.

OMB Control Number: 1240-0038.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,020.

Frequency: As needed.

Total Estimated Annual Responses: 10,020.

Estimated Average Time per Response: 45 minutes-CM-911 and 60 minutes-CM-911a.

Estimated Total Annual Burden

Hours: 8,768 hours.

Total Estimated Annual Other Cost Burden: \$2,315.

Authority: 30 U.S.C. 901 Black Lung Benefits Act.

Dated: June 7, 2023.

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2023-12595 Filed 6-12-23; 8:45 am]

BILLING CODE 4510-CK-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23-063]

Name of Information Collection: Electronic Medical Record for Implementation of TREAT Astronaut Act

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its

continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by July 13, 2023.

ADDRESSES: Written comments and recommendations for this 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:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757-864-7998, or b.edwards-bodmer@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. *Abstract:* The project includes standard use of Electronic Medical Records (EMR) under NASA 10 HIMS regulations at Johnson Space Center (JSC) Occupational Health Branch (OHB) by authorized healthcare providers assigned to, employed by, contracted to, or under partnership agreement with the JSC, OHB. This EMR will be used in support of the TREAT Astronaut Act to generate medical records of medical care, diagnosis, treatment, surveillance examinations (e.g., flight certification, special purpose and health maintenance), and exposure records (e.g., hazardous materials and ionizing radiation). Management and utilization of the EMR at JSC, OHB clinics will be carried out in support of the TREAT Astronaut Act; Public Law 115-10. The TREAT Astronaut Act is subsection 441 within the National Aeronautics and Space Administration Transition Authorization Act of 2017 (115th Congress, <https://www.congress.gov/115/plaws/publ10/PLAW-115publ10.pdf>). The goal is to maintain digital medical records of routine health care, emergency treatment, and scheduled examinations for active or retired astronauts in order to develop a knowledge base and address gaps in services in support of medical monitoring, diagnosis and treatment of conditions associated with human space flight as stated in Public Law 115-10.

II. *Methods of Collection:* Electronic and paper.

III. *Data:*

Title: Electronic Medical Record for Implementation of TREAT Astronaut Act. (Pub. L. 115-10).

OMB Number: 2700-0171.

Type of Review: Reinstatement.

Affected Public: Astronauts and payload specialists.

Estimated Annual Number of Activities: 175.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 175.

Estimated Time per Response: 0.5 hours.

Estimated Total Annual Burden Hours: 87.5.

Estimated Total Annual Cost: \$4,375.

IV. *Request for Comments:* Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

William Edwards-Bodmer,
NASA PRA Clearance Officer.

[FR Doc. 2023-12567 Filed 6-12-23; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23-062]

Name of Information Collection: JSC Form 1830—Report of Medical Examination

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by July 13, 2023.

ADDRESSES: Written comments and recommendations for this 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:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757-864-7998, or b.edwards-bodmer@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Since the mid-1960s, neutral buoyancy has been an invaluable tool for testing procedures, developing hardware, and training astronauts. Neutrally buoyant conditions sufficiently simulate reduced gravity conditions, comparable to the environmental challenges of space. The Neutral Buoyancy Laboratory (NBL) at NASA Johnson Space Center (JSC) provides opportunities for astronauts to practice future on-orbit procedures, such as extravehicular activities (EVA), and to work through simulation exercises to solve problems encountered on-orbit. NASA hires individuals with demonstrated diving experience as NBL Working Divers in teams comprised of four divers; two safety divers, one utility diver, and one cameraman to assist astronauts practice various tasks encountered in space.

NASA allows guest divers, typically non-federal photographers representing the media, opportunities to engage in the NBL diving experience. To participate, guest divers must present a dive physical, completed within one year of the targeted diving opportunity, for review by the NASA Buoyancy Lab Dive Physician.

If the guest diver does not have a current U.S. Navy, Association of Diving Contractors (ADC), or current British standard for commercial diving physical, they are required to complete a medical examination, performed by a certified Diving Medical Examiner. The results of the physical will be documented by on the JSC Form 1830/ Report of Medical Examination for Applicant and presented for review prior to participating in diving activities conducted at the JSC Neutral Buoyancy Lab. The associated cost for guest divers to complete the medical examination

will vary, typically based on the guest diver's insurance.

A completed JSC Form 1830/Report of Medical Examination, with test results attached as applicable, must be submitted to enable NASA to validate an individual's physical ability to dive in the NBL at NASA Johnson Space Center. The completed JSC Form 1830 will be protected in accordance with the Privacy Act. Records will be retained in accordance with NASA Records Retention Schedules.

II. Methods of Collection

Paper.

III. Data

Title: JSC Neutral Buoyancy Lab Guest Diver Physical Exam Results.

OMB Number: 2700-0170.

Type of Review: Existing collection in use without an OMB Control Number.

Affected Public: Individuals.

Estimated Annual Number of Activities: 175.

Estimated Number of Respondents per Activity: 60 minutes.

Annual Responses: 30.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 175.

Estimated Total Annual Cost: \$6,125.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

William Edwards-Bodmer,
NASA PRA Clearance Officer.

[FR Doc. 2023-12561 Filed 6-12-23; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Document Number NASA-22-064; Docket Number-NASA-2022-0002]

National Environmental Policy Act; Mars Sample Return Campaign; Correction

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice; correction.

SUMMARY: NASA published a document in the **Federal Register** on June 2, 2023 concerning the availability of the Mars Sample Return (MSR) Campaign Final Programmatic Environmental Impact Statement (PEIS). The document date has changed for the Record of Decision (ROD), which would be signed no sooner than July 3, 2023, instead of July 2, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Slaten, NASA Jet Propulsion Laboratory, by electronic mail at Mars-sample-return-nepa@lists.nasa.gov or by telephone at 202-358-0016. For questions regarding viewing the Docket, please call Docket Operations, telephone: 202-366-9317 or 202-366-9826.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of June 22, 2023, in FR Doc 2023-11750, on page 36348-36349, in the second column, correct the **DATES** caption to read:

DATES: NASA will document its decision regarding alternative implementation in a Record of Decision (ROD), which would be signed no sooner than July 3, 2023, after the 30-day mandatory Final PEIS waiting period is complete as required by 40 CFR 1506.11(b)(2).

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2023-12623 Filed 6-12-23; 8:45 am]

BILLING CODE 7510-13-P

NUCLEAR REGULATORY COMMISSION

[NRC-2023-0109]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to section 189.a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person.

DATES: Comments must be filed by July 13, 2023. A request for a hearing or petitions for leave to intervene must be filed by August 14, 2023. This monthly notice includes all amendments issued, or proposed to be issued, from April 28, 2023, to May 24, 2023. The last monthly notice was published on May 16, 2023.

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

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0109. Address questions about Docket IDs in [Regulations.gov](https://www.regulations.gov) to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **Mail comments to:** Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Karen Zeleznock, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-1118; email: Karen.Zeleznock@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2023-0109, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly

available information related to this action by any of the following methods:

- *Federal Rulemaking Website*: Go to <https://www.regulations.gov> and search for Docket ID NRC–2023–0109.

- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR*: You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2023–0109, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this notice, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of the *Code of Federal Regulations* (10 CFR) "Notice for public comment; State consultation," are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person

(petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053>) and on the NRC's public website at <https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate>.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the "Guidance for Electronic Submissions to the NRC" (ADAMS Accession No. ML13031A056) and on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at Hearing.Docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit

documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

LICENSE AMENDMENT REQUESTS

Arizona Public Service Company, et al; Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Maricopa County, AZ

Docket Nos	50-528, 50-529, 50-530.
Application date	May 12, 2023.
ADAMS Accession No	ML23132A339.
Location in Application of NSHC	Pages 4-6 of the Enclosure.

LICENSE AMENDMENT REQUESTS—Continued

Brief Description of Amendments	The proposed amendments would revise Technical Specification (TS) 3.3.11, "Remote Shutdown System," to adopt Technical Specification Task Force (TSTF) Traveler TSTF-266-A, "Eliminate the Remote Shutdown System Table of Instrumentation and Controls," for Palo Verde Nuclear Generating Station, Units 1, 2, and 3. TS 3.3.11 provides details for the instrumentation that supports remote shutdown system operability. The specific functions are listed in Table 3.3.11-1, "Remote Shutdown System Instrumentation and Controls." The proposed changes would eliminate this table and relocate it to the TS bases.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Carey Fleming, Senior Counsel, Pinnacle West Capital Corporation, 500 N 5th Street, MS 8695, Phoenix, AZ 85004.
NRC Project Manager, Telephone Number	Siva Lingam, 301-415-1564.

Constellation Energy Generation, LLC; Calvert Cliffs Nuclear Power Plant, Unit 1; Calvert County, MD

Docket No	50-317.
Application date	February 21, 2023.
ADAMS Accession No	ML23052A063.
Location in Application of NSHC	Pages 9-11 of Attachment 1.
Brief Description of Amendment	The proposed change would clarify the areal density testing corrective actions and modify the weight and visual acceptance criteria of the carborundum samples located in the Calvert Cliffs Nuclear Power Plant (CCNPP), Unit 1, spent fuel pool tested in accordance with the long-term coupon surveillance (LTCS) program as approved in Amendment 288. The LTCS program verifies that the carborundum degradation rates assumed in CCNPP analyses to prove subcriticality, remain valid.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jason Zorn, Associate General Counsel, Constellation Energy Generation, 101 Constitution Ave. NW, Suite 400 East, Washington, DC 20001.
NRC Project Manager, Telephone Number	Daniel King, 301-415-1233.

Duke Energy Progress, LLC; Brunswick Steam Electric Plant, Units 1 and 2; Brunswick County, NC; Duke Energy Carolinas, LLC; Catawba Nuclear Station, Units 1 and 2; York County, SC; Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC; Duke Energy Carolinas, LLC; McGuire Nuclear Station, Units 1 and 2; Mecklenburg County, NC; Duke Energy Carolinas, LLC; Oconee Nuclear Station, Units 1, 2, and 3; Oconee County, SC; Duke Energy Progress, LLC; H. B. Robinson Steam Electric Plant, Unit No. 2; Darlington County, SC

Docket Nos	50-325, 50-324, 50-413, 50-414, 50-400, 50-369, 50-370, 50-269, 50-270, 50-287, 50-261.
Application date	February 16, 2023.
ADAMS Accession No	ML23047A004.
Location in Application of NSHC	Pages 9-10 of Enclosure 1.
Brief Description of Amendment	The proposed amendments would allow Duke Energy Progress, LLC and Duke Energy Carolinas, LLC to revise technical specifications to adopt Technical Specifications Task Force 554, Revision 1, "Revise Reactor Coolant Leakage Requirements" for Brunswick Steam Electric Plant, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2; Shearon Harris Nuclear Power Plant, Unit 1; McGuire Nuclear Station, Units 1 and 2; Oconee Nuclear Station, Units 1, 2, and 3; and H. B. Robinson Steam Electric Plant, Unit 2. The proposed amendments would revise the technical specifications definition of "Leakage," clarify the requirements when pressure boundary leakage is detected and would add a Required Action when pressure boundary leakage is identified.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tracey Mitchell LeRoy, Deputy General Counsel, Duke Energy Corporation, 4720 Piedmont Row Dr., Charlotte, NC 28210.
NRC Project Manager, Telephone Number	Shawn Williams, 301-415-1009.

Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC

Docket No	50-400.
Application date	February 7, 2023.
ADAMS Accession No	ML23038A186.
Location in Application of NSHC	Pages 4-5 of Enclosure 1.
Brief Description of Amendment	The proposed amendment revises the Shearon Harris Nuclear Power Plant, Unit 1 Renewed Facility Operating License and technical specifications (TSs) to make administrative changes. Specifically, the proposed amendment would revise the TSs to remove the reference to Duke Energy procedure EGR-NGGC-0153, "Engineering Instrument Set-points." The proposed amendment would also remove the reference to, "[Transamerica Delaval, Inc.] TDI Diesel Engine Requirements," in the Renewed Facility Operating License.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tracey Mitchell LeRoy, Deputy General Counsel, Duke Energy Corporation, 4720 Piedmont Row Dr., Charlotte, NC 28210.
NRC Project Manager, Telephone Number	Demetrius Murray, 301-415-7646.

LICENSE AMENDMENT REQUESTS—Continued

Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Beaver Valley Power Station, Units 1 and 2; Beaver County, PA

Docket Nos	50–334, 50–412.
Application date	February 14, 2023.
ADAMS Accession No	ML23045A144.
Location in Application of NSHC	Pages 10–11 of Attachment.
Brief Description of Amendments	The amendments propose a permanent exemption from a requirement of Appendix H, Section IV. A to 10 CFR part 50, “Reactor Vessel Material Surveillance Program Requirements,” for Beaver Valley Power Station, Units 1 and 2, to submit a summary technical report to the NRC within 18 months of withdrawal for capsule A, a supplemental capsule.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Rick Giannantonio, General Counsel, Energy Harbor Nuclear Corp., 168 E Market Street, Akron, OH 44308–2014.
NRC Project Manager, Telephone Number	Daniel King, 301–415–1233.

Energy Northwest; Columbia Generating Station; Benton County, WA

Docket No	50–397.
Application date	March 27, 2023.
ADAMS Accession No	ML23086C103.
Location in Application of NSHC	Pages 4–5 of Enclosure 1.
Brief Description of Amendment	The proposed amendment would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–541, Revision 2, “Add Exceptions to Surveillance Requirements for Valves and Dampers Locked in the Actuated Position,” which is an approved change to the Standard Technical Specifications, into the Columbia Generating Station Technical Specifications. The amendment would modify certain surveillance requirements (SRs) by adding exceptions to consider the SR met when automatic valves or dampers are locked, sealed, or otherwise secured in the actuated position.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Ryan Lukson, Legal Service Supervisor, Energy Northwest, MD 1020, P.O. Box 968, Richland, WA 99352.
NRC Project Manager, Telephone Number	Mahesh Chawla, 301–415–8371.

PSEG Nuclear LLC; Hope Creek Generating Station; Salem County, NJ

Docket No	50–354.
Application date	April 18, 2023.
ADAMS Accession No	ML23108A035.
Location in Application of NSHC	Pages 7–9 of the Enclosure.
Brief Description of Amendment	The amendment proposes to modify the operation of safety related heating, ventilation, and air conditioning (HVAC) trains as described in the updated final safety analysis report for Hope Creek Generating Station. The proposed change modifies a portion of the trip and standby start logic for the safety related HVAC trains from an automatic function to a manual operator action.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Francis Romano, PSEG—Services Corporation, 80 Park Plaza, T–10, Newark, NJ 07101.
NRC Project Manager, Telephone Number	James Kim, 301–415–4125.

PSEG Nuclear LLC; Hope Creek Generating Station; Salem County, NJ; PSEG Nuclear LLC; Salem Nuclear Generating Station, Units 1 and 2; Salem County, NJ

Docket Nos	50–354, 50–272, 50–311.
Application date	April 21, 2023.
ADAMS Accession No	ML23111A103.
Location in Application of NSHC	Pages 4–5 of the Enclosure.
Brief Description of Amendments	The proposed amendments would revise the Hope Creek Generating Station and Salem Nuclear Generating Station, Units 1 and 2, technical specifications (TS) to remove TS Section 5.5, Meteorological Tower Location. The proposed amendments would remove the reference to the figures removed from the TS by the previously approved amendments.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Francis Romano, PSEG—Services Corporation, 80 Park Plaza, T–10, Newark, NJ 07101
NRC Project Manager, Telephone Number	James Kim, 301–415–4125.

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA

Docket Nos	50–424, 50–425.
Application date	April 11, 2023.
ADAMS Accession No	ML23101A159.
Location in Application of NSHC	Pages E–10 to E–12 of the Enclosure.

LICENSE AMENDMENT REQUESTS—Continued

Brief Description of Amendments	The proposed amendments would revise Technical Specifications (TS) 2.1.1, "Reactor Coolant Safety Limits," TS 3.3.1, "Reactor Trip System (RTS) Instrumentation," TS 3.4.1, "Reactor Coolant System (RCS) Pressure, Temperature, and Flow Departure from Nucleate Boiling (DNB) Limits," and TS 5.6.5, "Core Operating Limits Report (COLR)," to adopt most of the TS and COLR changes described in Appendix A and Appendix B of Westinghouse topical report WCAP-14483-A (ADAMS Accession No. ML020430092), to relocate several cycle-specific parameter limits from the TS to the COLR. The proposed amendments would adopt TSTF-339-A, "Relocate Technical Specification parameters to the COLR consistent with WCAP-14483" (ADAMS Accession No. ML003723269). The proposed amendments change Vogtle Electric Generating Plant, Units 1 and 2, TS 5.6.5 to include WCAP-8745-P-A and WCAP-11397-P-A, and to revise the TS applicability for the WCAP-9272-P-A, in the list of the NRC approved methodologies used to develop the cycle specific COLR. Also, the proposed amendments would make an administrative revision to an equation in TS 3.3.1.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201-1295.
NRC Project Manager, Telephone Number	John Lamb, 301-415-3100.

STP Nuclear Operating Company; South Texas Project, Units 1 and 2; Matagorda County, TX

Docket No(s)	50-498, 50-499.
Application date	March 30, 2023.
ADAMS Accession No	ML23089A204.
Location in Application of NSHC	Pages 24-25 of the Enclosure.
Brief Description of Amendments	The proposed amendments would revise the alternative source term dose calculation for the main steam line break and the locked rotor accident. The reanalysis uses the asymmetric natural circulation cooldown thermohydraulic analyses, various radiation transport assumptions, and the current licensing basis source term and meteorological data to evaluate the dose effects of an extended cooldown on the existing accident analyses.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Rachel L. Jackson, General Counsel and General Manager Employee Relations, STP Nuclear Operating Company, P.O. Box 289, Wadsworth, TX 77483.
NRC Project Manager, Telephone Number	Dennis Galvin, 301-415-6256.

TMI-2 Solutions, LLC; Three Mile Island Nuclear Station, Unit 2; Londonderry Township, Dauphin County, PA

Docket No	50-320.
Application date	February 22, 2023, as supplemented by letter dated May 1, 2023.
ADAMS Accession No	ML23058A064, ML23121A249.
Location in Application of NSHC	Pages 6-8 of Attachment 1.
Brief Description of Amendment	In the proposed license amendment request (LAR), TMI-2 Solutions states that the LAR is intended to support applicable historic and cultural reviews regarding the TMI-2 owned National Register of Historic Places (NRHP)-eligible buildings in anticipation of the eventual and necessary physical demolition of the facility to be performed in accordance with the TMI-2 decommissioning project schedule described in the Post-Shutdown Decommissioning Activities Report, Revision 5 (PSDAR), (ADAMS Accession No. ML22306A051). TMI-2 Solutions explains in the LAR, that physical demolition of the TMI-2 Solutions owned buildings previously deemed eligible for the NRHP could result in an environmental impact not bounded by the conclusions in the Decommissioning Generic Environmental Impact Statement (NUREG-0586, Supplement 1, Vol. 1) (ADAMS Accession No. ML023470304) with regard to cultural, historic, and archaeological resources if appropriate mitigation is not developed in consultation with the Pennsylvania State Historic Preservation Office.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Russ Workman, General Counsel, Energy Solutions, 299 South Main Street, Suite 1700, Salt Lake City, UT 84111.
NRC Project Manager, Telephone Number	Amy Snyder, 301-415-6822.

Union Electric Company; Callaway Plant, Unit 1; Callaway County, MO

Docket No	50-483.
Application date	March 29, 2023.
ADAMS Accession No	ML23088A118 (package).
Location in Application of NSHC	Pages 6-7 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendment would revise the technical specifications (TSs) to modify Section 3.8.3, "Diesel Fuel Oil, Lube Oil, and Starting Air." Specifically, TS 3.8.3 would be revised such that the numerical volume requirements/limits specified for stored diesel fuel oil and lube oil inventory, as specified in the limiting condition for operation, actions, and surveillance requirements for TS 3.8.3, would be replaced with descriptive "7 day" and "6 day" supply requirements/limits where applicable. The proposed changes are consistent with Technical Specifications Task Force (TSTF) Traveler TSTF-501-A, Revision 1, "Relocate Stored Fuel Oil and Lube Oil Volume Values to Licensee Control."
Proposed Determination	NSHC.

LICENSE AMENDMENT REQUESTS—Continued

Name of Attorney for Licensee, Mailing Address	Jay E. Silberg, Pillsbury Winthrop Shaw Pittman LLP, 1200 17th St. NW, Washington, DC 20036.
NRC Project Manager, Telephone Number	Maresh Chawla, 301-415-8371.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating

license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has

made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the "Obtaining Information and Submitting Comments" section of this document.

LICENSE AMENDMENT ISSUANCES

Dominion Energy Nuclear Connecticut, Inc.; Millstone Power Station, Units 2 and 3; New London County, CT; Dominion Energy South Carolina, Inc.; Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, SC; Virginia Electric and Power Company, Dominion Nuclear Company; North Anna Power Station, Units 1 and 2; Louisa County, VA; Virginia Electric and Power Company; Surry Power Station, Unit Nos. 1 and 2; Surry County, VA

Docket Nos	50-336, 50-423, 50-395, 50-338, 50-339, 50-280, 50-281.
Amendment Date	May 1, 2023.
ADAMS Accession No	ML23072A089.
Amendment Nos	346 (Millstone, Unit 2), 286 (Millstone, Unit 3), 294 (North Anna, Unit 1), 277 (North Anna, Unit 2), 311 (Surry, Unit 1), 311 (Surry, Unit 2), and 225 (Summer).
Brief Description of Amendments	The amendments revised the technical specifications (TSs) to adopt Technical Specifications Task Force (TSTF) Traveler TSTF-554, "Revise Reactor Coolant Leakage Requirements," for the Millstone Power Station Units 2 and 3, Surry Power Station Unit Nos. 1 and 2, North Anna Power Station Units 1 and 2, and V. C. Summer Nuclear Station Unit 1. The amendments revised the TS definition of "Leakage," clarified the requirements when pressure boundary leakage is detected and added a Required Action when pressure boundary leakage is identified, as described in the amendment request.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Beaver Valley Power Station, Units 1 and 2; Beaver County, PA

Docket Nos	50-334, 50-412.
Amendment Date	May 22, 2023.
ADAMS Accession No	ML23102A147.
Amendment Nos	321 (Unit 1), 211 (Unit 2).
Brief Description of Amendments	The amendments revised the Beaver Valley Power Station Technical Specifications to add a limiting condition for operation titled "Decay Time" prohibiting movement of fuel or over fuel that has occupied part of a critical reactor core within the previous 100 hours.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Northern States Power Company—Minnesota; Prairie Island Nuclear Generating Plant, Units 1 and 2; Goodhue County, MN; Northern States Power Company; Monticello Nuclear Generating Plant; Wright County, MN

Docket Nos	50-263, 50-282, 50-306.
Amendment Date	March 31, 2023.
ADAMS Accession No	ML22357A100.
Amendment Nos	Monticello—211; Prairie Island, 242 (Unit 1), 230 (Unit 2).

LICENSE AMENDMENT ISSUANCES—Continued

Brief Description of Amendments	The amendments revised the Monticello Nuclear Generating Plant and Prairie Island Nuclear Generating Plant, Units 1 and 2, emergency plans, which includes a Corporate Offsite Emergency Plan, to create a new Xcel Energy Standard Emergency Plan. In addition, the amendments approved a consolidated Emergency Operations Facility (EOF) replacing the existing Monticello and Prairie Island, Units 1 and 2, EOF and their common back-up EOF.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

PSEG Nuclear LLC; Salem Nuclear Generating Station, Units 1 and 2; Salem County, NJ

Docket Nos	50–272, 50–311.
Amendment Date	May 2, 2023.
ADAMS Accession No	ML23081A466.
Amendment Nos	346 (Unit 1), 327 (Unit 2).
Brief Description of Amendments	The amendments revised the Salem Nuclear Generating Station, Units 1 and 2, Technical Specification Action 3.8.1.1.b.4 to extend the allowed outage time for an inoperable emergency diesel generator from 72 hours to 14 days.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

PSEG Nuclear LLC; Salem Nuclear Generating Station, Unit 2; Salem County, NJ

Docket No	50–311.
Amendment Date	May 9, 2023.
ADAMS Accession No	ML23096A184.
Amendment No	328.
Brief Description of Amendment	The amendment revised the technical specifications by relocating the pressure-temperature (P–T) limits for the reactor pressure vessel to a licensee-controlled pressure and temperature limits report (PTLR) and replacing the existing reactor vessel heatup and cooldown rate limits and the P–T limit curves with references to the PTLR. The amendment also updated the existing P–T limits to extend their applicability through the period of extended operation to 50 effective full-power years.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

SHINE Medical Technologies, LLC; SHINE Medical Isotope Production Facility; Janesville, WI

Docket No	50–608.
Amendment Date	May 5, 2023.
ADAMS Accession No	ML23087A227.
Amendment No	No. 4.
Brief Description of Amendment	The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 4 to Construction Permit No. CPMIF–001 for the SHINE Technologies, LLC (SHINE) Medical Isotope Production Facility. This amendment adds one new license condition, 3.G, and revises the Commission's finding 1.K related to the construction permit in response to the application dated October 6, 2022 (ADAMS Accession No. ML22279A951), as supplemented by letter dated February 17, 2023 (ADAMS Accession No. ML23048A244). This amendment allows the receipt and possession of contained special nuclear material in the form of neutron detectors to be installed during the construction of the SHINE Medical Isotope Production Facility.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Burke County, GA

Docket Nos	52–025, 52–026.
Amendment Date	April 26, 2023.
ADAMS Accession No	ML23072A186 (package).
Amendment No	191 (Unit 3), 188 (Unit 4).
Brief Description of Amendments	The amendments changed Technical Specification (TS) Surveillance Requirement (SR) 3.0.3 and the associated TS Bases to allow application of SR 3.0.3 when a surveillance has not been previously performed and to clarify the application of SR 3.0.3. These changes were consistent with NRC approved changes reflected in Technical Specifications Task Force (TSTF) Traveler TSTF–529, “Clarify Use and Application Rules,” for SR 3.0.3.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Susquehanna Nuclear, LLC and Allegheny Electric Cooperative, Inc.; Susquehanna Steam Electric Station, Units 1 and 2; Luzerne County, PA

Docket Nos	50–387, 50–388.
Amendment Date	May 17, 2023.
ADAMS Accession No	ML23132A321.

LICENSE AMENDMENT ISSUANCES—Continued

Amendment Nos	285 (Unit 1), 269 (Unit 2).
Brief Description of Amendment(s)	The NRC staff approved conforming administrative license amendments regarding the indirect license transfer of Susquehanna Steam Electric Station, Units 1 and 2. The amendments revised Renewed Facility Operating License Nos. NPF-14 and NPF-22 to reflect a change in the entity responsible for providing a financial support agreement to Susquehanna Nuclear, LLC, as well as related editorial changes and changes regarding the investment of decommissioning trust funds.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Limestone County, AL

Docket Nos	50-259, 50-260, 50-296.
Amendment Date	May 2, 2023.
ADAMS Accession No	ML23073A290.
Amendment No	328 (Unit 1), 351 (Unit 2), 311 (Unit 3).
Brief Description of Amendment(s)	The amendments revised the Browns Ferry technical specification requirements to permit the use of Risk-Informed Completion Times in accordance with Technical Specification Task Force (TSTF) Traveler TSTF 505-A, Revision 2, "Provide Risk-Informed Extended Completion Times—RITSTF Initiative 4b." Additionally, the amendments revised the technical specifications to eliminate second completion times in accordance with Traveler TSTF 439-A, "Eliminate Second Completion Times Limiting Time From Discovery of Failure To Meet an LCO [limiting conditions for operation]."
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Limestone County, AL

Docket Nos	50-259, 50-260, 50-296.
Amendment Date	May 16, 2023.
ADAMS Accession No	ML23101A110.
Amendment No(s)	329 (Unit 1), 352 (Unit 2), 312 (Unit 3).
Brief Description of Amendment(s)	The amendments revised Browns Ferry Nuclear Plant, Units 1, 2, and 3, Technical Specification 4.1, "Site Location," to remove the description of the site acreage.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Limestone County, AL

Docket Nos	50-259, 50-260, 50-296.
Amendment Date	May 23, 2023.
ADAMS Accession No	ML23116A247.
Amendment Nos	330 (Unit 1), 353 (Unit 2), 313 (Unit 3).
Brief Description of Amendments	The amendments revised the Browns Ferry Nuclear Plant, Units 1, 2, and 3, Technical Specifications (TS) to delete TS 3.6.3.1, "Containment Atmosphere Dilution (CAD) System," and the associated TS Bases. The revisions are consistent with Revision 2 to Technical Specification Task Force (TSTF) Traveler, TSTF-478-A, "BWR [Boiling Water Reactor] Technical Specification Changes that Implement the Revised Rule for Combustible Gas Control."
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Union Electric Company; Callaway Plant, Unit 1; Callaway County, MO

Docket No	50-483.
Amendment Date	May 10, 2023.
ADAMS Accession No	ML23093A095.
Amendment No	232.
Brief Description of Amendment	The amendment revised Technical Specification (TS) 3.7.16, "Fuel Storage Pool Boron Concentration"; TS 3.7.17, "Spent Fuel Assembly Storage"; and TS 4.3.1, "Criticality," to accommodate a simplified storage configuration that establishes two regions in the spent fuel pool and provide a bounding nuclear criticality safety analysis for additional fuel assembly designs.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Virginia Electric and Power Company; Surry Power Station, Unit Nos. 1 and 2; Surry County, VA

Docket Nos	50-280, 50-281.
Amendment Date	May 9, 2023.
ADAMS Accession No	ML23061A012.
Amendment Nos	312 (Unit 1) and 312 (Unit 2).

LICENSE AMENDMENT ISSUANCES—Continued

Brief Description of Amendments	The amendments revised Technical Specification 3.12.E, “Rod Position Indication System and Bank Demand Position Indication System,” for Surry, Units 1 and 2, to adopt certain changes in Technical Specification Task Force Traveler 547, Revision 1, “Clarification of Rod Position Requirements,” that provide alternative TS Actions to allow the position of the rod to be monitored by a means other than movable incore detectors, but with a variation.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Circumstances or Emergency Situation)

Since publication of the last monthly notice, the Commission has issued the following amendment. The Commission has determined for this amendment that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission’s rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission’s rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent circumstances or emergency situation associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed NSHC determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee’s facility of the licensee’s application and of the Commission’s proposed determination of NSHC. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of

communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant’s licensed power level, the Commission may not have had an opportunity to provide for public comment on its NSHC determination. In such case, the license amendment has been issued without opportunity for comment prior to issuance. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that NSHC is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendments involve NSHC. The basis for this determination is contained in the documents related to each action. Accordingly, the amendment has been issued and made effective as indicated. For those amendments that have not been previously noticed in the **Federal**

Register, within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the guidance concerning the Commission’s “Agency Rules of Practice and Procedure” in 10 CFR part 2 as discussed in section II.A of this document.

Unless otherwise indicated, the Commission has determined that the amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to these actions, see the amendment and associated documents such as the Commission’s letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession number(s) for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the “Obtaining Information and Submitting Comments” section of this document.

LICENSE AMENDMENT ISSUANCE—EXIGENT/EMERGENCY CIRCUMSTANCES

Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 1; Rhea County, TN

Docket No	50–390.
Amendment Date	May 5, 2023.
ADAMS Accession No	ML23125A220.
Amendment No	161.
Brief Description of Amendment	The amendment revised Technical Specification Table 1.1–1 to add one-time use information to the footnotes (b) and (c) regarding reactor vessel head closure bolts. The license amendment is issued under emergency circumstances as provided in the provisions of paragraph 50.91(a)(5) of title 10 of the <i>Code of Federal Regulations</i> because of the time-critical nature of the amendment.

LICENSE AMENDMENT ISSUANCE—EXIGENT/EMERGENCY CIRCUMSTANCES—Continued

Local Media Notice (Yes/No)
Public Comments Requested as to Proposed NSHC
(Yes/No).

No.
No.

Dated: June 2, 2023.

For the Nuclear Regulatory Commission.

Bo M. Pham,

*Director, Division of Operating Reactor
Licensing, Office of Nuclear Reactor
Regulation.*

[FR Doc. 2023–12245 Filed 6–12–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–168 and CP2023–172;
MC2023–169 and CP2023–173; MC2023–170
and CP2023–174]

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:* June 14, 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
- II. Docketed Proceeding(s)

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):* MC2023–168 and CP2023–172; *Filing Title:* USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 27 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 5, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* June 14, 2023.

2. *Docket No(s):* MC2023–169 and CP2023–173; *Filing Title:* USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 28 to Competitive Product List and Notice of

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).

Filing Materials Under Seal; *Filing Acceptance Date:* June 5, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 14, 2023.

3. *Docket No(s):* MC2023–170 and CP2023–174; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 121 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 5, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 14, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–12637 Filed 6–12–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97665; File No. SR–CboeEDGX–2023–038]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fee Schedule

June 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on June 1, 2023, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule, effective June 1, 2023. The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 15% [sic] of the market share and currently the Exchange represents only approximately 6% of the market share.³ Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants

can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange's Fee Schedule sets forth standard rebates and rates applied per contract. For example, the Exchange assesses a fee of \$0.18 per contract for SAM⁴ Contra Non-Customer, Non-Professional orders, yielding fee code SF, and SAM Agency Non-Customer, Non-Professional orders, yielding fee code SA. The Exchange now proposes to increase the standard fee for both SAM Contra Non-Customer, Non-Professional orders and SAM Agency Non-Customer, Non-Professional orders (*i.e.*, yielding fee codes SF and SA, respectively) from \$0.18 per contract to \$0.20 per contract.

Additionally, the Fee Schedule offers tiered pricing which provides Members⁵ opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

For example, pursuant to Footnote 7 of the Fee Schedule, the Exchange currently offers three QCC⁶ Initiator/Solicitation Rebate Tiers which provide rebates between \$0.14 and \$0.28 per contract for qualifying QCC Agency Orders or Solicitation Agency Orders where a Member meets incrementally increasing volume thresholds. Particularly, the Exchange will apply the QCC Initiator/Solicitation Rebate to a Member that submits QCC Agency Orders or Solicitation Agency Orders, including a Member who routed orders to the Exchange with a Designated Give Up, when at least one side of the transaction is of Non-Customer, Non-Professional capacity. Fee codes QA,⁷

QM,⁸ QO,⁹ SA,¹⁰ SC,¹¹ and SG¹² qualify for these rebates.¹³ There are two separate rebates that are available under each tier, depending on whether one or both sides of the transaction are of Non-Customer, Non-Professional capacity. A qualifying order will receive the rebate under "Rebate 1" if one side of the transaction is of Non-Customer, Non-Professional capacity. A qualifying order will receive the rebate under "Rebate 2", if both sides of the transaction are of Non-Customer, Non-Professional capacity. The volume threshold (per month) for Tier 1 is 0 to 999,999 contracts, for Tier 2 is 1,000,000 to 1,999,999 contracts, for Tier 3 is 2,000,000+ contracts.

The Exchange proposes to amend the QCC Initiator/Solicitation Rebate Tier program by amending current rebates for Tiers 1 through 4 [sic]. Specifically, the Exchange proposes to increase Tier 1 Rebate 1 from \$0.14 to \$0.16, Tier 1 Rebate 2 from \$0.22 to \$0.24, Tier 2 Rebate 1 from \$0.16 to \$0.18, Tier 2 Rebate 2 from \$0.25 to \$0.28, Tier 3 Rebate 1 from \$0.18 to \$0.19, and Tier 3 Rebate 2 from \$0.28 to \$0.30. The volume thresholds for all tiers remain unchanged.

The Exchange believes the proposed rebate structure is competitive with rebates offered at another exchange for similar transactions.¹⁴ Additionally, the proposed changes to the QCC Initiator/Solicitation Rebate Tiers are designed to incentivize Members to grow their QCC Initiator and/or Solicitation order flow to receive the enhanced rebates. The Exchange believes that incentivizing greater QCC Initiator and/or Solicitation order flow would provide more opportunities for participation in QCC trades or in the SAM Auction which increases opportunities for price improvement.

⁸ Fee Code "QM" is appended to QCC Agency (Non-Customer, Non-Professional) Orders.

⁹ Fee Code "QO" is appended to QCC Agency (Professional) orders.

¹⁰ Fee Code "SA" is appended to SAM Agency Non-Customer orders.

¹¹ Fee Code "SC" is appended to SAM Agency (Customer) orders.

¹² Fee Code "SG" is appended to SAM Agency (Professional) orders.

¹³ See Cboe EDGX U.S. Options Exchange Fees Schedule, Footnote 7, QCC Initiator/Solicitation Rebate Tiers.

¹⁴ See Box Options Fee Schedule, Section IV(D)(1), which provides rebates ranging from \$0.14 to \$0.17 per contract to the Agency Order where at least one party to the QCC transaction is a Broker-Dealer or Market-Maker (*i.e.*, a non-customer, non-professional) and from \$0.22 to \$0.27 per contract where both parties to the QCC transaction are a Broker-Dealer or Market-Maker.

⁴ The term "SAM" refers to Solicitation Auction Mechanism.

⁵ See Exchange Rule 1.5(n).

⁶ The term "QCC" refers to Qualified Contingent Cross Orders.

⁷ Fee Code "QA" is appended to QCC Agency (Customer) Orders.

³ See Cboe Global Markets U.S. Options Market Monthly Volume Summary (May 26, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁸ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all market participants. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The proposed fee changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow, which the Exchange believes would enhance market quality to the benefit of all Members.

The Exchange believes the fee changes for SAM Contra Non-Customer, Non-Professional and SAM Agency Non-Customer, Non-Professional orders is consistent with Section 6(b)(4) of the Act in that the proposed fees are reasonable, equitable and not unfairly discriminatory. The Exchange believes that the proposed increase for SAM Non-Customer, Non-Professional Agency and Contra orders, is reasonable, equitable, and not unfairly discriminatory because the increase is modest and the Exchange believes the proposed fees will still encourage participation in SAM as the rate, even as amended, is equivalent to or better than most other price improvement auctions offered by other options exchanges as well as the Exchange itself.¹⁹ The Exchange believes the fees, as proposed, will continue to promote order flow through SAM and attract liquidity, which benefits all market participants by providing additional trading opportunities at improved prices. This, in turn, attracts increased large-order flow from liquidity providers which facilitates tighter spreads and potentially triggers a corresponding increase in order flow originating from other market participants.

The Exchange believes the proposed changes to the QCC Initiator/Solicitation Rebate Tiers are reasonable, equitable, and not unfairly discriminatory. The Exchange believes that increasing the rebates offered under Tiers 1 through 4 [sic] is reasonable because Members will be receiving higher rebates for meeting the criteria corresponding to each tier. Additionally, the Exchange believes the changes to the QCC Initiator/Solicitation Rebate Tiers are reasonable overall because, as stated above, in order to operate in the highly competitive markets, the Exchange and its competing exchanges seek to offer similar pricing structures, including assessing comparable rates and offering multiple enhanced pricing

opportunities for various types of orders. Thus, the Exchange believes the proposed changes are reasonable as they are generally aligned with and competitive with the amounts assessed for similar orders on other options exchanges.²⁰ Further, the Exchange believes the rebates, as modified, continue to serve as a reasonable means to encourage Members to increase their liquidity on the Exchange, particularly in connection with additional QCC and/or Solicitation Agency Order flow to the Exchange in order to benefit from the proposed enhanced rebates. The Exchange believes that incentivizing greater QCC Initiator and/or Solicitation order flow would provide more opportunities for participation in QCC trades or in the SAM Auction which increases opportunities for price improvement. The Exchange also believes that amending the rebates represents an equitable allocation of fees and is not unfairly discriminatory because they will continue to automatically and uniformly apply to all Members’ respective qualifying orders.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities for all Members.

The Exchange believes that the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. First, the Exchange notes that the proposed changes apply uniformly to similarly situated Members. The Exchange believes that the proposed changes related to QCC transactions would not impose any burden on intramarket competition, but rather, serves to increase intramarket competition by incentivizing members to direct their QCC orders to the Exchange, in turn providing for more opportunities to compete at improved prices. Additionally, the proposed rule change benefits all market participants as any overall increased liquidity that may result from the proposed rebate incentives benefits all investors by offering additional flexibility for all investors to enjoy cost savings,

¹⁹ See MIAX Options Fee Schedule, Section 1(a)(v), “MIAX Price Improvement Mechanism (“PRIME”) Fees, which provides for comparable rates for similar market participant type orders submitted into its PRIME auctions. For example, PRIME Customer Agency orders are free of charge; PRIME Agency orders for a Public Customer that is Not a Priority Customer, MIAX Market Maker, Non-MIAX Market Maker, Non-Member Broker-Dealer, and Firm are assessed a fee of \$0.30; PRIME Customer Contra-side orders are free of charge; PRIME Contra-side orders for a Public Customer that is Not a Priority Customer, MIAX Market Maker, Non-MIAX Market Maker, Non-Member Broker-Dealer, and Firm are assessed a fee of \$0.05. See also Box Options Fee Schedule, Section IV(C), which provides varying rates for similar market participant type orders submitted as a solicitation transaction.

²⁰ See *supra* note 14.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ *Id.*

¹⁸ 15 U.S.C. 78f(b)(4).

supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange also believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, as noted above, competing options exchanges have similar fees in place in connection with price improvement auctions.²¹ Further, the Exchange operates in a highly competitive market. Members have numerous alternative venues they may participate on and direct their order flow, including 15 other options exchanges. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 15% [sic] of the market share. Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchanges if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.” The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’” Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or

appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²² and paragraph (f) of Rule 19b-4²³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2023-038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-CboeEDGX-2023-038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGX-2023-038 and should be submitted on or before July 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-12577 Filed 6-12-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97664; File No. SR-NASDAQ-2023-015]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate a Transaction Credit at Equity 7, Section 118

June 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 1, 2023, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²¹ See *supra* note 19.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate a transaction credit at Equity 7, Section 118(a), as described further below. The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate a transaction credit currently offered to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) at Equity 7, Section 118(a)(1). Specifically, the Exchange proposes to eliminate the \$0.00295 per share executed credit for securities in Tapes A, B, and C offered to members with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.85% or more of Consolidated Volume, which includes shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent 0.25% or more of Consolidated Volume.

The Exchange proposes to eliminate this credit because it has not been heavily utilized or successful in accomplishing its objective of inducing members to increase liquidity on the Exchange, including in shares listed on exchanges other than Nasdaq or NYSE. The Exchange has limited resources to allocate to incentives and it must, from time to time, reallocate those resources

to maximize their net impact on the Exchange, market quality, and participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"⁵

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."⁶

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4) and (5).

⁵ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange proposes to eliminate a credit that has not been successful in accomplishing its objective of inducing members to increase liquidity on the Exchange, including in shares listed on exchanges other than Nasdaq or NYSE. The proposed deletion is designed to streamline the Exchange's fee schedule. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

Those participants that are dissatisfied with the elimination from the Exchange's schedule of credits are free to shift their order flow to competing venues that provide more generous incentives or less stringent qualifying criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

The Exchange intends for its proposed elimination of a credit at Equity 7, Section 118(a) to simplify its fee schedule, eliminate an unsuccessful rebate, preserve its limited resources for optimized effect, and better align the schedule of credits with the Exchange's overall mix of objectives. The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposal is not

attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition.

Even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 50% of industry volume.

If the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2023-015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NASDAQ-2023-015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE,

Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2023-015 and should be submitted on or before July 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-12576 Filed 6-12-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97658; File No. SR-Phlx-2023-22]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Options 8 Rules

June 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 31, 2023, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rule text within Options 8 related to Phlx's trading floor. Specifically, the Exchange proposes to amend Options 8, Section 26, Trading Halts, Business Continuity and Disaster Recovery; Options 8, Section 28, Responsibilities of Floor Brokers; Options 8, Section 29, Use of Floor Based Management System by Floor

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

Market Makers and Lead Market Makers; Options 8, Section 30, Crossing, Facilitation and Solicited Orders; Options 8, Section 32, Types of Floor-Based (non-System) Orders; Options 8, Section 33, Accommodation Transactions; Options 8, Section 34, FLEX Index, Equity, and Currency Options; and Options 8, Section 39, Option Minor Rule Violations and Order and Decorum Regulations.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend various rules within Options 8 related to Phlx's trading floor. Specifically, the Exchange proposes to amend Options 8, Section 26, Trading Halts, Business Continuity and Disaster Recovery; Options 8, Section 28, Responsibilities of Floor Brokers; Options 8, Section 29, Use of Floor Based Management System by Floor Market Makers and Lead Market Makers; Options 8, Section 30, Crossing, Facilitation and Solicited Orders; Options 8, Section 32, Types of Floor-Based (non-System) Orders; Options 8, Section 33, Accommodation Transactions; Options 8, Section 34, FLEX Index, Equity, and Currency Options; and Options. Each change will be discussed below.

Automation of FLEX and Cabinet Orders

Today, Phlx permits members and member organizations to transact FLEX

Options³ and Cabinet Orders⁴ on its trading floor.

FLEX Options

FLEX Options provide investors with the ability to customize basic option features including expiration date, exercise style, and certain exercise prices. Phlx FLEX Options may be FLEX index, equity, or currency options. Today, Phlx FLEX Options transactions are exposed in open outcry on the trading floor similar to other options that trade on Phlx's trading floor. Today, the Requesting Member⁵ initiates a Request-for-Quote ("RFQ") by submitting a ticket to Market Operations staff prior to requesting a quote in open outcry by announcing certain contract terms to the trading crowd of the non-FLEX option.⁶ Members may enter, modify, or withdraw FLEX Quotes at any point during the Request Response Time,⁷ which is currently set to two minutes, at the Market Operations post. At the expiration of the Request Response Time, the open outcry BBO is identified in accordance with the price and time priority principles set forth by the Exchange. Thereafter, on receipt of an RFQ in proper form, the assigned Lead Market Maker or the Requesting Member shall cause the terms of the RFQ to be disseminated as an administrative message through the Options Price Reporting Authority ("OPRA").⁸

If the Requesting Member has not indicated an intention to cross or act as

³ The term "FLEX option" means a FLEX option contract that is traded subject to Options 8, Section 34(a). The Exchange proposes to replace the term "FLEX option" with "FLEX Option" in the rule text.

⁴ A "cabinet order" is a closing limit order at a price of \$1 per option contract for the account of a Public Customer, firm, Lead Market Maker or ROT. An opening order is not a "Cabinet Order" but may in certain cases be matched with a Cabinet Order pursuant to subsection (a)(iii) of Options 8, Section 33. Only Floor Brokers may represent Cabinet Orders. See Options 8, Section 33(a).

⁵ A Requesting Member is a member of the Exchange qualified to trade FLEX Options pursuant to Options 3, Section 34(d) who initiates an RFQ for a FLEX option. See Options 3, Section 34(b)(10).

⁶ The contract terms include: (1) underlying index, security or foreign currency; (2) type, size, and crossing intention; (3) in the case of FLEX index options and FLEX equity options, exercise style and settlement type; (4) expiration date; (5) exercise price; and (6) respecting index options, the settlement value. See Options 8, Section 34(c)(1).

⁷ The Request Response Time is the minimum period of time established by the Exchange, during which Exchange members participating in FLEX Options may provide FLEX Quotes in response to a Request for Quotes. See Options 8, Section 34(b)(12).

⁸ FLEX Quotes must be entered during the Request Response Time within Options 8, Section 34(b)(12) of 15 seconds. All FLEX Quotes may be entered, modified or withdrawn at any point during the request response time. See Options 8, Section 34(c)(2).

principal with respect to any part of the FLEX trade, the member shall promptly accept or reject the displayed BBO; provided, however, that if such a Requesting Member either rejects the BBO or is given a BBO for less than the entire size requested, all FLEX participating members other than the Requesting Member will have an opportunity during the BBO Improvement Interval in which to match, or improve, (as applicable), the BBO pursuant to Options 8, Section 34(c)(3). At the expiration of any such BBO Improvement Interval,⁹ which is currently set to 15 seconds, the Requesting Member must promptly accept or reject the BBO(s). If the Requesting Member has indicated an intention to cross or act as principal with respect to any part of the FLEX trade, acceptance of the displayed BBO shall be automatically delayed until the expiration of the BBO Improvement Interval pursuant to Options 8, Section 34(c)(3). Prior to the BBO Improvement Interval, the Requesting Member must indicate at the post the price at which the member expects to trade. In these circumstances, the Requesting Member may participate with all other FLEX-participating members in attempting to improve or match the BBO during the BBO Improvement Interval pursuant to Options 8, Section 34(c)(3). At expiration of the BBO Improvement Interval, the Requesting Member must promptly accept or reject the BBO(s) pursuant to Options 8, Section 34(c)(3). The Requesting Member has no obligation to accept any FLEX bid or offer pursuant to Options 8, Section 34(c)(3). Whenever, following the completion of FLEX bidding and offering responsive to a given RFQs, the Requesting Member rejects the BBO or the BBO size exceeds the FLEX transaction size indicated in the RFQs, members may accept the entire order or the unfilled balance of the BBO pursuant to Options 8, Section 34(c)(3). Once the FLEX Order is executed in open outcry, the FLEX trade is disseminated to OPRA by the Exchange pursuant to Options 8, Section 34(c)(6).

In contrast, as proposed, in order to transact a FLEX Order, a member would enter open outcry trading and announce one of each of the following terms¹⁰

⁹ The BBO Improvement Interval means the minimum period of time, to be established by the Exchange, during which members may submit FLEX Quotes to meet or improve the BBO established during the Request Response Time. See Options 8, Section 34(b)(15).

¹⁰ See proposed Options 8, Section 34(f)(1) which states, "Characteristics of Underlying Interest: (A) any index upon which options currently trade on

within subparagraph (f)(1).¹¹ Additionally, all other terms of a FLEX Option series, which are the same as those that apply to non-FLEX Options, must be included except that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option). Floor participants would have a reasonable amount of time (which amount of time must be between three seconds and five minutes) from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order (including announcing a crossing transaction pursuant to Options 8, Section 30(a)) to respond with bids or offers. This timeframe would be analogous to the RFQ Process which includes the BBO Improvement Interval. Today, an Options Exchange Official¹² would intervene if they believed that an appropriate amount of time was not allotted for the FLEX Order to trade. The Options Exchange Official would enforce the requirement that the amount of time must be at least three seconds and no more than five minutes based on the complexity of the trade and the responses in the trading crowd when determining if the time was reasonable. For example, based on the number of participants who indicate an interest to participate in the trade and the complexity of the trade, the Options Exchange Official would determine if there was an appropriate amount of time and require more time if necessary. Unlike the current process, an RFQ ticket would not be submitted to the Market Operations post and the RFQ would not be disseminated to OPRA. By contrast, quotes are not disseminated

the Exchange. The applicable index multiplier shall be the same multiplier, in the case of U.S. dollar-denominated FLEX index options, that applies to non-FLEX index options on the same underlying index; (B) any security which is options-eligible pursuant to Options 4, Section 3; or (C) any foreign currency which is options-eligible pursuant to Options 4, Section 3 and which underlies non-FLEX U.S. dollar-settled foreign currency options that are trading on the Exchange.”

¹¹ See proposed Options 8, Section 34(h).

¹² The term “Option Exchange Official” means an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer. A list of individual Options Exchange Officials shall be displayed on the Exchange website. The Chief Regulatory Officer shall maintain the list of Options Exchange Officials and update the website each time a name is added to, or deleted from, the list of Options Exchange Officials. In the event no Options Exchange Official is available to rule on a particular matter, the Chief Regulatory Officer or his/her designee shall rule on such matter. See Options 1, Section 1(b)(38).

with respect to other trades in open outcry today. While a market participant could seek to participate in the trade by calling a floor broker after viewing the FLEX RFQ on OPRA, this is an uncommon scenario.¹³ FLEX Orders, unlike standard orders, are less common and the Exchange does not have a similar RFQ process for standard orders that are analogous to those FLEX Orders. This proposed process would align with Cboe, Inc.’s (“Cboe”) process and not require Phlx to disseminate quotes to OPRA while other options floor exchanges have no similar obligations.¹⁴ The Exchange believes that the proposed process is analogous to the current process and provides market participants ample time to respond to requests for a market in a FLEX Order. As the foregoing process demonstrates, Phlx seeks to maintain a competitive trading floor through the administration of its rules which contain processes to ensure that options transactions are exposed in such a way as to permit other floor members an opportunity to participate in price discovery by requiring floor members to seek liquidity in open outcry.

The Exchange proposes several amendments to Options 8, Section 34. First, the Exchange proposes to require FLEX Orders to be reported into Phlx’s Options Floor Based Management System or “FBMS.” FBMS will create an electronic audit trail for FLEX Orders, thereby further automating the execution and reporting of FLEX Options. With this change, members and member organizations will be required to record all FLEX Orders represented in the trading crowd into FBMS.¹⁵ Orders entered into FBMS will be executed based on market conditions at the time of execution and in accordance with Exchange rules. All executed contracts will be reported to OPRA and sent to The Options Clearing Corporation (“OCC”) for clearing, similar to all other equity, equity index and U.S. dollar-settled foreign currency options orders executed on the Exchange’s trading floor. Second, the Exchange proposes to remove its RFQ process including the BBO Improvement Interval Process, as explained above, with this rule change. Third, the Exchange proposes to

reorganize Options 8, Section 34 to restructure its rule to include additional information which describes current FLEX trading on Phlx. The proposed amendments seek to reorganize Options 8, Section 34 so as to provide a greater amount of information concerning FLEX trading.

The Exchange proposes to add a new Options 8, Section 34(b) titled “Order Types” to address FLEX Order types. This proposed rule text memorializes the Exchange’s current practice as it relates to order types for FLEX trading. Specifically, the Exchange proposes to state that it may determine to make the order types and Time-in-Force, respectively, within Options 8, Section 32 submitted in FLEX Options (“FLEX Orders”) available on a class or System basis. Options 8, Section 32 describes the order types available on the trading floor. Specifically, with respect to complex orders transacted on the trading floor, complex FLEX Orders may have up to the maximum number of legs permitted pursuant to Exchange rules for standard trading. Further, each leg of a complex FLEX Order: (1) must be for a FLEX Option series authorized for FLEX trading with the same underlying equity security or index; (2) must have the same exercise style (American or European); and (3) for a FLEX Index Option, may have a different settlement type (a.m.-settled or p.m.-settled), except each leg must have the same settlement type. Today, Options 8, Section 32 provides that the Exchange may determine to make certain order types and time-in-force, respectively, available on a class or System basis. The Exchange is proposing to add this same rule text within new Options 8, Section 34(b) with respect to FLEX Orders. Today, the Exchange may determine which orders may apply to FLEX trading. The language concerning complex orders is intended to memorialize the manner in which complex orders may trade as FLEX. The proposed rule text explains the manner in which these orders trade today on Phlx. This proposed change is not intended to amend the Exchange’s current practice, which is not currently described within the FLEX rules.

The Exchange proposes to relocate Options 8, Section 34(c)(8), concerning Trading Hours, to new Options 8, Section 34(c) without change. The Exchange proposes to add a new header re-titled “Trading Hours”.

The Exchange proposes to relocate Options 8, Section 34(c)(7), concerning Trading Rotations, to new Options 8, Section 34(d) without change.

¹³ See Options 3, Section 34(c)(1) and (2) which explains the RFQ Process to request a quotation and respond.

¹⁴ Cboe does not disseminate via OPRA information respecting open outcry RFQs. See Securities Exchange Act Release No. 66052 (December 23, 2011), 77 FR 306 at 308 (January 4, 2012) (SR-Cboe-2011-123).

¹⁵ A FLEX Option series is only eligible for trading if the FLEX Order is represented in open outcry. See proposed Options 8, Section 34(h).

The Exchange proposes to adopt rule text similar to Cboe Rule 4.21(a),¹⁶ which describes current permissible series for FLEX Options at new Options 8, Section 34(e). The proposed rule text would state that the Exchange may authorize for trading a FLEX Option class on any equity security or index it may authorize for trading a non-FLEX Option class on that equity security or index pursuant to Options 4, Section 3 and Options 4A, Section 3, respectively, even if the Exchange does not list that non-FLEX Option class for trading. FLEX Option series are not pre-established. A FLEX Option series is eligible for trading on the Exchange upon submission to the System of a FLEX Order for that series pursuant to Options 8, Section 34.

FLEX Options would be subject to certain trading conditions, which exist today and are specified within current Options 8, Section 34(b)(6)(B).¹⁷ The Exchange proposes to remove the rule text within Options 8, Section 34(b)(6)(B) related to the RFQ process, as explained below. As provided in current Options 8, Section 34(b)(6)(B), the Exchange only permits trading in a put or call FLEX Option series that does not have the same exercise style, same expiration date, and same exercise price as a non-FLEX Option series on the

same underlying security or index that is already available for trading. As provided in current Options 8, Section 34(b)(6)(B), this includes permitting trading in a FLEX Option series before a series with identical terms is listed for trading as a non-FLEX Option series. As provided in current Options 8, Section 34(b)(6)(B), if the Exchange lists for trading a non-FLEX Option series with identical terms as a FLEX Option series, the FLEX Option series will become fungible with the non-FLEX Option series. As provided in current Options 8, Section 34(b)(6)(B), the System does not accept a FLEX Order for a put or call FLEX Option series if a non-FLEX Option series on the same underlying security or index with the same expiration date, exercise price, and exercise style is already listed for trading. Further, a FLEX Order for a FLEX Option series may be submitted on any trading day prior to the expiration date. The Exchange abides by these conditions today and proposes to enumerate them within its rules similar to Cboe. The proposed rule text explains the manner in which these orders trade today on Phlx. This proposed change is not intended to amend the Exchange's current practice.

Next, the Exchange proposes to add new rule text to proposed Options 8, Section 34(f) which provides that when submitting a FLEX Order for a FLEX Option series to FBMS, one of each of the terms within current Options 8, Section 34(b) must be included.¹⁸ Options 8, Section 34(b) is being relocated to Options 8, Section 34(f)(1), therefore subparagraph (f)(1) is being referenced in the proposed rule text at Options 8, Section 34(f). The Characteristics of Underlying Interest include: (A) any index upon which options currently trade on the Exchange;¹⁹ (B) any security which is options-eligible pursuant to Options 4, Section 3; or (C) any foreign currency which is options-eligible pursuant to Options 4, Section 3 and which underlies non-FLEX U.S. dollar-settled foreign currency options that are trading on the Exchange.²⁰ Further, the Exchange proposes to state within Options 8, Section 34(f) that all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options, provided that a FLEX Index

Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series. This rule text represents the Exchange's current practice. The Exchange states that, to the extent the Exchange lists a micro FLEX Index Option on an index on which it also lists a standard FLEX index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.

As noted above, current Options 8, Section 34(b)(1) is being relocated to proposed Options 8, Section 34(f)(1) without substantive change. The Exchange proposes to amend the header to "Characteristics of Underlying Interest."

Current Options 8, Section 34(b)(2), concerning Type, is relocated to proposed Options 8, Section 34(f)(2)(A) without substantive change. An "A" is being added to the sentence.

Current Options 8, Section 34(b)(3), concerning Exercise Price, is relocated to proposed Options 8, Section 34(f)(3). The Exchange proposes to reword the current rule text which provides,

(A) with respect to FLEX index options, may be specified in terms of a specific index value number, a percentage of the index value calculated as of the open or close of trading on the Exchange on the trade date, or a method for fixing such number;

(B) with respect to FLEX equity options, may be specified in terms of a specific dollar amount rounded to the nearest \$.10 or a percentage of the underlying security rounded to the nearest minimum increment; or

(C) with respect to FLEX currency options, may be specified in terms of a specific dollar amount rounded to the nearest hundredth of a dollar.

The Exchange proposes to more succinctly state that the Exchange may determine the smallest increment for exercise prices of FLEX Options not to exceed two decimal places. Today, the Exchange has the ability to require that FLEX index options be specified by an index value, number, percentage of index value calculated as of the open or close of trading on the Exchange on the trade date, a method for fixing such number, in terms of a specific dollar amount rounded to the nearest \$.10 or a percentage of the underlying security rounded to the nearest minimum increment, or in terms of a specific

¹⁶ Unlike Cboe Rule 4.21(a), Phlx's subparagraph (e) does not address trading halts for FLEX Options. All options traded on Phlx are subject to Phlx's trading halt rule within Options 3, Section 9. Further, Cboe's rule does not describe intra-day halts.

¹⁷ Current Options 8, Section 34(b)(6)(B) states that provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options shall be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price as non-FLEX Options that are already available for trading on the same underlying security or index. FLEX Options shall also be permitted before the options are listed for trading as non-FLEX Options. Once and if the option series are listed for trading as non-FLEX Options, then (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective non-FLEX option series, and (ii) any further trading in the series would be as non-FLEX Options subject to the non-FLEX trading procedures and Rules. However, in the event the Non-FLEX series is added intra-day, a position established under the FLEX trading procedures would be permitted to be closed using the FLEX trading procedures for the balance of the trading day on which the Non-FLEX series is added against another closing only FLEX position. For such FLEX series, the Exchange will make an announcement that the FLEX series is now restricted to closing transactions; a FLEX Request for Quotes ("RFQ") may not be disseminated for any order representing a FLEX series having the same terms as a Non-FLEX series, unless such FLEX option order is a closing order (and it is the day the Non-FLEX series has been added); and only responses that close out an existing FLEX position are permitted. Any transactions in a restricted series that occur that do not conform to these requirements will be nullified by the Exchange.

¹⁸ Such terms are described in proposed new Options 8, Section 34(f)(1), "Characteristics of Underlying Interest."

¹⁹ The applicable index multiplier shall be the same multiplier, in the case of U.S. dollar-denominated FLEX index options, that applies to non-FLEX index options on the same underlying index.

²⁰ See current Options 8, Section 34(b).

dollar amount rounded to the nearest hundredth of a dollar. At this time, the Exchange proposes to narrow its discretion to provide that it may determine the smallest increment for exercise prices of FLEX Options, not to exceed two decimal places. The Exchange has this authority today, it is electing to narrow its authority to provide the increment in the form of a dollar value.

The Exchange proposes to remove the rule text within Options 8, Section 34(b)(4), related to the RFQ process, as explained below.

Current Options 8, Section 34(b)(5), concerning Exercise style, is relocated to proposed Options 8, Section 34(f)(4) without change.

Current Options 8, Section 34(b)(6)(A), concerning Expiration date style, is relocated to proposed Options 8, Section 34(f)(5) without change. The Exchange added rule text within proposed Options 8, Section 34(e)(1) similar to current Options 8, Section 34(b)(6)(B). The Exchange proposes to remove the rule text within Options 8, Section 34(b)(6)(B) related to the RFQ process, as explained below.

The Exchange proposes to remove the RFQ feature, including the BBO Improvement Interval, from its FLEX Options which process was described above in detail. With the automation of FLEX Options to enable FLEX to be entered into FBMS, similar to all other options transactions executed on the Exchange's trading floor including cabinet as explained below, the Exchange is disabling the RFQ feature, including the BBO Improvement Interval. The Exchange notes that Cboe removed its RFQ feature for FLEX Orders.²¹ Similarly, Phlx proposes to remove its RFQ feature, including the BBO Improvement Interval.²²

The Exchange believes the current open outcry RFQ process, including the BBO Improvement Interval, for FLEX Orders is substantially similar to the current open outcry process for non-

FLEX Orders described within Options 8, Sections 22, 23, and 24 at Supplementary Material .01, and therefore believes completely aligning the two processes is appropriate.²³

As noted herein, today, FLEX Quotes must be entered during the Request Response Time, which is currently set to two minutes. Phlx FLEX Options transactions are exposed in open outcry on the trading floor similar to other options that trade on Phlx's trading floor. Thereafter, during the BBO Improvement Interval, which is set to 15 seconds, floor members may submit FLEX Quotes to meet or improve the BBO established during the Request Response Time. The Exchange proposes within Options 3, Section 34(h) to provide floor participants with a reasonable amount of time to respond with bids and offers, which would be between three seconds and five minutes from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order. This time would include announcing a crossing transaction pursuant to Options 3, Section 30(a). The Exchange believes that the proposed rule text permits FLEX Options to trade substantially similar to the current RFQ process, including the BBO Improvement Interval, in which a Floor Broker requests a market and provides Market Makers in the crowd with time to respond with a market. The Exchange believes that eliminating the RFQ process, which is not contemplated in non-FLEX Option open outcry trading, would have minimal (if any) impact on how a Floor Broker may request a market on the Exchange's trading floor with respect to FLEX Options. The initial process permits members the ability to enter, modify or withdraw FLEX Quotes at the Market Operations post during the Request Response Time, which is currently set to two minutes, after a quote was requested in open outcry. The proposed new process would continue to permit members the opportunity to enter, modify or withdraw FLEX Quotes in open outcry, without the need to submit FLEX Quotes at the Market Operations Post. Further, with respect to the BBO Improvement Interval, members continue to have an opportunity to match, or improve, (as applicable), the BBO. Today, the BBO Improvement Interval is 15 seconds. Members will also have the ability to cross any part of

the FLEX trade pursuant to Options 8, Section 30(a)(2), as is the case today. The proposed timeframe of between three seconds and five minutes is appropriate to ensure there is at least a minimum amount of time for Market Makers to conduct the same activities that take place today with the RFQ process and the BBO Improvement Interval, given the unique terms of FLEX Options. Cboe Rule 5.72(d)(1) provides its floor participants the same timeframe to respond with bids and quotes as the Exchange's proposal.

Once a Floor Broker has received a market from the crowd, the Floor Broker may then represent its order on the trading floor in open outcry (after systematizing it, which it must do prior to representing an order on the trading floor) and elect to trade against the best prices or not, or announce an intention to cross at a specific price.²⁴ As discussed above, this is substantially similar to the current RFQ process, including the BBO Improvement Interval. Currently, the Exchange has set a crossing entitlement for facilitations and solicitations of FLEX Orders in all classes to be 40%.²⁵ The 40% crossing entitlement would apply to FLEX Orders as it applies today for all other crossing orders executed on the Exchange's trading floor. As provided for in proposed Options 8, Section 34(h), trading of FLEX Options is subject to all other Options 8 Rules applicable to the trading of options on the Exchange, unless otherwise provided in this Rule.

Current Options 8, Section 30(a) specifies that an Options Floor Broker who holds orders to buy and sell the same option series may cross such orders, must request bids and offers for such options series, and make all persons in the trading crowd aware of the request. Further, Options 8, Section 30(a) states that after providing an opportunity for such bids and offers to be made, the Floor Broker must bid and offer at prices differing by the minimum increment and must improve the market by bidding above the highest bid or offering below the lowest offer. If such

²¹ See Securities Exchange Act 87235 (October 4, 2019), 84 FR 54671 (October 10, 2019) (SR-Cboe-2019-084) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Rules Regarding the Trading of Flexible Exchange Options, and Move Those Rules From the Currently Effective Rulebook to the Shell Structure for the Exchange's Rulebook That Will Become Effective Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges).

²² The Exchange notes that the minimum size requirements for an RFQ is also being removed within Options 8, Section 34(b)(8) as the Exchange would no longer have the RFQ process. The Exchange notes that one contract is the minimum size for options trading on Phlx and will remain the minimum size for FLEX Options trading on FLEX. See Options 3, Section 2.

²³ A Floor Broker may also initially represent an order to the trading crowd, and then receives bids or offers, as appropriate, and trade. However, this is an uncommon scenario. See Options 8, Section 28.

²⁴ See current Options 8, Section 30 which describes procedures for crossing orders on the Exchange's trading floor.

²⁵ Current Supplementary Material .02(iii) to Options 8, Section 30 prescribes the percentage of the order which a Floor Broker is entitled to cross in equity, index and U.S dollar settled foreign currency options, after all Public Customer orders that were (1) on the limit order book and then (2) represented in the trading crowd at the time the market was established have been satisfied, is 40% of the remaining contracts in the order if the order is traded at or between the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market.

higher bid or lower offer is not taken, the Floor Broker may cross the orders at such higher bid or lower offer by announcing in public outcry that he is crossing and giving the quantity and price. All such orders are not deemed executed until entered into and executed through the FBMS.²⁶ The Exchange believes the proposed rule change will have a minimal (if any) impact on the crossing of FLEX Orders in open outcry.

The proposed allocation is substantially similar to the allocation for non-FLEX trading in open outcry, excluding the provisions that are inapplicable to FLEX trading, and to the current allocation for FLEX trading in open outcry. With respect to allocation for a FLEX Order as well as non-FLEX Orders, best-priced responses will continue to have first priority, however if a Customer order were at the same price, the Customer would have priority over a non-Customer.²⁷ With respect to responses at the same price, because there is no electronic trading of FLEX Options on Phlx, there can be no priority Customer orders resting in the order book that would receive first priority at the same price. Therefore, the Customer priority rules of Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. Additionally, no Market Makers are appointed in FLEX Options, so there will be no participation entitlement applicable to FLEX trading. Therefore, the Market Maker entitlements described in Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. The crossing participation would continue to the next priority level in each of those respective rules. Therefore, members of the trading crowd who established the market will have priority over all other orders that were not represented in the trading crowd at the time that the market was established and will maintain priority over such orders except for orders that improve upon the market.²⁸ With respect to the order book, Defined Participation²⁹ shall be equal where

size is the same, otherwise participants are allocated based on size.³⁰ Therefore, the proposed rule change will have minimal (if any) impact on the allocation of responses in open outcry trades of FLEX Orders.

This proposal simplifies the process pursuant to which FLEX Orders would execute on the Exchange in open outcry. As demonstrated above, the general open outcry trading rules are substantially similar to the current open outcry RFQ procedure, including the BBO Improvement Interval, for FLEX Options. However, the proposed rule change eliminates the terminology that applies only to FLEX trading. Floor participants are familiar with the general open outcry trading procedures, and therefore, by aligning the open outcry trading process for FLEX Options with that of non-FLEX Options, and permitting FLEX trading in the same manner as non-FLEX trading on the Exchange's trading floor, the Exchange believes the proposed rule change may encourage members to submit FLEX Orders for execution on Phlx.

In line with the Exchange's proposal to remove the RFQ process, including the BBO Improvement Interval, the Exchange proposes to delete Options 8, Section 34(b)(4), (b)(6)(B), (b)(7), (b)(8), (b)(10)–(15) and (c) with describe the RFQ process. Further, the Exchange proposes to systematize the FLEX Options trading process so that it mirrors the trading process of all other orders entered on the Exchange's trading floor whereby trades are reported to FBMS. To that end, the proposal will require a Floor Broker to systematize a FLEX Order in the same manner as Floor Brokers systematize non-FLEX Orders. The Exchange believes the proposed rule change will result in a more efficient open outcry trading process for FLEX Orders, as a Floor Broker can request a market as soon as it gets that request from a customer. This may ultimately result in more timely executions for customers. This new process would eliminate the requirement to submit an RFQ ticket to the Market Operations post and the requirement to respond to such order at the Market Operations post.³¹ The Exchange desires to remove these manual processes and, instead, permit all responses to take place in open outcry verbally, thereby obviating the

customers that are on parity in accordance with Options 8, Section 25.

³⁰ See Options 8, Section 25(c)(3)(B).

³¹ The Exchange proposes to remove the rule text within Options 8, Section 26(g)(3)(F)(1)(d) which provides, "FLEX Trade tickets must be sent by email to the Phlx Correction Post," because the process will require trades to be reported to FBMS.

need to submit paper responses at the trading post. The Exchange believes the proposed rule change may reduce confusion regarding how FLEX Orders may trade in open outcry, given that any minor differences between the two processes that exist today are being eliminated with the proposed automation.

The Exchange proposes to relocate Options 8, Section 34(b)(5), concerning Exercise Style, to Options 8, Section 34(f)(4) without change.

The Exchange proposes to relocate Options 8, Section 34(b)(6)(A), concerning Expiration Date, to Options 8, Section 34(f)(5) without change. The Exchange proposes to capitalize "Date" in the title. As noted above, the Exchange created a new Options 8, Section 34(e)(1) which incorporated provisions similar to those within Options 8, Section 34(b)(6)(B), except for rule text related to the RFQ process which is being deleted.

The Exchange proposes to relocate Options 8, Section 34(b)(9), concerning Settlement, to Options 8, Section 34(f)(6) and remove current subsection (iii).³² The Exchange will only permit the settlement value to be specified as a.m.-settled or p.m.-settled. The Exchange will not permit the settlement value to be specified as the index value reported as an average over a specified time period.

The Exchange proposes to relocate Options 8, Section 34(d), which describes FLEX simple orders and FLEX Complex Orders, to Options 8, Section 34(g) without substantive change. The Exchange proposes to change references to the terms "ROT" and "Registered Options trader" within this rule text to "Market Maker" within proposed Options 8, Section 29(d) and Section 34(d) and (i). In 2020, the Exchange amended the term "ROT" to "Market Maker" ³³ throughout the Phlx Rulebook.

The Exchange proposes to add a new Options 8, Section 34(h), similar to Cboe Rule 5.72(a) and (b), to describe FLEX Options trading. As is the case today, trading of FLEX Options is subject to all other Options 8 Rules applicable to the trading of options on the Exchange, unless otherwise provided in this Rule.

³² Current Options 8, Section 34(b)(9)(A)(iii) states, "respecting FLEX index options, the settlement value may be specified as the index value reported at the: . . . (iii) as an average over a specified period of time, within parameters established by the Exchange."

³³ See Securities Exchange Act 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03)(Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell) ("Rulebook Relocation").

²⁶ There is an exception where there is a provisional execution using the Snapshot feature of FBMS (as described in Options 8, Section 28(i)); bids and offers can be withdrawn pursuant to Options 8, Section 22(c) or (d).

²⁷ See current Options 8, Section 25(a)(1) and Supplementary Material .02 of Options 8, Section 30.

²⁸ See Supplementary Material .02(vii) of Options 8, Section 30.

²⁹ "Defined Participation" is the portion of the Remainder of the Order to which a crowd participant is entitled. "Remainder of the Order" means the portion of an Initiating Order that remains following the allocation of contracts to

Also, as is the case today, a FLEX Option series is only eligible for trading if the FLEX Order is represented in open outcry. With respect to simple FLEX Orders, a FLEX Order for a FLEX option series submitted to the System must include all terms for a FLEX option series set forth in subparagraphs (e) and (f) of Options 8, Section 34 (including that a non-FLEX option series with identical terms is not listed for trading), size, side of the market, and a bid or offer price, subject to the order entry requirements set forth in Options 8, Section 32. This proposed rule text represents the Exchange's current practice. With respect to complex FLEX Orders, a FLEX Order for a FLEX option complex strategy submitted to the System must satisfy the criteria for a complex FLEX Order set forth in subparagraph (b) of Options 8, Section 34, and include size, side of the market, and a net debit or credit price. Additionally, each leg of the FLEX Option complex strategy must include all terms for a FLEX Option series set forth in subparagraphs (e) and (f) of Options 8, Section 34 (including that a non-FLEX Option series with identical terms is not listed for trading), subject to the order entry requirements set forth in subparagraph (a) of Options 8, Section 34. This proposed rule text represents the Exchange's current practice.

The Exchange proposes to relocate Options 8, Section 34(e), concerning Position Limits, to Options 8, Section 34(i). The Exchange proposes to update a rule citation to reflect the changes proposed herein with the reorganization of the rule to reflect the relocated rule text.

The Exchange proposes to relocate rule text within Options 8, Section 34(f), concerning Exercise Limits, to proposed Options 8, Section 34(j) without change.

Finally, the Exchange proposes to relocate rule text from Options 8, Section 34(g) and (h) into new Options 8, Section 26(g)(3)(F)(1)(d), Options 8, Section 34(k)(1) and (2) respectively, without substantive change.³⁴ The Exchange also proposes to update rule citations within this section to account for the reorganization of the rule to reflect the relocated rule text.

Finally, the Exchange proposes corresponding changes to reflect the proposed change to automate FLEX Options within Options 8, Section 28(f), Section 29(f), Section 32(g), Section 39, A-1, B-7, and C-2.

Cabinet Options

Cabinet Orders are bids and offers (whether opening or closing) at a price of \$1 per option contract for the account of a Public Customer, firm, Lead Market Maker, Market Maker or Floor Market Maker. Cabinet Orders may only be executed on the Exchange's trading floor in open outcry pursuant to Options 8 Rules.³⁵ Today, Phlx reports cabinet trades to OCC within 90 seconds.³⁶ Today, Floor Brokers must submit the designated cabinet transaction form to the Nasdaq Market Operations staff for clearance within ninety seconds of execution. Phlx then immediately reports the cabinet trade to OCC.

At this time, the Exchange proposes to require Cabinet Orders to be reported into FBMS. Similar to the proposal for FLEX Orders, FBMS will create an electronic audit trail for Cabinet Orders, thereby further automating the execution and reporting of Cabinet Orders. With this change, members and member organizations will be required to record all Cabinet Orders represented in the trading crowd into FBMS. All executed contracts will be reported to OPRA and sent to OCC for clearing similar to all other equity, equity index and U.S. dollar-settled foreign currency options orders executed on the Exchange's trading floor.

In line with this proposed change, the Exchange proposes to amend Options 8, Section 33(a)(2) to provide that Floor Brokers shall enter Cabinet Orders into The Options Floor Based Management System pursuant to Options 3, Section 29. The Exchange proposes to remove the verbiage in Options 8, Section 33 which relates to the use of Cabinet forms, which are part of the Exchange's manual process.

The Exchange proposes replacing the word "he" with "the Floor Broker" within Options 8, Section 33(a)(3)(A) to clarify which market participant was being referenced.

In line with the proposed change, the Exchange proposes to amend Options 8, Section 33(a)(4) to specify that the Floor Broker must enter the Cabinet Order into FBMS.

The Exchange proposes to remove the rule text within Options 8, Section 33(d)(3) which relates to the use of forms which would no longer be relevant.

The Exchange proposes to update citations within Options 8, Section 33(e), which refer FLEX rules within Options 8, Section 34 which rules are being relocated. The updated citations

mirror those changes proposed to new Options 8, Section 34(k)(2).

Technical Amendment

The Exchange proposes to amend rule citations within Options 8, Section 30(d) to correct references to subparagraphs, (i) and (ii) to properly cite (1) and (2), respectively.

Implementation

The Exchange proposes to implement this rule change on or before March 29, 2024. The Exchange will announce an implementation date by issuing an Options Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,³⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange's proposal to automate FLEX Order and Cabinet Orders, so that members and member organizations will be required to record all FLEX Orders and Cabinet Orders represented in the trading crowd into FBMS, is consistent with the Act. The Exchange believes removing the requirement for members and member organizations to manually enter FLEX Orders into the Exchange's electronic audit trail and submit manual Cabinet Order forms and, instead require members and member organizations to enter these orders into FBMS, similar to all other orders executed on the trading floor, will reduce the administrative burden on floor participants and therefore removes impediments to and perfects the mechanisms of a free and open market.

Also, because FLEX Orders and Cabinet Orders will be reported and processed like all other open outcry trades, market participants will not be impacted nor have to take on any additional reporting or processing burden. In addition, the Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because having an electronic audit trail of all FLEX Orders and Cabinet Orders will provide a complete and accurate record of these transactions and better facilitate regulatory oversight. In particular, the Exchange believes the proposed rule

³⁴ The Exchange proposes to re-letter the remainder of that section to account for the removed rule text.

³⁵ See Options 8, Section 33(a). Only Floor Brokers may represent Cabinet Orders.

³⁶ See Options 8, Section 33(a)(5).

³⁷ 15 U.S.C. 78f(b)

³⁸ 15 U.S.C. 78f(b)(5).

change will remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest because the proposal more closely aligns the handling of FLEX Orders and Cabinet Orders with the handling of all other options transacted on Phlx's trading floor.

Specifically, with respect to FLEX Options, the proposed open outcry process is closely aligned with the current open outcry trading process for non-FLEX Options, but is still similar to the FLEX trading processes in place today. The proposed rule change merely eliminates many of the differences between FLEX and non-FLEX trading to eliminate potential confusion for market participants given the current differences, while implementing trading processes with which market participants are more familiar. As a result, the Exchange believes the proposed rule change will have minimal impact on the trading of FLEX Options, and possibly increase participation in FLEX Options, which could add liquidity to the Exchange's FLEX market, which ultimately benefits investors. By permitting FLEX Options to trade in a manner similar to non-FLEX Options, the Exchange believes this further improves a comparable alternative to the OTC market in customized options. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

The Exchange believes the current open outcry RFQ process, including the BBO Improvement Interval, for FLEX Orders is substantially similar to the current open outcry process for non-FLEX Orders described within Options 8, Section 24 at Supplementary Material .01, and therefore believes completely aligning the two processes is appropriate. Phlx FLEX Options transactions are exposed in open outcry on the trading floor similar to other options that trade on Phlx's trading floor. Today, the initial process permits members the ability to enter, modify or withdraw FLEX Quotes at the Market Operations post during the Request Response Time, which is currently set to two minutes, after a quote was requested in open outcry. Thereafter, during the BBO Improvement Interval, which is set to 15 seconds, members may submit FLEX Quotes to meet or

improve the BBO established during the Request Response Time. The Exchange's proposal within Options 3, Section 34(h) to provide floor participants with a reasonable amount of time to respond with bids and offers is consistent with the Act. The proposed timeframe of between three seconds and five minutes from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order would allow FLEX Options to trade substantially similar to the current RFQ process, including the BBO Improvement Interval. The proposed new process would continue to permit members the opportunity to enter, modify or withdraw FLEX Quotes in open outcry, without the need to submit FLEX Quotes at the Market Operations Post. Members would continue to have an opportunity to match, or improve, (as applicable), the BBO as is the case today during the BBO Improvement Interval. With the proposal members would have the ability to cross any part of the FLEX trade pursuant to Options 8, Section 30(a)(2), as is the case today. The proposed timeframe of between three seconds and five minutes is appropriate to ensure there is at least a minimum amount of time for Market Makers to conduct the same activities that take place today with the RFQ process and the BBO Improvement Interval, given the unique terms of FLEX Options. The Exchange believes that eliminating the RFQ process, including the BBO Improvement Interval, which is not contemplated in non-FLEX Option open outcry trading, would have minimal (if any) impact on how a Floor Broker may request a market on the Exchange's trading floor with respect to FLEX Options. The Exchange believes it is appropriate to continue to ensure there is at least a minimum amount of time for Market Makers to respond give the unique terms of FLEX Options.

The proposed timeframe, which is analogous to the RFQ Process which includes the BBO Improvement Interval, is consistent with the Act and removes impediments to and perfects the mechanism of a free and open market by creating an appropriate timeframe to seek liquidity. Today, an Options Exchange Official would intervene if they believed that an appropriate amount of time was not allotted for the FLEX Order to trade. The Options Exchange Official would enforce the requirement that the amount of time must be at least three seconds and no more than five minutes based on the complexity of the trade and the responses in the trading crowd when determining if the time was reasonable.

For example, based on the number of participants who indicate an interest to participate in the trade and the complexity of the trade, the Options Exchange Official would determine if there was an appropriate amount of time and require more time if necessary. Unlike the current process, an RFQ ticket would not be submitted to the Market Operations post and the RFQ would not be disseminated to OPRA.

Additionally, the Exchange would no longer disseminate RFQ Quotes to OPRA as part of this proposal. The Exchange believes that not disseminating RFQ Quotes is consistent with the Act and removes impediments to and perfects the mechanism of a free and open market by aligning the process to transact FLEX Orders with the current process to transact other orders in open outcry. By contrast, quotes are not disseminated with respect to other trades in open outcry today. While a market participant could seek to participate in the trade by calling a floor broker after viewing the RFQ on OPRA, this is an uncommon scenario. The Exchange notes that the RFQ message has not provided any additional liquidity under the current process for FLEX Orders. Today, the RFQ message for FLEX Orders is the only administrative message disseminated to OPRA on the Exchange's trading floor. The Exchange does not otherwise disseminate an administrative message for other transactions on the Exchange's trading floor; only executed orders are disseminated to OPRA for non-FLEX Orders on the trading floor and for electronic transactions on Phlx. The Exchange believes that the open outcry process will continue to provide a competitive market for FLEX Orders and that the proposed process will provide an opportunity for the trading crowd to provide liquidity. FLEX Orders, unlike standard orders, are less common and the Exchange does not have a similar RFQ process for standard orders that are analogous to those FLEX Orders. This proposed process would align with Cboe's process and not require Phlx to disseminate quotes to OPRA while other options floor exchanges have no similar obligations.³⁹

The proposed allocation is substantially similar to the allocation for non-FLEX trading in open outcry, excluding the provisions that are inapplicable to FLEX trading, and to the current allocation for FLEX trading in open outcry. With respect to allocation

³⁹ Cboe does not disseminate via OPRA information respecting open outcry RFQs. See Securities Exchange Act Release No. 66052 (December 23, 2011), 77 FR 306 at 308 (January 4, 2012) (SR-Cboe-2011-123).

for a FLEX Order as well as non-FLEX Orders, best-priced responses will continue to have first priority, however if a Customer order were at the same price, the Customer would have priority over a non-Customer.⁴⁰ With respect to responses at the same price, because there is no electronic trading of FLEX Options on Phlx, there can be no priority Customer orders resting in the order book that would receive first priority at the same price. Therefore, the Customer priority rules of Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. Additionally, no Market Makers are appointed in FLEX Options, so there will be no participation entitlement applicable to FLEX trading. Therefore, the Market Maker entitlements described in Options 8, Section 25 and Supplementary Material .02 of Options 8, Section 30 are inapplicable. The crossing participation would continue to the next priority level in each of those respective rules. Therefore, members of the trading crowd who established the market will have priority over all other orders that were not represented in the trading crowd at the time that the market was established and will maintain priority over such orders except for orders that improve upon the market.⁴¹ With respect to the order book, Defined Participation shall be equal where size is the same, otherwise participants are allocated based on size.⁴² Therefore, the proposed rule change will have minimal (if any) impact on the allocation of responses in open outcry trades of FLEX Orders.

The Exchange's proposal to reword rule text concerning Exercise Price located within proposed Options 8, Section 34(f)(3) is consistent with the Act and does not expand the Exchange's current discretion. Today, the Exchange has the ability to require that FLEX index options be specified by an index value, number, percentage of index value calculated as of the open or close of trading on the Exchange on the trade date, a method for fixing such number, in terms of a specific dollar amount rounded to the nearest \$.10 or a percentage of the underlying security rounded to the nearest minimum increment, or in terms of a specific dollar amount rounded to the nearest hundredth of a dollar. In fact, the proposal narrows the Exchange's

discretion to provide that it may determine the smallest increment for exercise prices of FLEX Options, not to exceed two decimal places. The Exchange has this authority today, it is electing to narrow its authority to provide the increment in the form of a dollar value. The proposal protects investors and the public interest by amending the rule text within proposed Options 8, Section 34(f)(3) to succinctly define the bounds of the Exchange's discretion.

The Exchange's proposal to amend Options 8, Section 34(f) to provide that all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options, provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series is consistent with the Act. The Exchange states that, to the extent the Exchange lists a micro FLEX Index Option on an index on which it also lists a standard FLEX index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.

The proposal eliminates the terminology that applies only to FLEX trading. Floor participants are familiar with the general open outcry trading procedures, and therefore, by aligning the open outcry trading process for FLEX Options with that of non-FLEX Options, and permitting FLEX trading in the same manner as non-FLEX trading on the Exchange's trading floor, the Exchange believes the proposed rule change may encourage members to submit FLEX Orders for execution on Phlx. The Exchange believes the proposed rule change may reduce confusion regarding how FLEX Orders may trade in open outcry, given that any minor differences between the two processes that exist today are being eliminated. The Exchange believes that, with this proposal, floor participants will have the necessary time to respond in open with markets to FLEX Orders, similar to other Non-FLEX Orders which are transacted in open outcry.

The Exchange believes the proposed rule change will permit executions of FLEX Orders to continue to be completed in a timely fashion, while providing the crowd with sufficient time to price the unique terms of FLEX Options. The proposed amendments

will enable floor participants to compete vigorously and potentially provide price improvement for FLEX Orders, as they do for non-FLEX Orders, as they will be encouraged to submit their best-priced bids and offers during the auctions to have the opportunity to execute against the FLEX Order.

Finally, reorganizing the FLEX rules and adding greater specificity to the rule will provide market participants with greater information on FLEX Options which removes impediments to and perfect the mechanism of a free and open market. The organization of the Options 8, Section 34 is intended to provide floor participants with greater information which represents the manner in which FLEX Options are transacted today on Phlx.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange's proposal to automate FLEX Orders and Cabinet Orders does not impose an undue burden on intra-market competition because FLEX Orders and Cabinet Orders will be reported and processed similar to all other open outcry trades. Further, market participants will not be impacted by this proposal. Members will not have additional reporting or processing burdens as a result of the proposal.

The proposed amendments to FLEX Options do not impose an undue burden on inter-market competition as the Exchange seeks to automate its current FLEX and Cabinet processes. The removal of the RFQ Process, including the BBO Improvement Interval, is similar to Cboe.⁴³

Furthermore, with respect to the amendments to FLEX Options, the Exchange does not believe that the proposed rule change will impose any burden on competition because the proposed open outcry process is closely aligned with the current open outcry trading process for non-FLEX Options. The proposed process continues to be similar to the FLEX trading processes in place today. The proposed rule change merely eliminates many of the differences between FLEX and non-FLEX trading, which removes potential confusion for market participants given the current differences, while implementing trading processes with which market participants are more familiar. As a result, the Exchange believes the proposed rule change will

⁴⁰ See current Options 8, Section 25(a)(1) and Supplementary Material .02 of Options 8, Section 30.

⁴¹ See Supplementary Material .02(vii) of Options 8, Section 30.

⁴² See Options 8, Section 25(c)(3)(B).

⁴³ See *supra* note 21.

have minimal impact on the trading of FLEX Options, and possibly increase participation in FLEX Options, which could add liquidity to the Exchange's FLEX market, which ultimately benefits investors. Any member or member organization may transact FLEX Options.

Eliminating the RFQ Process and the BBO Improvement Interval in favor of a reasonable timeframe of between three seconds and five minutes from the time a FLEX Trader requests a quote in a FLEX Option series or represents a FLEX Order to respond with bids or offers does not impose an undue burden on competition. The proposed timeframe, which is analogous to the RFQ Process which includes the BBO Improvement Interval, creates an appropriate timeframe to seek liquidity. Today, an Options Exchange Official would intervene if they believed that an appropriate amount of time was not allotted for the FLEX Order to trade. Based on the number of participants who indicate an interest to participate in the trade and the complexity of the trade, the Options Exchange Official would determine if there was an appropriate amount of time and require more time if necessary. The Exchange believes that eliminating the RFQ process, including the BBO Improvement Interval, which is not contemplated in non-FLEX Option open outcry trading, would have minimal (if any) impact on how a Floor Broker may request a market on the Exchange's trading floor with respect to FLEX Options.

The Exchange's proposal to no longer disseminate RFQ Quotes to OPRA as part of this proposal does not impose an intra-market burden on competition because the proposal aligns the process to transact FLEX Orders with the current process to transact other orders in open outcry. The RFQ message has not provided any additional liquidity under the current process for FLEX Orders. Today, the RFQ message for FLEX Orders is the only administrative message disseminated to OPRA on the Exchange's trading floor. The Exchange does not otherwise disseminate an administrative message for other transactions on the Exchange's trading floor; only executed orders are disseminated to OPRA for non-FLEX Orders on the trading floor and for electronic transactions on Phlx. The Exchange believes that the open outcry process will continue to provide a competitive market for FLEX Orders and that the proposed process will provide an opportunity for the trading crowd to provide liquidity. By contrast, quotes are not disseminated with respect to

other trades in open outcry today. While a market participant could seek to participate in the trade by calling a floor broker after viewing the RFQ on OPRA, this is an uncommon scenario. FLEX Orders, unlike standard orders, are less common and the Exchange does not have a similar RFQ process for standard orders that are analogous to those FLEX Orders. The Exchange's proposal to no longer disseminate RFQ Quotes to OPRA as part of this proposal does not impose an inter-market burden on competition because the proposed process would align Phlx's process with Cboe's process and not require Phlx to disseminate quotes to OPRA while other options floor exchanges have no similar obligations.⁴⁴

The Exchange's proposal to reword rule text concerning Exercise Price located within proposed Options 8, Section 34(f)(3) does not impose an undue burden on competition because it does not expand the Exchange's current discretion. The proposal narrows the Exchange's authority to provide the increment in the form of a dollar value not to exceed two decimal places.

The Exchange's proposal to amend Options 8, Section 34(f) to provide that all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options, provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series does not impose an undue burden on competition. In the event that the Exchange were to list a micro FLEX Index Option on an index on which it also lists a standard FLEX index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

⁴⁴ Cboe does not disseminate via OPRA information respecting open outcry RFQs. See Securities Exchange Act Release No. 66052 (December 23, 2011), 77 FR 306 at 308 (January 4, 2012) (SR-Cboe-2011-123).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁴⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁴⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2023-22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-Phlx-2023-22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/>

⁴⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2023-22, and should be submitted on or before July 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-12573 Filed 6-12-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-17, OMB Control No. 3235-0018]

Submission for OMB Review; Comment Request; Extension: Rule 15b6-1 and Form BDW

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 15b6-1 (17 CFR 240.15b6-1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Registered broker-dealers use Form BDW (17 CFR 249.501a) to withdraw from registration with the Commission, the self-regulatory organizations, and the states. On average, the Commission estimates that it would take a broker-dealer approximately one hour to complete and file a Form BDW to withdraw from Commission registration as required by Rule 15b6-1. The Commission estimates that approximately 411 broker-dealers withdraw from Commission registration annually¹ and, therefore, file a Form BDW via the internet with the Central Registration Depository, a computer system operated by the Financial Industry Regulatory Authority, Inc. that maintains information regarding registered broker-dealers and their registered personnel. The 411 broker-dealers that withdraw from registration by filing Form BDW would incur an aggregate annual reporting burden of approximately 411 hours.²

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent by July 13, 2023 to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: June 7, 2023.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-12570 Filed 6-12-23; 8:45 am]

BILLING CODE 8011-01-P

¹ This estimate is based on Form BDW data collected over the past three years for fully registered broker-dealers. This estimate is based on the numbers of forms filed; therefore, the number may include multiple forms per broker-dealer if the broker-dealer's initial filing was incomplete. In fiscal year (from 10/1 through 9/30) 2020, 499 broker-dealers withdrew from registration. In fiscal year 2021, 417 broker-dealers withdrew from registration. In fiscal year 2022, 318 broker-dealers withdrew from registration. $(499 + 417 + 318)/3 = 411$ (rounded down from 411.33).

² $(411 \times 1 \text{ hour}) = 411 \text{ hours}$.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-34941; File No. 812-15474]

Credit Suisse Asset Management, LLC., et al.; Notice of Application and Temporary Order

June 7, 2023.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

SUMMARY OF APPLICATION: Applicants have applied for an order exempting them from section 9(a) of the Act with respect to the Injunction (as defined below) entered against Credit Suisse Securities (USA) LLC ("CSSU"), Credit Suisse First Boston Mortgage Securities Corp. ("CSFB"), and DLJ Mortgage Capital, Inc. ("DLJ"), and together with CSSU and CSFB, the "Settling Entities" and each a "Settling Entity") on October 24, 2022, by the Superior Court of New Jersey ("New Jersey Court"), in connection with a consent order between the Settling Entities and the Acting Attorney General of New Jersey, on behalf of the Acting Chief of the New Jersey Bureau of Securities ("Bureau") until the Commission takes final action on an application for a time-limited order exempting them from section 9(a) of the Act ("Time-Limited Exemption"). Upon the expiration of the Time-Limited Exemption, Applicants will be disqualified from engaging in Fund Servicing Activities (defined below). Applicants, on behalf of UBS Covered Persons (defined below), also have applied for a temporary exemption from section 9(a) of the Act until the Commission takes final action on an application for a permanent order exempting them from section 9(a) of the Act (the "Permanent Order"). The temporary order is set forth herein (the "Temporary Order" and, together with the Time-Limited Exemption and the Permanent Order, the "Orders").

APPLICANTS: Credit Suisse Securities (USA) LLC ("CSSU"), Credit Suisse First Boston Mortgage Securities Corp. ("CSFB"), DLJ Mortgage Capital, Inc. ("DLJ"), Credit Suisse Asset Management, LLC ("CSAM"), Credit Suisse Asset Management Limited ("CSAML") and Credit Suisse AG ("CSAG").¹

¹ CSAG is a party to the application solely for purposes of making the representations and agreeing to the conditions in the application that apply to it. For such purpose, it is included in the

⁴⁷ 17 CFR 200.30-3(a)(12).

FILING DATE: The application was filed on June 7, 2023.

HEARING OR NOTIFICATION OF HEARING:

The Temporary Order will be effective until such time as the Commission takes final action on the application (or, in the case of the Time-Limited Exemption, until it expires by its terms, if sooner) by issuing an order granting the requested relief, unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the Commission's Secretary at *Secretaries-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on July 3, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretaries-Office@sec.gov*. Applicants: Neal Heble and Lou Anne McInnis, Credit Suisse Asset Management, LLC, Eleven Madison Avenue, New York, NY 10010; Barry P. Barbash, Justin L. Browder, and Bissie K. Bonner, Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Toyin Momoh, Senior Counsel, or Trace W. Rakestraw, Senior Special Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. For Applicants' representations, legal analysis, and conditions, please refer to the application, dated June 7, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Office of Investor

Education and Advocacy at (202) 551-8090.

Applicants' Representations

1. DLJ, a corporation organized under the laws of Delaware, is licensed as a mortgage seller/servicer by the U.S. Department of Housing and Urban Development and Fannie Mae. DLJ is an indirect wholly-owned subsidiary of CSAG (defined below). Its principal activity is buying, selling and servicing residential mortgage whole loans.

2. CSFB, a limited liability company organized under the laws of Delaware, was created to form trusts to issue and sell collateralized mortgage obligations and pass-through certificates collateralized by Government National Mortgage Association, Federal National Mortgage Association, Federal Home Loan Mortgage Association and conventional residential mortgage whole loans. CSFB is an indirect wholly-owned subsidiary of CSAG (defined below).

3. CSAM, a limited liability company formed under Delaware law, is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). CSAM serves as investment adviser (either as primary investment adviser or as investment sub-adviser) to each Fund² listed in Part 1 of Appendix A of the application.

4. CSAML, a corporation formed under the laws of the United Kingdom, is registered as an investment adviser under the Advisers Act. CSAML serves as investment sub-adviser to the Fund listed in Part 2 of Appendix A of the application.

5. CSSU, a limited liability company formed under Delaware law, is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and as an investment adviser under the Advisers Act. CSSU serves as principal underwriter to each Open-End Fund listed in Part 3 of Appendix A of the application.

6. Each of the above Applicants is either a direct or indirect wholly owned subsidiary of CSAG (CSAG, together with its wholly-owned subsidiaries and affiliated entities, "Credit Suisse"). CSAG is a wholly owned subsidiary, and the principal operating subsidiary,

of Credit Suisse Group AG ("CS Group"), which operates as a holding company. Credit Suisse Holdings (USA), Inc. ("CS Holdings USA") is a wholly owned subsidiary of CSAG, and serves as the holding company for Credit Suisse's U.S. entities, including Applicants. Both CS Group and CSAG are corporations organized under the laws of Switzerland. Upon the Transaction (as defined below), CS Group will merge with and into UBS Group AG ("UBS") resulting in UBS remaining as the surviving company. Upon the Merger, UBS Covered Persons will become Affiliated Persons (as defined below) of the Settling Entities.

7. Currently, CSAM, CSAML and CSSU (together, the "Fund Servicing Applicants"), collectively serve as investment adviser or investment sub-adviser to RICs or series of such companies and ESCs and as principal underwriter to open-end management investment companies registered under the Act ("Open-End Funds") (such activities, collectively, "Fund Servicing Activities").³ CSSU is a Settling Entity, and CSAM and CSAML are Affiliated Persons of the Settling Entities.

8. Applicants request that any relief granted by the Commission pursuant to the application also apply to "UBS Covered Persons" which means: (i) any existing company of which an Applicant becomes an Affiliated Person upon the closing of the transactions (collectively, the "Transaction") contemplated under the merger agreement entered into by and among CS Group and UBS, dated as of March 19, 2023 (the "Merger Agreement") (but excluding any company, any Affiliated Person of which is an Applicant as of the date of the application); and (ii) any company of which an Applicant becomes an Affiliated Person following the closing of the Transaction (but excluding any company, any Affiliated Person of which is an Applicant as of the date of the application).⁴

³ Other than the Fund Servicing Applicants, no existing company of which the Settling Entities are an "affiliated person" within the meaning of Section 2(a)(3) of the Act currently serves as an investment adviser or depositor of any RIC, ESC or BDC, or as principal underwriter for any Open-End Fund, registered unit investment trust ("UIT"), or registered face-amount certificate company ("FACC"). Section 2(a)(3) of the Act defines "affiliated person" to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person ("Affiliated Person"). The term "Fund Servicing Activities," as it relates to the UBS Covered Persons (defined below), refers to each of the capacities identified in Section 9(a) of the Act in which a UBS Covered Person currently serves or may serve in the future.

⁴ The term "CS Covered Persons" refers collectively to Applicants and their Affiliated

Continued

term "Applicants" solely with respect to such representations and conditions.

² The term "Fund" as used herein refers to any investment company that is registered under the Act ("RIC"), employees' securities companies ("ESC"), or investment company that has elected to be treated as a business development company under the Act ("BDC"), for which a Fund Servicing Applicant currently provides Fund Servicing Activities, or for which a UBS Covered Person, subject to the terms and conditions of the Orders, may in the future provide Fund Servicing Activities.

9. On December 17, 2013, the Bureau filed a complaint in the New Jersey Court in the action captioned *Ruotolo v. Credit Suisse Securities (USA) LLC*, et al., Docket No. MER-C-137-13 (N.J. Sup. Ct.) alleging that CSSU, FBMSC and DLJ violated the New Jersey Uniform Securities Law (“New Jersey Securities Law”) in connection with the offer, sale, or purchase of residential mortgage-backed securities (“RMBS”) prior to the global financial crisis of 2008.

10. On October 24, 2022, the New Jersey Court entered the Consent Order and Final Judgment (“Consent Judgment”), negotiated and submitted by the parties, which, in relevant part, ordered that, under N.J.S.A. 49:3-69, the Settling Entities “shall not violate” the New Jersey Securities Law (the “Injunction”). On the following day, the Bureau entered a related Administrative Consent Order (“ACO”) which includes findings of fact by the Bureau, to which the Settling Entities neither admitted nor denied.

Applicants’ Legal Analysis

1. Section 9(a)(2) of the Act provides, in pertinent part, that a person may not serve or act as, among other things, an investment adviser or depositor of any registered investment company or as principal underwriter for any registered open-end investment company, UIT, or FACC, if such person “. . . by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.” Section 9(a)(3) of the Act makes the prohibitions of section 9(a)(2) applicable to a company, any Affiliated

Person of which has been disqualified under the provisions of section 9(a)(2). Applicants and, upon closing of the Transaction, UBS Covered Persons would be precluded pursuant to Sections 9(a)(2) and 9(a)(3) of the Act from acting in the capacities specified in Section 9(a).

2. Section 9(c) of the Act provides that: “[t]he Commission shall by order grant [an] application [for relief from the prohibitions of subsection 9(a)], either unconditionally or on an appropriate temporary or other conditional basis, if it is established [i] that the prohibitions of subsection 9(a), as applied to such person, are unduly or disproportionately severe or [ii] that the conduct of such person has been such as not to make it against the public interest or the protection of investors to grant such application.” Applicants have filed an application pursuant to section 9(c) seeking a Temporary Order, a Time-Limited Exemption (with respect to Applicants) and a Permanent Order (with respect to UBS Covered Persons) exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c) for the Time-Limited Exemption. Applicants argue that the Time-Limited Exemption is necessary to complete the transition of Fund Servicing Activities to other service providers and/or to restructure their businesses so they may provide Fund Servicing Activities without being subject to a section 9(a) disqualification (“CS Fund Servicing Restructuring”).

4. Applicants assert that, absent the Time-Limited Exemption, the prohibitions of Section 9(a) would be unduly or disproportionately severe, and that the Conduct did not constitute conduct that would make it against the protection of investors or the public interest to grant the Time-Limited Exemption. Applicants point out that a continuing Disqualification would deprive the Funds they serve of the advisory or sub-advisory and underwriting services that shareholders expected the Funds would receive when they decided to invest in the Funds. Applicants also assert that the effects of a Disqualification prior to CS Fund Servicing Restructuring could operate to the financial detriment of the Funds and their shareholders, including by causing the Funds to spend time and resources to engage substitute advisers, subadvisers, and principal underwriters, which would be an unduly and disproportionately severe consequence given that it would result from Conduct which occurred over 15 years ago, and

was unrelated to any Funds or to any Fund Servicing Activities provided by Fund Servicing Applicants, which occurred within a distinctly separate and currently inactive business operation of Credit Suisse.

5. Applicants assert that if the Fund Servicing Applicants were not granted the Time-Limited Exemption, the effect on their businesses and employees would be severe. Applicants state that the Fund Servicing Applicants have committed substantial capital and other resources to establishing expertise in advising and sub-advising Funds with a view to continuing and expanding this business. Similarly, Applicants represent that if CSSU were unable to obtain the Time-Limited Exemption they have requested, the effect on its current business and employees would be significant. CSSU has committed substantial resources to establish expertise in underwriting the securities of the Funds that are Open-End Funds and to establish distribution arrangements for Open-End Fund shares. Applicants further state that prohibiting the Fund Servicing Applicants from engaging in Fund Servicing Activities prior to the CS Fund Servicing Restructuring would not only adversely affect their business, but would also adversely affect their employees who are involved in these activities.

6. In support of their application, Applicants assert that the Conduct did not involve any Fund Servicing Applicants in their performance of the Fund Servicing Activities.⁵ Instead, the Applicants state that the CSSU personnel involved in the Conduct were not associated or involved in any way with the business unit providing underwriting and distribution services to the Funds.

7. Applicants represent that: (i) none of the current or former directors, officers or employees of Applicants (other than certain current and former personnel of the Settling Entities who were not and are not involved in Fund Servicing Activities) had any involvement in the Conduct; (ii) no current or former director, officer, or employee of the Settling Entities or any CS Covered Person who previously has been or who subsequently may be identified by the Settling Entities or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct will be an

⁵ FBMSC and DLJ each does not and will not serve in any of the capacities described in Section 9(a) of the Act, and CSSU’s Fund Servicing Activities will continue to be separate, during the 12 months from the date of the closing of the Transaction, from its other internal business units.

Persons as of the date of the application (with the exception of CS Group). CSAG and CS Group do not and will not serve as investment adviser, depositor or principal underwriter to any RIC, ESC or BDC. UBS Covered Persons may, if the Order is granted, in the future act in any of the capacities contemplated by section 9(a) of the Act. Any existing or future entities that may rely on the Orders in the future will comply with the terms and conditions of the application.

officer, director, or employee of any Applicant, CSAG, and of any UBS Covered Person (except that any employees of CSSU involved in the Conduct may continue to be employed by CSSU prior to and following the closing of the Transaction but will not be allowed to participate in any Fund Servicing Activity of any Applicant); (iii) such directors, officers, and employees and any other persons who otherwise were involved in the Conduct have had no, and will not have any future, involvement in Applicants', CSAG or UBS Covered Persons' activities in any capacity described in Section 9(a) of the Act; and (iv) because the directors, officers and employees of Applicants (other than certain current and former personnel of the Settling Entities who were not involved in any Fund Servicing Activities) did not engage in the Conduct, shareholders of the Funds were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser or principal underwriter.⁶

8. In addition, each Settling Entity will comply in all material respects with the material terms and conditions of the Consent Judgment and ACO as such terms and conditions are applicable to it. In addition, Applicants will provide written notification to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement of a material violation of the terms and conditions of the Orders, Consent Judgment and ACO within 30 days of discovery of the material violation.

9. Applicants further state that Credit Suisse has undertaken certain other remedial measures, as described in greater detail in the application. These include three types of remedial measures: (i) selling a significant portion of its business engaged in sponsoring and underwriting RMBS to an entity that is not an Affiliated Person of Applicants or the CS Covered Persons; (ii) implementing a number of enhancements to the mortgage securitization process to incorporate stronger business practices; and (iii) industry-wide reforms designed to address the Conduct.

10. Applicants represent that Credit Suisse has developed enhanced policies

and procedures for considering potential collateral consequences associated with the settlement of matters involving regulators and law enforcement authorities. This process requires the engagement of outside counsel to complete a collateral consequences analysis in advance of all anticipated settlements with regulators and law enforcement authorities, regardless of the form of resolution, to ensure that any potential disqualifications are promptly identified and proactively addressed.

11. Applicants represent that upon closing of the Transaction, section 9(a)(3) of the Act would make it unlawful for the UBS Covered Persons to conduct Fund Servicing Activities. Applicants argue that such an outcome would force UBS to incur significant damage to its existing business as a result of completing the merger, all based on conduct that was outside of UBS' control, that UBS entities and employees were not involved in, and long pre-dated the Transaction. Applicants assert that the prohibitions of section 9(a), as applied to UBS Covered Persons, are unduly or disproportionately severe.

12. Applicants also have agreed that Applicants, CSAG and UBS Covered Persons (in the case of UBS Covered Persons, in respect of Fund Servicing Activities) will not employ any person that has been or subsequently may be identified by the Settling Entities or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to Section 9(c).⁷

13. Further, Applicants have agreed that each of the CS Covered Persons and UBS Covered Persons will adopt and implement policies and procedures reasonably designed to ensure that it will comply with the terms and conditions of the Orders granted under section 9(c).

14. As a result of the foregoing, the Applicants submit that absent relief, the prohibitions of section 9(a) as applied to the UBS Covered Persons would be unduly or disproportionately severe, and that the Conduct did not constitute conduct that would make it against the public interest or protection of investors to grant the exemption to the UBS Covered Persons.

15. Certain of the Applicants and their affiliates have previously applied for exemptive orders under section 9(c) of the Act, as described in greater detail in the application.

Applicants' Conditions

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any Order, if granted, shall only become effective upon the closing of the Transaction.

2. Any temporary exemption granted pursuant to the application will be without prejudice to, and will not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, CS Covered Persons or UBS Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from Section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

3. Applicants, CSAG and UBS Covered Persons (in the case of UBS Covered Persons, in respect of Fund Servicing Activities) will not employ any person that has been or subsequently may be identified by the Settling Entities or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to Section 9(c), except that any employees of CSSU involved in the Conduct may continue to be employed by CSSU prior to and following the closing of the Transaction but will not be allowed to participate in any Fund Servicing Activity of any Applicant.

4. Each of the CS Covered Persons and UBS Covered Persons will adopt and implement policies and procedures reasonably designed to ensure that it will comply with the terms and conditions of the Orders applicable to it within 60 days of the date of the Permanent Order.

5. Each Settling Entity will comply in all material respects with the material terms and conditions of the Consent Judgment and the ACO as such terms and conditions are applicable to it.

6. Applicants will provide written notification to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement of a material violation of the terms and conditions of the Orders, Consent Judgment, and ACO within 30

⁶ Applicants state that this representation with respect to the UBS Covered Persons is made based on the actual knowledge of UBS as of the date of the application. Within 180 days from the issuance of the Orders, UBS will conduct a review reasonably designed to ensure the accuracy of this representation with respect to the UBS Covered Persons.

⁷ Applicants represent that any employees of CSSU involved in the Conduct may continue to be employed by CSSU prior to and following the closing of the Transaction but will not be allowed to participate in any Fund Servicing Activity of any Applicant.

days of discovery of the material violation.

7. The Time-Limited Exemption will remain in place for 12 months from the date of the closing of the Transaction.

8. Within 30 days of the expiration of the Time-Limited Exemption, Applicants will submit a report, signed by the chief executive officer of CS Holdings USA, to the Chief Counsel of the Commission's Division of Investment Management, describing (i) the findings of the internal compliance review concerning the process for assessing collateral consequences described in Section IV.G of the application and any steps taken to address areas for improvement identified in those findings and (ii) the steps that the Fund Servicing Applicants have taken since the date of the Time-Limited Exemption to foster a culture of compliance, as further described in Section IV.G of the application.

9. As a condition of the Temporary Order, Applicants will hold in a segregated account, amounts equal to all fees payable by the Funds to the Fund Servicing Applicants for the period from October 24, 2022 through the date upon which the Commission grants the Temporary Order. Amounts placed in the segregated account will be released from the account after the Commission has acted on the application for the Permanent Order.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Applicants and UBS Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as of the date of the closing of the Transaction, solely with respect to the Injunction, subject to the representations and conditions in the application, until the Commission takes final action on their application (or, in the case of the Time-Limited Exemption, until it expires by its terms, if sooner).

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-12579 Filed 6-12-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97662; File No. SR-MEMX-2023-09]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule

June 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 31, 2023, MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members³ (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on June 1, 2023. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to

(i) modify the Liquidity Provision tiers by modifying the required criteria under Liquidity Provision Tier 4 and adopting a new Liquidity Provision Tier 6, and (ii) modify the Liquidity Removal Tiers by increasing the fee and modifying the required criteria under Liquidity Removal Tier 1 and eliminating Liquidity Removal Tier 2, as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading.⁴ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 3.2% of the overall market share.⁵ The Exchange in particular operates a "Maker-Taker" model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Liquidity Provision Tiers

The Exchange currently provides a base rebate of \$0.0018 per share for executions of Added Displayed Volume.⁶ The Exchange also currently

⁴ Market share percentage calculated as of May 31, 2023. The Exchange receives and processes data made available through consolidated data feeds (*i.e.*, CTS and UTDF).

⁵ *Id.*

⁶ The base rebate for executions of Added Displayed Volume is referred to by the Exchange on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

offers Liquidity Provision Tiers 1–5 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Liquidity Provision Tiers by modifying the required criteria under such Liquidity Provision Tier 4 and adopting a new Liquidity Provision Tier 6, as further described below.

First, with respect to Liquidity Provision Tier 4, the Exchange currently provides an enhanced rebate of \$0.0029 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV⁷ that is equal to or greater than 0.15% of the TCV; or (2) a Displayed ADAV that is greater than or equal to 2,000,000 shares and a Step-Up Displayed ADAV⁸ from April 2023 that is greater than or equal to 50% of the Member's April 2023 Displayed ADAV.⁹ The Exchange now proposes to modify the required criteria under Liquidity Provision Tier 4 such that a Member would qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.15% of the TCV; or (2) a Displayed ADAV that is equal to or greater than 0.02% of the TCV and a Step-Up Displayed ADAV of the TCV from April 2023 that is equal to or greater than 50% of the Member's April 2023 Displayed ADAV of the TCV. Thus, such proposed change would keep the existing criteria (1) intact and modify the alternative Displayed ADAV and a Step-Up Displayed ADAV thresholds in criteria (2), which are designed to encourage the submission of additional liquidity-adding order flow to the Exchange. Additionally, the Exchange is proposing that criteria (2) of Liquidity Provision Tier 4 will expire no later than October 31, 2023, which is currently the case under the existing Liquidity Provision Tier 4 criteria (2). The Exchange is not proposing to

change the rebate provided under such tier.

Second, the Exchange is proposing to establish a new tier under the Liquidity Provision Tiers, which, as proposed, would be referred to by the Exchange as Liquidity Provision Tier 6. Under the proposed new Liquidity Provision Tier 6, the Exchange would provide an enhanced rebate of \$0.0024 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving a Displayed ADAV that is equal to or greater than 0.007% of the TCV and has a Step-Up Displayed ADAV of the TCV from May 2023 that is equal to or greater than 50% of the Member's May 2023 Displayed ADAV of the TCV.¹⁰ The Exchange proposes to provide Members that qualify for the proposed new Liquidity Provision Tier 6 a rebate of 0.075% of the total dollar volume of the transaction for executions of orders in securities priced below \$1.00 per share that add displayed liquidity to the Exchange, which is the same rebate that is applicable to such executions under each of the existing Liquidity Provision Tiers. Additionally, the Exchange is proposing that Liquidity Provision Tier 6 will expire no later than November 30, 2023, and the Exchange will indicate this in a note under the Liquidity Provision Tiers pricing table on the Fee Schedule.

The tiered pricing structure for executions of Added Displayed Volume under the Liquidity Provision Tiers provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, primarily in the form of liquidity-adding volume, to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. The Exchange believes that the Liquidity Provision Tiers, as modified by the proposed changes described above, reflect a reasonable and competitive pricing

structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. Specifically, the Exchange believes that, after giving effect to the proposed changes described above, the rebate for executions of Added Displayed Volume provided under each of the Liquidity Provision Tiers 1–6 remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve.

Liquidity Removal Tiers

The Exchange currently charges a standard fee of \$0.0030 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (such orders, "Removed Volume"). The Exchange also currently offers Liquidity Removal Tiers 1 and 2 under which qualifying Members are charged a discounted fee by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Liquidity Removal Tiers by increasing the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 and modifying the required criteria under such tier and eliminating Liquidity Removal Tier 2, as further described below.

With respect to Liquidity Removal Tier 1, the Exchange currently charges a discounted fee of \$0.0029 per share for executions of Removed Volume by achieving one of the following two alternative criteria: (1) an ADV¹¹ that is equal to or greater than 0.50% of the TCV¹² and a Remove ADV¹³ that is equal to or greater than 0.30% of the TCV; or (2) an ADV that is equal to or greater than 1.00% of the TCV.

Now, the Exchange proposes to increase the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 to \$0.00295 per share, and to modify the required criteria such that a Member would now qualify for such tier by achieving one of the following two alternative criteria: (1) an ADV that is equal to or greater than 0.50% of the TCV; or (2) a Remove ADV

the Fee Schedule under the existing description "Added displayed volume" with a Fee Code of "B", "D" or "J", as applicable, on execution reports.

⁷ As set forth on the Fee Schedule, "ADAV" means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and "Displayed ADAV" means ADAV with respect to displayed orders.

⁸ As set forth on the Fee Schedule, "Step-Up Displayed ADAV" means Displayed ADAV in the relevant baseline month subtracted from current Displayed ADAV.

⁹ The pricing for Liquidity Provision Tier 4 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, Liquidity Provision Tier 4" with a Fee Code of "B4", "D4" or "J4", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

¹⁰ The proposed pricing for new Liquidity Provision Tier 6 is referred to by the Exchange on the Fee Schedule under the description "Added displayed volume, Liquidity Provision Tier 6" with a Fee Code of "B6", "D6" or "J6", as applicable, to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier for a particular month will not be made until after the month-end, the Exchange will provide the Fee Codes otherwise applicable to such transactions on the execution reports provided to Members during the month and will only designate the Fee Codes applicable to the achieved pricing tier on the monthly invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today.

¹¹ As set forth on the Fee Schedule, "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day, which is calculated on a monthly basis.

¹² As set forth on the Fee Schedule, "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

¹³ As set forth on the Fee Schedule, "Remove ADV" means ADV with respect to orders that remove liquidity.

that is equal to or greater than 0.30% of the TCV.¹⁴ Thus, the proposed change to the required criteria would keep the ADV threshold and Remove ADV thresholds in the current criteria (1) the same, but rather than requiring Members to meet both thresholds as a single criteria, the Remove ADV threshold of 0.30% of the TCV would become an alternative, and the current alternative of an ADV that is equal or greater than 1.00% of the TCV would be eliminated. In other words, the existing “and” in criteria (1) would become an “or”, which would replace the existing criteria (2). The Exchange is not proposing to change the fee for executions of orders in securities priced below \$1.00 per share under such tier.

With respect to Liquidity Removal Tier 2, the Exchange currently charges a discounted fee of \$0.00295 per share for executions of Removed Volume by achieving an ADV that is equal to or greater than 0.25% of the TCV. The Exchange now proposes to eliminate Liquidity Removal Tier 2, as the Exchange no longer wishes to, nor is it required to, maintain such tier.

The proposed changes to the Liquidity Removal Tiers are designed to encourage Members to maintain or increase their order flow, including in the form of orders that remove liquidity, to the Exchange in order to qualify for the proposed discounted fee for executions of Removed Volume. While the Exchange’s overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that providing alternative criteria that are based on different types of volume that Members may choose to achieve, such as the proposed new criteria which includes a Remove ADV threshold, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

the provisions of Section 6 of the Act,¹⁵ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁷

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow, including displayed, liquidity-adding and/or liquidity-removing orders, to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,

including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange’s market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the Liquidity Provision Tier 4 as modified by the proposed change to the required criteria under such tier, the proposed new Liquidity Provision Tier 6, and the Liquidity Removal Tier 1 as modified by the proposed changes to the fee for executions of Removed Volume and the required criteria under such tier are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding and/or liquidity removing orders, to the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume or a discounted fee for executions of Removed Volume, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes that the enhanced rebate for executions of Added Displayed Volume under the proposed modified Liquidity Provision Tier 4 and the proposed new Liquidity Provision Tier 6, as well as the discounted fee for executions of Removed Volume under the modified Liquidity Removal Tier 1, each remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve, as described above. While the Exchange has proposed increasing its fees for certain executions of Removed Volume, the Exchange believes that such change represents a modest increase from the current fee applicable to such executions.

For the reasons discussed above, the Exchange submits that the proposal

¹⁴ The pricing for Liquidity Removal Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description “Removed volume from MEMX Book, Liquidity Removal Tier 1” with a Fee Code of “R1” to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier for a particular month will not be made until after the month-end, the Exchange will provide the Fee Codes otherwise applicable to such transactions on the execution reports provided to Members during the month and will only designate the Fee Codes applicable to the achieved pricing tier on the monthly invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today.

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(4) and (5).

¹⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act¹⁸ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow, including displayed, liquidity-adding and liquidity-removing orders, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants, as well as to generate additional revenue and decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁹

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including displayed, liquidity-adding and liquidity-removing orders, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the

Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the proposed new Liquidity Provision Tier 6, and thus receive the proposed enhanced rebate for executions of Added Displayed Volume under such tier, would be available to all Members that meet the associated volume requirements in any month. Similarly, the opportunity to qualify for the proposed modified criteria under Liquidity Provision 4 and the proposed modified criteria under Liquidity Removal Tier 1, and thus received the enhanced rebate for executions of Added Displayed Volume or be charged the discounted fee for executions of Removed Volume, respectively, would continue to be available to all Members that meet the associated volume requirements in any month. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction

fees and rebates, including with respect to Added Displayed Volume, and Removed Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to generate additional revenue with respect to its transaction pricing and to encourage the submission of additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."²⁰ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. SEC*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"²¹ Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

²⁰ See *supra* note 17.

²¹ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

¹⁹ See *supra* note 17.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act²² and Rule 19b-4(f)(2)²³ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2023-09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-MEMX-2023-09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MEMX-2023-09 and should be submitted on or before July 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-12574 Filed 6-12-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97666; File No. SR-Phlx-2023-23]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 4

June 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 1, 2023, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx's Pricing Schedule at Options 7, Section 4, "Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY)."

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to amend its Pricing Schedule at Options 7, Section 4, "Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY)." Specifically, Phlx proposes to amend its Floor Transaction (Open Outcry) Floor Broker Incentive Program.

Today, the Exchange offers an incentive program for Floor Brokers³ that is designed to attract order flow to Phlx's trading floor for execution in open outcry. Today, the Exchange pays Floor Transaction (Open Outcry) Floor Broker Incentive Program rebates on qualifying volume at each threshold level per the below schedule.

Qualifying contracts	Per contract rebate
0-5,000,000	\$0.03
5,000,001-10,000,000	0.06
Greater than 10,000,000	0.09

³ The term "Floor Broker" means an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders. See Phlx Options 7, Section 1(c).

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4(f)(2).

By way of example, a Floor Broker that executes floor transactions in a given month totaling 10,500,000 contracts is paid \$0.03 for the first 5,000,000 floor transaction contracts (\$150,000), \$0.06 for the next 5,000,000 floor transaction contracts (\$300,000), and \$0.09 for the final 500,000 floor transaction contracts (\$45,000) for a total rebate of \$495,000 for that month. Further, as an additional clarifying example, if a Floor Broker executes a floor transaction in the amount of 1,000,000 contracts, represents both sides of the floor transaction, and executes the floor transaction as a crossing transaction pursuant to Options 8, Section 30(a) for 700,000 of the 1,000,000 contracts, then trades the remaining 300,000 contracts with the trading crowd, the Floor Transaction (Open Outcry) Floor Broker Incentive Program rebate for this transaction will be paid on the qualifying floor transaction volume of 1,000,000 contracts. The Exchange caps rebates for the Floor Transaction (Open Outcry) Floor Broker Incentive Program at \$1,000,000 per member or member organization in a given month.

Today, the following floor transactions are not subject to the rebates offered within the Floor Transaction (Open Outcry) Floor Broker Incentive Program: (1) Floor QCC Orders, as defined in Options 8, Section 30(e);⁴ (2) dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions as defined in this Options 7, Section 4; (3) Firm Floor Options Transactions Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges); and (4) Customer-to-Customer transactions.

At this time, the Exchange proposes to amend the rebates that will be paid on qualifying volume at each threshold level. The Exchange proposes to increase the rebate from \$0.03 to \$0.05 per contract for qualifying contracts from 1–5,000,000. The Exchange proposes to increase the rebate from \$0.06 to \$0.08 per contract for qualifying contracts from 5,000,001 to 10,000,000. Finally, the Exchange proposes to increase rebate from \$0.09 to \$0.11 per contract for qualifying contracts greater than 10,000,000. The Exchange is not amending qualifying

floor transactions that are subject to the rebates. The Exchange would make corresponding changes to the example beneath the rebate table in Options 7, Section 4.

The Exchange believes that the Floor Transaction (Open Outcry) Floor Broker Incentive Program will continue to attract greater order flow to Phlx's trading floor.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁷

Likewise, in *NetCoalition v. Securities and Exchange Commission*⁸ (“NetCoalition”) the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.⁹ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁰

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing

agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’. . . .”¹¹ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange's proposal to increase the Floor Transaction (Open Outcry) Floor Broker Incentive Program rebates that will be paid on qualifying volume at each threshold level (\$0.03 to \$0.05 per contract for 1–5,000,000; \$0.06 to \$0.08 per contract for 5,000,001 to 10,000,000; and \$0.09 to \$0.11 per contract for greater than 10,000,000) is reasonable because the Exchange believes that these rebates will serve to continue to incentivize Floor Brokers to execute a greater number of orders in the Exchange's trading crowd. Any market participant may send an order to a Phlx Floor Broker for execution on Phlx's trading floor. The Exchange notes that other Phlx floor members¹² may interact with orders exposed in open outcry on the Exchange's trading floor.

The Exchange's proposal to increase the Floor Transaction (Open Outcry) Floor Broker Incentive Program rebates that will be paid on qualifying volume at each threshold level (\$0.03 to \$0.05 per contract for 1–5,000,000; \$0.06 to \$0.08 per contract for 5,000,001 to 10,000,000; and \$0.09 to \$0.11 per contract for greater than 10,000,000) is equitable and not unfairly discriminatory as the Exchange would uniformly calculate all qualifying volume and uniformly pay rebates associated with the Floor Transaction (Open Outcry) Floor Broker Incentive Program up to \$1,000,000 in rebates a month.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with

⁴ Today, Floor QCC Orders are not transacted in open outcry. The Exchange proposes to include Floor QCC Orders in the list of exclusions to remind members and member organizations that Floor QCC Orders will not be paid the Floor Transaction (Open Outcry) Floor Broker Incentive Program rebate.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁸ *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

⁹ See *NetCoalition*, at 534–535.

¹⁰ *Id.* at 537.

¹¹ *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

¹² Floor members include all members who have acquired a permit to trade on Phlx's trading floor.

other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

The proposed amendments do not impose an undue burden on intra-market competition. In terms of intra-market competition, the Exchange does not believe that its proposals will place any category of market participant at a competitive disadvantage. The proposed Floor Broker Incentive Program rebates should encourage Floor Brokers to send additional order flow to Phlx to obtain rebates and lower their costs. Any market participant may send an order to a Phlx Floor Broker for execution on Phlx's trading floor. The Exchange believes that the additional liquidity will enhance the quality of the Exchange's market and increase certain trading opportunities on the Exchange's trading floor for floor members.

The Exchange's proposal to increase the Floor Transaction (Open Outcry) Floor Broker Incentive Program rebates that will be paid on qualifying volume at each threshold level (\$0.03 to \$0.05 per contract for 1–5,000,000; \$0.06 to \$0.08 per contract for 5,000,001 to 10,000,000; and \$0.09 to \$0.11 per contract for greater than 10,000,000) does not impose an undue burden on competition as the Exchange would uniformly calculate all qualifying volume and uniformly pay rebates associated with the Floor Transaction (Open Outcry) Floor Broker Incentive Program up to \$1,000,000 in rebates a month.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-Phlx-2023-23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-Phlx-2023-23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE,

Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2023-23 and should be submitted on or before July 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-12578 Filed 6-12-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97663; File No. SR-CBOE-2023-030]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

June 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 1, 2023, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/>

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

CBOELegalRegulatoryHome.aspx), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective June 1, 2023.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 15% of the market share.³ Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to competitive pricing, the Exchange, like other options exchanges, offers rebates and assesses fees for certain order types

executed on or routed through the Exchange.

Also, in response to the competitive environment, the Exchange offers various tiered incentive programs which provide Trading Permit Holders ("TPHs") opportunities to qualify for higher rebates or reduced rates where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for TPHs to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria. For example, the Exchange currently offers, among other tiered volume programs, a Floor Broker Sliding Scale Rebate Program, which offers four tiers that provide rebates on a sliding scale⁴ for qualifying orders where a TPH meets certain liquidity thresholds. The Program applies to all products except for Underlying Symbol List A,⁵ Sector Indexes,⁶ DJX, MRUT, MXEA, MXEF, NANOS, XSP, and FLEX Micros ("multiply-listed options"). The Program offers two categories of rebates that correspond to each of the proposed tiers; one that applies to Firm Facilitated orders (*i.e.*, orders that yield fee code FF)⁷ and another that applies to all other non-Firm Facilitated orders (*i.e.*, orders that do not yield fee code FF).

The current Floor Broker Sliding Scale Rebate Program tiers and corresponding rebates are as follows:

- Tier 1 provides a rebate of \$0.01 per contract for all qualifying (*i.e.*, Non-Customer, Non-Strategy, Floor Broker orders in all products except Underlying Symbol List A, Sector Indexes, DJX,

⁴ The rebate offered under each tier is only applied to the qualifying volume within that tier. In addition, the Exchange calculates the average rebate for each type of rebate (Firm Facilitated and Non-Firm Facilitated) based on the TPH's total qualifying volume across all four tiers plus its qualifying baseline volume (which corresponds to a rebate of \$0.00). Each respective average rebate is applied to the percentage of qualifying volume that corresponds specifically to the type of order (Firm Facilitated or Non-Firm Facilitated) volume and added together, which results in a final average rebate. The final average rebate is then applied to the TPH's total qualifying executions. This is consistent with the manner in which the Exchange calculates rebates for other sliding scale programs offered under the Fees Schedule.

⁵ See Cboe Options Fees Schedule, Footnote 34, which provides that Underlying Symbol List A includes OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXW), SPESG and VIX.

⁶ See Cboe Options Fees Schedule, Footnote 47, which provides that Sector Index underlying symbols include IXB, SIXC, IXE, IXI, IXM, IXR, IXRE, IXT, IXU, IXV AND IXZ, and corresponding option symbols include SIXB, SIXC, SIXE, SIXI, SIXM, SIXR, SIXRE, SIXT, SIXU, SIXV AND SIXY.

⁷ Orders that yield fee code FF are not assessed a charge. See Cboe U.S. Options Fee Schedules, Fees and Associated Fee Codes, available at: https://markets.cboe.com/us/options/membership/fee_schedule/cboe/.

MRUT, MXEA, MXEF, NANOS, XSP, and FLEX Micros) Firm Facilitated orders, and a rebate of \$0.03 per contract for all qualifying non-Firm Facilitated orders, where a TPH has a Step-Up Volume in Non-Customer, Non-Strategy, Floor Broker Volume (in applicable products) from April 2021 that is greater than zero contracts;

- Tier 2 provides a rebate of \$0.01 per contract for all qualifying Firm Facilitated orders, and a rebate of \$0.04 per contract for all qualifying non-Firm Facilitated orders, where a TPH has a Step-Up Volume in Non-Customer, Non-Strategy, Floor Broker Volume (in applicable products) from April 2021 that is greater than or equal to 100,000 contracts;

- Tier 3 provides a rebate of \$0.01 per contract for all qualifying Firm Facilitated orders, and a rebate of \$0.05 per contract for all qualifying non-Firm Facilitated orders, where a TPH has a Step-Up Volume in Non-Customer, Non-Strategy, Floor Broker Volume (in applicable products) from April 2021 that is greater than or equal to 250,000 contracts; and

- Tier 4 provides a rebate of \$0.015 per contract for all qualifying Firm Facilitated orders, and a rebate of \$0.06 per contract for all qualifying non-Firm Facilitated orders, where a TPH has a Step-Up Volume in Non-Customer, Non-Strategy, Floor Broker Volume (in applicable products) from April 2021 that is greater than or equal to 500,000 contracts.

The Exchange now proposes to update the Floor Broker Sliding Scale Rebate Program. Specifically, the Exchange proposes to amend tier rebates for Tiers 1, 3, and 4, and to amend tier criteria for all Tiers 1 through 4. The proposed changes are as follows.

- Tier 1, as amended, provides a rebate of \$0.005 per contract for all qualifying (*i.e.*, Non-Customer, Non-Strategy, Floor Broker orders in all products except Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF, NANOS, XSP, and FLEX Micros) Firm Facilitated orders, and a rebate of \$0.020 per contract for all qualifying non-Firm Facilitated orders, where a TPH has Volume in Non-Customer, Non-Strategy, Floor Broker (in applicable products) that is greater than zero contracts;

- Tier 2, as amended, provides a rebate of \$0.01 per contract for all qualifying Firm Facilitated orders, and a rebate of \$0.04 per contract for all qualifying non-Firm Facilitated orders, where a TPH has Volume in Non-Customer, Non-Strategy, Floor Broker (in applicable products) that is greater than or equal to 250,000 contracts;

³ See Cboe Global Markets U.S. Options Monthly Market Volume Summary (May 26, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

- Tier 3, as amended, provides a rebate of \$0.02 per contract for all qualifying Firm Facilitated orders, and a rebate of \$0.07 per contract for all qualifying non-Firm Facilitated orders, where a TPH has Volume in Non-Customer, Non-Strategy, Floor Broker (in applicable products) that is greater than or equal to 500,000 contracts; and

- Tier 4, as amended, provides a rebate of \$0.025 per contract for all qualifying Firm Facilitated orders, and a rebate of \$0.1 per contract for all qualifying non-Firm Facilitated orders, where a TPH has Volume in Non-Customer, Non-Strategy, Floor Broker (in applicable products) that is greater than or equal to 1,000,000 contracts.⁸

Additionally, the Exchange proposes certain clean-up changes to its Fees Schedule to eliminate PULSe Workstation fees and references in the Routing, Network Access Port, and Logical Connectivity sections and Footnotes 27 and 45, as PULSe was decommissioned in January 2021, and thus, such fees and references are obsolete. The Exchange also proposes to eliminate reference to Cboe “Command” system in Footnotes 27, 36, and 45 of the Fees Schedule, as it no longer uses that naming convention with respect to its system.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the

proposed rule change is consistent with the Section 6(b)(5)¹¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹² which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

As stated above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange’s trading floor, which the Exchange believes would enhance market quality to the benefit of all TPHs. The Exchange notes that the proposed volume-based incentives and discounts, as amended, are reasonable, equitable and non-discriminatory because they are open to all TPHs on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange’s market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including incentive programs that offer rebates or rates that apply based upon TPHs achieving certain volume thresholds.

The Exchange believes that reducing the rebates offered under Tier 1 is reasonable because TPHs are still eligible to receive a rebate for meeting the corresponding criteria, albeit at a lower amount than before. The Exchange believes that increasing the rebates offered under Tiers 3 and 4 is reasonable because TPHs will be receiving higher rebates for meeting the corresponding criteria. The Exchange believes the proposed changes to the rebate amounts offered under these tiers are commensurate with the corresponding criteria under the respective tiers, even as amended.

The Exchange also believes that the proposed changes to the Floor Broker Sliding Scale Rebate Program are reasonable and equitable because they are designed to incentivize increased order flow in multiply-listed options to the Exchange’s trading floor. The Exchange believes the changes are reasonably designed to encourage market participants to submit Non-Customer, Non-Strategy order flow, which provides liquidity to the Exchange’s trading floor, facilitates tighter spreads and may attract an additional corresponding increase in order flow from other market participants. Increased overall order flow benefits all investors by deepening the Exchange’s liquidity pool, potentially providing even greater execution incentives and opportunities, as well as improved price opportunities for all market participants.

Moreover, the Exchange believes that the proposed changes to the criteria and rebates of the Floor Broker Sliding Scale Rebate Program are reasonable as they are comparable to the tier criteria and rebates or reduced rates offered under similar volume-based incentive programs offered at other options exchanges.¹³ The Exchange also believes that it is reasonable to continue to offer higher rebates for Non-Firm Facilitated order flow than for Firm Facilitated order flow (*i.e.*, where the same executing broker and clearing firm are on both sides of the transaction) because it wishes to further incentivize order flow that attracts contra-side interest from a wider variety of market participants, which may further contribute towards a robust, well-balance market ecosystem.

The Exchange believes that the proposed changes to the Floor Broker Sliding Scale Rebate Program represent an equitable allocation of fees and are not unfairly discriminatory because the program, as amended, applies uniformly to all qualifying TPHs, in that all TPHs that submit the requisite order flow (*i.e.*,

⁸ The proposed change also amends language in the Fees Schedule regarding the Floor Broker Sliding Scale Rebate Program to note that the Exchange will aggregate a TPH’s volume with the volume of its affiliates (“affiliate” defined as having at least 75% common ownership between the two entities as reflected on each entity’s Form BD, Schedule A) for the purposes of calculating Volume each month (rather than Step-Up Volume).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ *Id.*

¹² 15 U.S.C. 78f(b)(4).

¹³ See BOX Options Fee Schedule, Section V(C), Qualified Open Outcry (“QOO”) Order Rebate, which offers a rebate for floor broker orders of \$0.075 or \$0.05 per contract (depending on the capacity) and does not apply to Strategy QOO Orders. See also NYSE American Options Fee Schedule, E.1, Floor Broker Fixed Cost Prepayment Incentive Program (the “FB Prepay Program”), which offers participating floor brokers annual rebates for achieving growth in manual volume by a certain percentage as measured against certain benchmarks, and does not apply to volume executed as part of Strategy Execution Fee Cap (that is, strategy orders); and NYSE Arca Options Fee Schedule, Floor Broker Fixed Cost Prepayment Incentive Program (the “FB Prepay Program”), which provides a rebate for floor broker orders on manual billable volume of \$0.08 to \$0.10 per billable side (based on billable sides), and excludes strategy executions from the program.

Non-Customer, Non-Strategy, Floor Broker Volume in multiply-listed options) have the opportunity to compete for and achieve the tiers, as amended. The proposed rebates will apply automatically and uniformly to all TPHs that achieve the proposed corresponding criteria. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether these proposed changes would definitely result in any TPHs qualifying for Tiers 1–4. While the Exchange has no way of predicting with certainty how the proposed changes will impact TPH activity, based on trading activity from the prior months, the Exchange anticipates that at least 2 TPHs will achieve Tier 2, 2 TPH will achieve Tier 3 and 1 TPH will achieve Tier 4.

Finally, the Exchange believes eliminating PULSe fees and references as discussed above is reasonable as such PULSe has been decommissioned, rendering such fees and references obsolete. The proposed change to eliminate references to Cboe “Command” is also reasonable as the Exchange no longer refers to its system as “Cboe Command”. The proposed deletions reduce potential confusion and maintain clarity in the Fees Schedule.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the Exchange believes that the proposed changes encourage the submission of additional liquidity to the floor of a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution and price improvement opportunities for all TPHs.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Floor Broker Sliding Scale Rebate Program, as amended, will apply equally to all similarly situated TPHs that submit the requisite order flow. That is, the proposed criteria and rebates will apply equally to all Non-Customer, Non-Strategy, Floor Broker orders in multiply-listed options. The Exchange does not believe that the continued application of Floor Broker Sliding Scale Rebate Program to Non-Customer orders will impose any significant burden on intramarket

competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange recognizes that Non-Customer participation in the markets is essential to a robust hybrid market ecosystem as each contributes unique and important liquidity to the Exchange’s trading floor, as described above. Such Non-Customer order flow may result in overall tighter spreads, attracting order flow from other market participants, more execution opportunities at improved prices, and/or deeper levels of liquidity, which may ultimately improve price transparency, provide continuous trading opportunities and enhance market quality on the Exchange, to the benefit of all market participants.

The Exchange also does not believe that the proposed changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act because, as noted above, competing options exchanges have similar incentive programs and discount opportunities in place in connection with floor broker order flow.¹⁴ Additionally, and as previously discussed, the Exchange operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, many of which offer substantially similar volume-based incentive programs.¹⁵ Based on publicly available information, no single options exchange has more than 15% of the market share.¹⁶ Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁷ The fact that this market is competitive has also long been recognized by the courts.

¹⁴ See *supra* note 13.

¹⁵ See *supra* note 13.

¹⁶ See *supra* note 3.

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁸ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁹ and paragraph (f) of Rule 19b–4²⁰ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹⁸ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b–4(f).

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2023-030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CBOE-2023-030. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2023-030 and should be submitted on or before July 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-12575 Filed 6-12-23; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice: 12096]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations:

“Emerging Ecologies: Architecture and the Rise of Environmentalism” 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 “Emerging Ecologies: Architecture and the Rise of Environmentalism” at The Museum of Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator, 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.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023-12587 Filed 6-12-23; 8:45 am]

BILLING CODE 4710-05-P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Minor Modifications

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the minor modifications approved for a previously approved project by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: May 1–31, 2023.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT:

Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238-0423, ext. 1312; fax (717) 238-2436; email: joyler@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists previously approved projects, receiving approval of minor modifications, described below, pursuant to 18 CFR 806.18 or to Commission Resolution Nos. 2013-11 and 2015-06 for the time period specified above.

1. Nature's Way Purewater Systems, Inc.—USHydrations—Dupont Bottling Plant, Docket No. 20230319, Dupont Borough, Luzerne County, Pa.; modification to rescind approval to withdraw groundwater from Covington Springs Borehole 1 and remove from approved consumptive use sources; Approval Date: May 10, 2023.

Authority: Public Law 91-575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806 and 808.

Dated: June 7, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023-12545 Filed 6-12-23; 8:45 am]

BILLING CODE 7040-01-P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: May 1–31, 2023.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT:

Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238-0423, ext. 1312; fax: (717)

²¹ 17 CFR 200.30-3(a)(12).

238–2436; email: joyler@srbc.net. Regular mail inquiries May be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22 (f) for the time period specified above.

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. Repsol Oil & Gas USA, LLC; Pad ID: HARVEY (02 192) D; ABR–202305002; Covington Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: May 8, 2023.
2. Repsol Oil & Gas USA, LLC; Pad ID: TWIN RIDGE (02 185); ABR–201804001.R1; Covington Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: May 8, 2023.
3. Seneca Resources Company, LLC; Pad ID: DCNR 100 Pad R; ABR–201304013.R2; Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 8, 2023.
4. Seneca Resources Company, LLC; Pad ID: SGL 90D Pad; ABR–201103021.R2; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 8, 2023.
5. Coterra Energy Inc.; Pad ID: MooreS P1; ABR–201804002.R1; Jessup Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: May 9, 2023.
6. Pennsylvania General Energy Company, L.L.C.; Pad ID: COP Tract 322 Pad C; ABR–201304006.R2; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.5000 mgd; Approval Date: May 9, 2023.
7. Pennsylvania General Energy Company, L.L.C.; Pad ID: COP Tract 596 Pad B; ABR–201304007.R2; Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.5000 mgd; Approval Date: May 9, 2023.
8. Chesapeake Appalachia, L.L.C.; Pad ID: Runabuck Drilling Pad; ABR–201305008.R2; Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 10.0000 mgd; Approval Date: May 24, 2023.
9. Repsol Oil & Gas USA, LLC; Pad ID: HUGHES (02 204) E; ABR–201804003.R1; Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: May 24, 2023.
10. Seneca Resources Company, LLC; Pad ID: DCNR 100 Pad J; ABR–202305001; Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 24, 2023.
11. SWN Production Company, LLC; Pad ID: Martin (Pad 11); ABR–201304009.R2; Standing Stone Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 24, 2023.
12. SWN Production Company, LLC; Pad ID: RU–23 MITCHELL PAD; ABR–201304012.R2; New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 24, 2023.
13. SWN Production Company, LLC; Pad ID: Tice (13 Pad); ABR–201304011.R2; Orwell Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 24, 2023.
14. SWN Production Company, LLC; Pad ID: WY–10–FALCONERO–PAD; ABR–201804004.R1; Forkston Township, Wyoming County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 24, 2023.
15. Campbell Oil & Gas, Inc.; Pad ID: Mid Penn Unit A Well Pad; ABR–201304002.R2; Bigler Township, Clearfield County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: May 28, 2023.
16. Chesapeake Appalachia, L.L.C.; Pad ID: Hooker; ABR–201305001.R2; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 28, 2023.
17. Chesapeake Appalachia, L.L.C.; Pad ID: Lightcap; ABR–201303009.R2; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 28, 2023.
18. Chesapeake Appalachia, L.L.C.; Pad ID: P. Cullen A Drilling Pad; ABR–201304019.R2; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 28, 2023.
19. Chesapeake Appalachia, L.L.C.; Pad ID: Visneski; ABR–201305002.R2; Mehoopany Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 28, 2023.
20. Coterra Energy Inc.; Pad ID: ThomasR P1; ABR–201305005.R2; Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: May 28, 2023.
21. Repsol Oil & Gas USA, LLC; Pad ID: REPINE (07 022) T; ABR–201305009.R2; Apolacon Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: May 28, 2023.
22. Seneca Resources Company, LLC; Pad ID: Gamble Pad C Alt; ABR–201605001.R1; Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 28, 2023.
23. Seneca Resources Company, LLC; Pad ID: Root #1; ABR–201605003.R1; Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 28, 2023.
24. Seneca Resources Company, LLC; Pad ID: Showalter 822; ABR–201105018.R2; Chatham Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 28, 2023.
25. Coterra Energy Inc.; Pad ID: DiazM P1; ABR–201805003.R1; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: May 30, 2023.
26. EQT ARO LLC; Pad ID: Alden Evans Pad A; ABR–201805001.R1; Cascade Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 30, 2023.
27. Repsol Oil & Gas USA, LLC; Pad ID: KROPP (07 017) C; ABR–201305010.R2; Apolacon Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: May 30, 2023.
28. Repsol Oil & Gas USA, LLC; Pad ID: SCHMITT (07 043) D; ABR–201305012.R2; Apolacon Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: May 30, 2023.
29. Repsol Oil & Gas USA, LLC; Pad ID: TAYLOR BUCKHORN LAND CO (07 010); ABR–201305011.R2; Apolacon Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: May 30, 2023.
30. SWN Production Company, LLC; Pad ID: Ferguson-Keisling (Pad B); ABR–201304010.R2; Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 30, 2023.
31. Coterra Energy Inc.; Pad ID: HouselR P1; ABR–201305015.R2; Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: May 31, 2023.
32. Coterra Energy Inc.; Pad ID: HustonJ P1; ABR–201305014.R2; Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: May 31, 2023.

(Authority: Public Law 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806 and 808)

Dated: June 7, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–12546 Filed 6–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA–2018–0054; FMCSA–2018–0057; FMCSA–2020–0045]

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 three 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: The exemptions were applicable on May 15, 2023. The exemptions expire on May 15, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, fmcsamedical@dot.gov. Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:**I. Public Participation****A. Viewing Comments**

To view comments go to www.regulations.gov. Insert the docket number (FMCSA–2018–0054, FMCSA–2018–0057, or FMCSA–2020–0045) 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 May 1, 2023, FMCSA published a notice announcing its decision to renew exemptions for three 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 26647). The public comment period ended on May 31, 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 criteria¹ 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 applicants should take a seizure trigger education class as an additional requirement for applying.

FMCSA has granted these exemptions on the basis that all applicants have maintained their medical monitoring

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>.

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 three 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).

As of May 15, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three 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 26647):

Kevin Addington (PA); Jose F.J. Maciel (CA); and John Shainline (PA).

The drivers were included in docket number FMCSA–2018–0054, FMCSA–2018–0057, or FMCSA–2020–0045. Their exemptions were applicable as of May 15, 2023 and will expire on May 15, 2025.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–12588 Filed 6–12–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration**

[Docket No. NHTSA–2022–0015; Notice 1]

AGC Automotive Americas Co., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: AGC Automotive Americas Co., (AGC), has determined that certain

glass backlites and sidelites manufactured as replacement parts do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials*. AGC filed an original noncompliance report dated March 11, 2020. AGC petitioned NHTSA on April 7, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of AGC's petition.

DATES: Send comments on or before July 13, 2023.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.

- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477-78).

FOR FURTHER INFORMATION CONTACT: Jack Chern, Safety Compliance Engineer, Office of Vehicle Safety Compliance, NHTSA, (202) 366-0661.

SUPPLEMENTARY INFORMATION:

I. *Overview:* AGC determined that certain glass backlites and sidelites manufactured as replacement parts do not fully comply with paragraph S6.2 of FMVSS No. 205, *Glazing Materials* (49 CFR 571.205).

AGC filed an original noncompliance report dated March 11, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. AGC petitioned NHTSA on April 7, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of AGC's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. *Equipment Involved:* Approximately 1,843 glass backlites and sidelites manufactured as replacement parts between February 1, 2008, and July 31, 2018, were reported by the manufacturer.

III. *Noncompliance:* AGC explains that the subject replacement glass does not have the required "DOT" certification marking and manufacturer code, and therefore does not comply with paragraph S6.2 of FMVSS No. 205. Specifically, the subject equipment is missing the marking "DOT 24" indicating DOT certification and AGC's assigned manufacturer code.

IV. *Rule Requirements:* Paragraph S6.2 of FMVSS No. 205 includes the

requirements relevant to this petition. A prime glazing manufacturer must certify its glazing by adding to the marks required by section 7 of ANSI/SAE Z26.1-1996, in letters and numerals of the same size, the symbol "DOT" and a manufacturer's code mark that is assigned to the manufacturer. NHTSA will assign a code mark to a manufacturer after the manufacturer submits a written request that must include the company name, address, and a statement from the manufacturer certifying its status as a prime glazing manufacturer.

V. *Summary of AGC's Petition:* The following views and arguments presented in this section, "V. Summary of AGC's Petition," are the views and arguments provided by AGC. They have not been evaluated by the Agency and do not reflect the views of the Agency. AGC describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

AGC explains that the subject replacement glass inadvertently entered the U.S. market through Automotive Replacement Glass (ARG), a business unit in Europe. The shipment was made to satisfy a replacement glass order for the U.S. market. AGC states that the subject replacement glass was manufactured without the "DOT" certification marking and manufacturer code because they were not intended to be sold in the U.S.

After investigating the issue, AGC states that it blocked shipments of the noncompliant replacement glass, tested the affected replacement glass to confirm that it met the applicable FMVSS performance requirements, and destroyed extant stock. AGC believes that the missing "DOT" symbol on glazing does not create a risk to motor vehicle safety and is therefore, inconsequential, based on its finding that no test indicated any issue with the glass.

AGC believes that the subject noncompliance is inconsequential to motor vehicle safety because the subject replacement glass met the performance requirements as stated in FMVSS No. 205. Furthermore, AGC states that it has not received "reports of any noncompliance either for any of these parts produced during this time including parts shipped with and without the required DOT number," nor have there been any customer complaints related to the subject replacement glass.

AGC claims that the following petitions for similar noncompliances have previously been granted by NHTSA:

- Pilkington North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance; 78 FR 22942 (April 17, 2003)
- Fuji Heavy Industries USA, Inc., Grant of Petition for Decision of Inconsequential Noncompliance; 78 FR 59088 (September 25, 2013)
- Toyota Motor Corporation., Grant of Petition for Decision of Inconsequential Noncompliance; 68 FR 10307 (March 4, 2003)
- Mitsubishi Motors North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance; 80 FR 72482 (August 27, 2015)¹
- Custom Glass Solutions Upper Sandusky Corp., Grant of Petition for Decision of Inconsequential Noncompliance; 80 FR 3737 (January 23, 2015)
- Supreme Corporation, Grant of Petition for Decision of Inconsequential Noncompliance; 81 FR 72850 (October 21, 2016)
- Ford Motor Company, Grant of Petition for Decision of Inconsequential Noncompliance; 78 FR 32531 (May 30, 2013)
- Ford Motor Company, Grant of Petition for Decision of Inconsequential Noncompliance; 80 FR 11259 (March 2, 2015)
- General Motors, LLC, Grant of Petition for Decision of Inconsequential Noncompliance; 79 FR 23402 (September 25, 2015)²

AGC concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject equipment that AGC no longer controlled at the time it determined that the noncompliance existed. However, any decision on this

petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant equipment under their control after AGC notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke, III,
Director, Office of Vehicle Safety Compliance.
[FR Doc. 2023-12566 Filed 6-12-23; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT-OST-2023-0092]

Potential Research and Development Areas of Interest for the Advanced Research Projects Agency—Infrastructure (ARPA-I); Request for Information

AGENCY: Department of Transportation (DOT).

ACTION: Notice; request for information (RFI).

SUMMARY: The Advanced Research Projects Agency—Infrastructure (ARPA-I) is a newly-designated agency within the U.S. Department of Transportation (DOT) that was authorized by the Infrastructure Investment and Jobs Act of 2021 (IIJA) November 15, 2021 (also known as the Bipartisan Infrastructure Law). ARPA-I was established by Congress “to support the development of science and technology solutions that overcomes long-term challenges and advances the state of the art for United States transportation infrastructure.” ARPA-I will have a single overarching goal and focus: to fund external innovative advanced research and development (R&D) programs that develop new technologies, systems, and capabilities to improve transportation infrastructure in the United States. The purpose of this Request for Information (RFI) is to obtain input from interested parties on potential areas for future innovative advanced research and development programs to be funded and managed by ARPA-I, subject to the availability of appropriations.

DATES: Written submissions must be received within 45 days of the publication of this RFI.

ADDRESSES: Please submit any written comments to Docket Number DOT-OST-2023-0092 electronically through the Federal eRulemaking Portal at <https://regulations.gov>. Go to <https://regulations.gov> and select “Department

of Transportation (DOT)” from the agency menu to submit or view public comments. Note that, except as provided below, all submissions received, including any personal information provided, will be posted without change and will be available to the public on <https://www.regulations.gov>. You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at <https://www.transportation.gov/privacy>. **FOR FURTHER INFORMATION CONTACT:** For questions about this RFI, please email ARPA-I@dot.gov. You may also contact Mr. Timothy A. Klein, Director, Technology Policy and Outreach, Office of the Assistant Secretary for Research and Technology (202-366-0075) or by email at timothy.klein@dot.gov.

SUPPLEMENTARY INFORMATION: The Advanced Research Projects Agency—Infrastructure (ARPA-I) is a newly-designated agency within the U.S. Department of Transportation (DOT) that was established by Congress “to support the development of science and technology solutions that overcomes long-term challenges and advances the state of the art for United States transportation infrastructure.” (Pub. L. 117-58, Section 25012, November 15, 2021; 49 U.S.C. 119). ARPA-I is modeled after the Defense Advanced Research Projects Agency (DARPA) within the U.S. Department of Defense, and ARPA-E (Energy) within the U.S. Department of Energy. It will offer a once-in-a-generation opportunity to improve our nation’s transportation infrastructure, both physical and digital, and will support DOT’s strategic goals of Safety, Economic Strength and Global Competitiveness, Equity, Climate and Sustainability, and Transformation. ARPA-I will focus on developing and implementing technologies, rather than developing policies and processes or providing regulatory support. An ARPA-I funded technology should have a clear pathway to commercialization and widespread cross-modal deployment within 5–10 years, to have a substantial and transformative beneficial impact on DOT’s priorities. A typical ARPA-I program might run for multiple years, have a significant budget, and include multiple actively-managed R&D projects within that single program.

ARPA-I will augment and complement existing R&D activities within DOT’s Office of the Assistant Secretary for Research and Technology (OST-R) and DOT’s Operating Administrations, and will not supplant or duplicate those efforts. Those efforts

¹ AGC included the incorrect date of the cited **Federal Register** notice. 80 FR 72482 was published on November 19, 2015.

² AGC included the incorrect date of the cited **Federal Register** notice. 79 FR 23402 was published on April 28, 2014.

currently include the U.S. DOT Research, Development and Technology (RD&T) Strategic Plan as well as the activities of the University Transportation Centers (UTCs). ARPA-I will fund innovative teams of researchers and developers that might include academic institutions, innovators, industry, Federally funded research and development centers (FFRDCs), infrastructure owners and operators (IOOs), and others. These teams will be funded to develop commercializable technologies that solve persistent problems in infrastructure design, development, construction, and deployment.

The aims of ARPA-I include “lowering the long-term costs of infrastructure development, including costs of planning, construction, and maintenance; reducing the lifecycle impacts of transportation infrastructure on the environment, including through the reduction of greenhouse gas emissions; contributing significantly to improving the safe, secure, and efficient movement of goods and people; promoting the resilience of infrastructure from physical and cyber threats; and ensuring that the United States is a global leader in developing and deploying advanced transportation infrastructure technologies and materials.” (IIJA, 2021)

Specific Questions

Responses to this RFI are intended to inform DOT on areas of focus for future innovative R&D funding programs to be undertaken by ARPA-I.

DOT is providing the following specific questions to prompt feedback and comments. DOT encourages public comment on any of these questions, and also seeks any other information commenters believe is relevant.

DOT is requesting information from all interested entities and stakeholders, including innovators and technology developers, researchers and universities, transportation system operators, transportation-focused groups, organizations and associations, and the public.

DOT is interested in receiving succinct and relevant responses to the following six questions:

Safety

Improving the safety of our transportation system users is of critical importance to achieving the objectives of the DOT’s National Roadway Safety Strategy (<https://www.transportation.gov/NRSS>) and DOT’s vision of zero fatalities and serious injuries across all modes of transportation. There are many current

and existing DOT safety R&D efforts that span the full spectrum from roadway and intersection design, active and passive vehicle safety systems, policy and regulatory support, human factors and human behavior research, to vulnerable road user safety improvements (such as the U.S. DOT Intersection Safety Challenge), and more. Safety spans all transportation modes and is an all-pervasive overarching goal at DOT. A number of safety research programs are currently underway at DOT, including the Federal Highway Administration (FHWA) Improving Highway Safety for All Users Program Request for Information, the National Highway Traffic Safety Administration (NHTSA) Vehicle Safety Research Program, and many others. In this current RFI, DOT is seeking information on additional, complementary, and supplemental program areas that ARPA-I can address in developing innovative new infrastructure technologies that enhance Safety across our transportation system.

Question 1: Are there new and emerging areas of innovation, including external early-stage research and development, that ARPA-I should contemplate funding as a part of its Safety area of concentration, noting the agency’s high-risk, high-reward focus? If yes, what are these areas, and why should DOT consider funding them?

Advanced Construction Materials and Methods

The development of advanced infrastructure construction materials and methods, including for roads, highways, bridges, airports, ports, railways, and pipelines, has long been a priority for DOT. There are considerable efforts ongoing including at the Federal Aviation Administration (FAA) and FHWA in the development of low embodied carbon materials, new construction materials and new construction methods for infrastructure. For example, these might include 3D concrete printing of large structures such as bridges, culverts, and roadways, and related advanced construction methods.

Question 2: Are there new and emerging areas of innovation, including external early-stage research and development, that ARPA-I should contemplate funding as a part of its Advanced Construction Materials and Methods area of concentration, noting the agency’s high-risk, high-reward focus? If yes, what are these areas, and why should DOT consider funding them?

Digital Infrastructure

Advances in digital infrastructure and digitalization abound. These include (but are not limited to) new technologies for mapping, sensing, connectivity and communications, networking, and computation. Transportation infrastructure is one of the largest sectors of our economy that has only begun to participate in the ‘digital revolution’ of information technology. The potential advantages of digitalization are pervasive, from the development of advanced centralized traffic management systems to advanced driver assistance systems (ADAS), GPS (or GNSS) applications, machine vision and artificial intelligence. There is a considerable body of work being conducted across DOT in digital infrastructure, including at FHWA, FAA, the Intelligent Transportation System Joint Program Office (ITS JPO), and the Highly Automated Systems Safety Center of Excellence (HASS COE) within OST-R.

Question 3: Are there new and emerging areas of innovation, including external early-stage research and development, that ARPA-I should contemplate funding as a part of its Digital Infrastructure area of concentration, noting the agency’s high-risk, high-reward focus? If yes, what are these areas, and why should DOT consider funding them?

Freight and Logistics Optimization

The seamless movement of freight across transportation modes is an essential requirement for our economic health and well-being. The COVID-19 pandemic exposed the vulnerability of our economy to disruptions in freight and logistics operations, as part of the larger breakdown in supply chains and their continuity. Increasing the resilience of freight and goods movement across our nation is essential to ensuring the uninterrupted flow of food, fuel, commodities, and consumer and industrial products from source to destination. DOT conducts research across all transportation modes in the area of freight and logistics and has recently instituted the Office of Multimodal Freight Infrastructure and Policy within the Office of the Secretary (OST), as established by the IIJA, Section 21101 (49 U.S.C. 118).

Question 4: Are there new and emerging areas of innovation, including external early-stage research and development, that ARPA-I should contemplate funding as a part of its Freight and Logistics Optimization area of concentration, noting the agency’s high-risk, high-reward focus? If yes,

what are these areas, and why should DOT consider funding them?

Climate and Resilience

Our transportation infrastructure is increasingly susceptible to damage from climate-related events, from drought to floods to sea level rise. Increasing the resilience of our infrastructure and mitigating negative effects on our transportation system across all modes is an imperative for DOT. Climate and resilience research is being conducted across all transportation modes at DOT, including in the newly reestablished DOT Climate Change Center, and includes the reduction of greenhouse gas (GHG) emissions from transportation, the reduction of embodied carbon in infrastructure materials, and increasing physical and cyber resilience across the transportation system.

Question 5: Are there new and emerging areas of innovation, including external early-stage research and development, that ARPA-I should contemplate funding as a part of its Climate and Resilience area of concentration, noting the agency's high-risk, high-reward focus? If yes, what are these areas, and why should DOT consider funding them?

Other Areas in Transportation Infrastructure

DOT currently conducts a considerable amount of R&D work, both internally and externally, in many areas pertinent to transportation infrastructure.

Question 6: Are there other new and emerging areas of innovation associated with transportation infrastructure, including external early-stage research and development, that ARPA-I should contemplate funding, noting the agency's high-risk, high-reward focus? If yes, what are these other areas, and why should DOT consider funding them?

Confidential Business Information

Do not submit information disclosure of which is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information "CBI") to *Regulations.gov*. Comments submitted through *Regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted.

Issued in Washington, DC, on June 6, 2023.

Robert C. Hampshire,

Acting Assistant Secretary for Research and Technology.

[FR Doc. 2023-12621 Filed 6-12-23; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On February 21, 2023, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to revise and extend the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051), and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), all of which are currently approved collections of information. These proposed revisions to the Call Reports and the FFIEC 002 result from the 2022 statutorily mandated review of the Call Reports, Call Report process revisions, and reporting of certain Federal Home Loan Mortgage Corporation and similar securitizations.

DATES: Comments must be submitted on or before July 13, 2023.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments will be shared among the agencies.

OCC: You may submit comments, by any of the following methods:

- **Email:** prainfo@occ.treas.gov.

- **Mail:** Chief Counsel's Office, Office of the Comptroller of the Currency, Attention: 1557-0081, 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "1557-0081" 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 following method:

- **Viewing Comments Electronically:** Go to www.reginfo.gov. Hover over the "Information Collection Review" tab and click on "Information Collection Review." Underneath the "Currently under Review" section heading, from the drop-down menu select "Department of the Treasury" and then click "submit." This information collection can be located by searching by OMB control number "1557-0081." 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.

Board: You may submit comments, which should refer to "Call Report and FFIEC 002 Revisions," by any of the following methods:

- **Agency Website:** <https://www.federalreserve.gov>. Follow the instructions for submitting comments at: <https://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- **Email:** regs.comments@federalreserve.gov. Include "Call Report and FFIEC 002 Revisions" in the subject line of the message.

- **Fax:** (202) 395-6974.

- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal

Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

In general, all public comments will be made available on the Board's website at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, and will not be modified to remove confidential, contact or any identifiable information.

FDIC: You may submit comments, which should refer to "Call Report and FFIEC 002 Revisions," by any of the following methods:

- **Agency Website:** <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Follow the instructions for submitting comments on the FDIC's website.
- **Email:** comments@FDIC.gov. Include "Call Report (FFIEC 002) Revisions" in the subject line of the message.
- **Mail:** Manuel E. Cabeza, Counsel, Attn: Comments, Room MB-3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- **Hand Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.
- **Public Inspection:** All comments received will be posted without change to <https://www.fdic.gov/resources/regulations/federal-register-publications/>, including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center by telephone at (877) 275-3342 or (703) 562-2200.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395-6974; or by email to oira_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions to the information collections discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the report forms for the Call Reports can be obtained at the FFIEC's website (https://www.ffiec.gov/ffiec_report_forms.htm).

OCC: Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649-5490. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452-3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services (TRS), please call 711 from any telephone, anywhere in the United States.

FDIC: Manuel E. Cabeza, Counsel, (202) 898-3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The comment period for the February, 2023 notice ended on April 24, 2023. After considering the comments received on the proposal, the FFIEC and the agencies are proceeding with the proposed revisions related to the 2022 statutorily mandated review, with certain modifications. These reporting revisions would take effect for the September 30, 2023, report date, rather than as of the June 30, 2023, report date, as originally proposed. The agencies are continuing to review the reporting of certain Federal Home Loan Mortgage Corporation and similar securitizations.

The agencies also are proposing clarifications to the reporting instructions for certain items on Schedule RC-T, Fiduciary and Related Services.

The agencies hereby give notice of their plan to submit to OMB a request to approve the revision and extension of these information collections, and again invite comment on the renewal.

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I. Report Summary

A. Call Report

The agencies propose to extend for three years, with revision, their information collections associated with the FFIEC 031, FFIEC 041, and FFIEC 051 Call Reports.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: FFIEC 031 (Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices), FFIEC 041 (Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only), and FFIEC 051 (Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than \$5 Billion).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Type of Review: Revision and extension of currently approved collections.

OCC

OMB Control No.: 1557-0081.

Estimated Number of Respondents: 1,015 national banks and federal savings associations.

Estimated Average Burden per Response: 40.68 burden hours per quarter to file.

Estimated Total Annual Burden: 165,161 burden hours to file.

Board

OMB Control No.: 7100-0036.

Estimated Number of Respondents: 699 state member banks.

Estimated Average Burden per Response: 44.13 burden hours per quarter to file.

Estimated Total Annual Burden: 123,387 burden hours to file.

FDIC

OMB Control No.: 3064-0052.

Estimated Number of Respondents: 2,990 insured state nonmember banks and state savings associations.

Estimated Average Burden per Response: 38.87 burden hours per quarter to file.

Estimated Total Annual Burden: 464,885 burden hours to file.

The estimated average burden hours collectively reflect the estimates for the FFIEC 031, the FFIEC 041, and the FFIEC 051 reports for each agency. When the estimates are calculated by type of report across the agencies, the estimated average burden hours per quarter are 84.53 (FFIEC 031), 54.60 (FFIEC 041), and 34.41 (FFIEC 051). These estimates represent a reduction of 1.96 hours (FFIEC 031), 0.93 (FFIEC 041) and 0.97 hours (FFIEC 051) per quarter compared with the prior estimates approved by OMB. The changes are due to the revisions proposed in this notice, change in the number of institutions filing each type of report, and change to the amount of

data items reported in each report. The estimated burden per response for the quarterly filings of the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices).

Type of Review: Extension and revision of currently approved collections. In addition to the proposed revisions discussed below, Call Reports are periodically updated to clarify instructional guidance and correct grammatical and typographical errors on the forms and instructions, which are published on the FFIEC website.¹ These non-substantive updates may also be commented upon.

Legal Basis and Need for Collections

The Call Report information collections are mandatory: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (federal and state savings associations). At present, except for selected data items and text, these information collections are not given confidential treatment.

Banks and savings associations submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data serve a regulatory or public policy purpose by assisting the agencies in fulfilling their shared missions of ensuring the safety and soundness of financial institutions and the financial system and protecting consumer financial rights, as well as agency-specific missions affecting federal and state-chartered institutions, such as conducting monetary policy, ensuring financial stability, and administering federal deposit insurance. Call Reports are the source of the most current statistical data available for identifying areas of focus for on-site and off-site examinations. Among other purposes, the agencies use Call Report data in evaluating institutions' corporate applications, including interstate merger and acquisition applications for which the agencies are required by law to determine whether the resulting institution would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Call Report data also are

used to calculate the risk-based assessments for insured depository institutions.

B. FFIEC 002 and 002S

The Board proposes to extend for three years, with revision, the FFIEC 002 and FFIEC 002S reports.

Report Titles: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

Form Numbers: FFIEC 002; FFIEC 002S.

OMB Control Number: 7100-0032.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Respondents: All state-chartered or federally-licensed U.S. branches and agencies of foreign banking organizations, and all non-U.S. branches managed or controlled by a U.S. branch or agency of a foreign banking organization.

Estimated Number of Respondents: FFIEC 002—183; FFIEC 002S—18.

Estimated Average Burden per Response: FFIEC 002—24.67 hours; FFIEC 002S—6.0 hours.

Estimated Total Annual Burden: FFIEC 002—18,058 hours; FFIEC 002S—432 hours.

Type of Review: Extension and revision of currently approved collections.

The proposed revisions to the FFIEC 002 instructions in this notice would not have a material impact on the existing burden estimates.

Legal Basis and Need for Collection

On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data also are used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. In addition, FFIEC 002 data are used to calculate the risk-based assessments for FDIC-insured U.S. branches of foreign banks. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. A non-U.S. branch is managed or controlled by a U.S. branch or agency if a majority of the responsibility for business decisions,

including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002.

These information collections are mandatory (12 U.S.C. 3105(c)(2), 1817(a)(1) and (3), and 3102(b)). Except for select sensitive items, the FFIEC 002 is not given confidential treatment; the FFIEC 002S is given confidential treatment pursuant to 5 U.S.C. 552(b)(4) and (8). The data from both reports are used for (1) monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of all three agencies.

II. Current Actions

A. Background

On February 21, 2023, the agencies proposed revisions to all three versions of the Call Report (FFIEC 031, FFIEC 041 and the FFIEC 051) and the FFIEC 002 resulting from the 2022 statutorily mandated full review, along with proposed Call Report process improvements and reporting of certain securitizations (February notice).² The comment period for the February notice ended on April 24, 2023. The agencies received three comments on the February notice.

Additionally, in response to questions received from preparers of the Call Report and other stakeholders, as well as to promote consistent reporting across all institutions, the agencies are clarifying the instructions on the reporting of certain items on Schedule RC-T, Fiduciary and Related Services, as detailed in Section II.C of this **SUPPLEMENTARY INFORMATION.**

¹ www.ffiec.gov/forms031.htm; www.ffiec.gov/forms041.htm; www.ffiec.gov/forms051.htm.

² 88 FR 10644 (Feb. 21, 2023).

B. Proposed Changes and Comments Received

1. Statutorily Mandated Review

As a result of the statutorily mandated review required by Section 604 of the of the Financial Services Regulatory Relief Act of 2006,³ the agencies identified multiple items for removal or consolidation. These items related to FDIC loss-sharing agreements, negative amortization loans, reverse mortgages, and the money market mutual fund liquidity facility (MMLF). Additional detail about the specific line items impacted is included in the February notice.

One commenter generally supported the removal of items no longer necessary in connection with the statutorily mandated review. This commenter also requested removal of Schedule RC–C, Memorandum items 17.a and 17.b, which collect information regarding the number and amount of loans modified pursuant to Section 4013 of the CARES Act.⁴ The commenter noted that similar items previously were removed from bank holding company reports. These items relate to loan modifications or restructurings, which the agencies are planning to address in a more comprehensive proposal. Therefore, the agencies will retain these items for now but will consider the commenter's input when developing that proposal, which will follow the standard notice and comment process pursuant to the Paperwork Reduction Act.

After further deliberation and recent loss-share transactions established by the FDIC, the agencies decided to retain and redesignate certain items related to FDIC loss-sharing agreements that had been proposed for removal. These items are necessary solely for FDIC deposit insurance assessment purposes. On the FFIEC 031 and FFIEC 041 Call Report forms, the retained items are:

- Schedule RC–M, item 13.b.(7), “Portion of covered other real estate owned included in items 13.b.(1) through (6) above that is protected by FDIC loss-sharing agreements.” This item would be redesignated as item 13 and reflect the total of other real estate owned that is protected by FDIC loss-sharing arrangements. The agencies still would discontinue all other subitems of item 13, including subitems 13.b.(1) through 13.b.(6), 13.c and 13.d, as this information is not necessary for deposit insurance assessment or other purposes.
- Schedule RC–N, item 12.f, “Portion of covered loans and leases included in

items 12.a through 12.e above that is protected by FDIC loss-sharing agreements” (Columns A, B, and C). This item would be redesignated as item 12 and reflect the total of loans and leases protected by FDIC loss-sharing arrangements. The agencies still would discontinue subitems 12.a through 12.e, as this information is not necessary for deposit insurance assessment or other purposes.

On the FFIEC 051, the agencies will also retain the following subitems of Schedule SU, item 9.c, “Portion of past due and nonaccrual covered loans and leases that is protected by FDIC loss-sharing agreements:”

- Schedule SU, item 9.c.(2), “Past due 90 days or more and still accruing.”
- Schedule SU, item 9.c.(3), “Nonaccrual.”

These items would be moved to Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, and redesignated as item 12, “Portion of loans and leases covered by FDIC loss-sharing agreements,” with reporting in column B, “Past due 90 days or more and still accruing” and column C, “Nonaccrual,” which would be consistent with the FFIEC 031 and FFIEC 041 forms. The agencies still would discontinue the other subitems under Schedule SU, item 9, FDIC Loss-Sharing Agreements, as this information is not necessary for deposit insurance assessment or other purposes.

The agencies are proceeding with the removal or consolidation of the other items described in the February notice. While the agencies had proposed removing these items as of June 30, 2023, due to the time needed to update systems for the Call Reports, the agencies instead propose to remove or consolidate the items related to negative amortization loans, reverse mortgages, MMLF and FDIC loss-sharing agreements, as described above, effective as of the September 30, 2023, report date.

Furthermore, to maintain consistency of reporting between the Call Report and the FFIEC 002, the Board proposed in the February notice to remove from Schedule O, Other Data for Deposit Insurance Assessments, Memorandum item 7, “Quarterly average amount of holdings of assets purchased from money market funds under the Money Market Mutual Fund Liquidity Facility” and intend to remove this item, also effective for the September 30, 2023, report date.

2. Call Report Process Changes

In the February notice, the agencies had proposed changes to improve efficiency and usability of the Call

Report. Specifically, the agencies proposed providing the Call Report instructions and the instructional updates using the Portable Document Format instead of the binder format and would discontinue preparing the optional tax worksheet. No comments were received on these process changes, and the agencies will discontinue the optional tax worksheet starting with the June 30, 2023, report date. The agencies are continuing to review alternatives to providing the Call Report instructions and the instructional updates in a format other than the existing binder format.

3. Clarification of Reporting Certain Securitizations

In the February notice, the agencies had proposed a change to clarify reporting of certain Federal Home Loan Mortgage Corporation and similar securitization structures that have government guarantees in the Call Report. The agencies had proposed clarifying that these securitizations should be reported in Schedule RC–B, Securities, item 5.b., “Structured financial products.”

Two comments were received on this clarification. One comment opposed reporting of these securities in Schedule RC–B, Securities, item 5.b, noting that this item includes a broad range of structured financial products, and there would be a lack of clarity on the amount of securities reported in this item that is guaranteed by a government or agency. The other comment supported reporting these securities in item 5.b. However, the commenter also noted the lack of transparency in this item regarding the proportion of securities with government guarantees. The commenter requested that a subcategory be added to item 5.b to report the amount that was guaranteed by the U.S. government or an agency. The agencies are continuing to review the original clarification and the new item proposed by the commenter.

4. Other Comments Received

The agencies also received requests from two commenters on the Call Report that were not specifically related to any of the proposed changes.

One commenter requested the agencies to provide clarification on how long an institution would continue to report a loan subsequent to its modification that met the criteria in Accounting Standards Update 2022–02, “Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures” (ASU 2022–02) in the Call Report. The agencies plan to propose revisions to the

³ 12 U.S.C. 1817(a)(11).

⁴ Public Law 116–136, 4013 (2020).

Call Report in response to ASU 2022–02 and will consider these comments at that time. This proposal would follow the standard notice and comment process pursuant to the PRA.

The other commenter requested that the agencies expand the level of detail on interest and fee income collected in the Call Report on Schedule RI, Income Statement, to align with each loan category reported on Schedule RC–C, Part I, Loans and Leases. The agencies are declining to make any changes to the level of detail on loan income at this time. The current level of detail strikes the appropriate balance between the information necessary for monitoring the condition and performance of individual institutions and the industry with the effort required by those organizations to separately collect and report interest and fee income information by loan category.

C. Proposed Instructional Clarifications to Schedule RC–T, Fiduciary and Related Services

In response to questions received on the reporting of managed and non-managed assets and number of managed and non-managed accounts on Schedule RC–T, Fiduciary and Related Services, and to promote consistent reporting across all institutions, the agencies are proposing to clarify the instructions for these items as of the September 30, 2023, report date. Specifically:

- *Reporting of life insurance trusts.* The agencies have observed inconsistent reporting of life insurance trusts and are clarifying that life insurance trusts, other than term life insurance policies that have nominal value, should be reported in Schedule RC–T, item 4, “Personal trust and agency accounts.” Relatedly, the agencies are proposing to clarify in the “Fiduciary and Related Assets” section of the Schedule RC–T instructions that the cash surrender value of a life insurance policy generally may be used when calculating the value of the account.

- *Classification of investment advisory employee benefit accounts.* The agencies have observed inconsistent reporting of employee benefit accounts for which the institution provides investment services or investment advice for a fee and whether those accounts are classified as managed or non-managed in item 5, “Employee benefit and retirement-related trust and agency accounts.” The agencies are proposing to clarify in Schedule RC–T, items 5.a through 5.c, that accounts for which the institution serves as either trustee or agent and provides investment management services, or provides investment advice for a fee,

should be reported in one of the subcategories of item 5. The agencies are further proposing to clarify that accounts for which the institution serves as a directed trustee or provides investment advice for a fee should be reported under non-managed accounts. In addition, the agencies are proposing to clarify that employee benefit accounts for which the institution provides investment management or investment advisory services should not be reported in Schedule RC–T, item 7, “Investment management and investment advisory agency accounts.”

- *Primary relationship test.* The agencies have observed inconsistent reporting of trust accounts for which the institution has both a fiduciary and custodial relationship. The current instructions for Schedule RC–T, item 11, “Custody and safekeeping accounts” indicate that the institution should report the account under the primary relationship. The agencies are proposing to clarify in the instructions for this item that when an institution has both a fiduciary and custodial relationship, the fiduciary relationship is the primary relationship. In this case, the account should be reported as a fiduciary account in Schedule RC–T, items 4 through 9, and it should not be reported as a custodial account in item 11.

- *Back-office services.* The agencies have received questions about whether accounts for which the institution provides back-office or operational services for a third party, but does not hold the account, should be reported along with custody and safekeeping accounts. The agencies are proposing to revise the “Fiduciary and Related Assets” section of the Schedule RC–T instructions to clarify that accounts for which the institution only provides back-office or operational services and the accounts or assets are not held by the institution should not be reported in Schedule RC–T.

The agencies are proposing to incorporate these clarifications starting with the September 30, 2023, report date. The agencies would expect institutions that are not currently reporting consistent with these clarifications to incorporate the clarifications on a best-efforts basis over the four subsequent quarterly reports.

III. Timing

The revisions to the Call Report and the FFIEC 002 resulting from the statutorily mandated full review related to certain loss-sharing agreements with the FDIC, negative amortization loans, reverse mortgages, and MMLF items, and the proposed clarifications to the instructions for Schedule RC–T, will be

effective as of the September 30, 2023, report date, subject to OMB approval. The agencies plan to discontinue the optional tax worksheet as part of the implementation of the Call Report process changes starting with the June 30, 2023, report date.

IV. Request for Comment

Public comment is requested on all aspects of this joint notice. Comment is specifically invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies’ functions, including whether the information has practical utility;

(b) The accuracy of the agencies’ estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

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

Comments submitted in response to this joint notice will be shared among the agencies.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on June 6, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–12553 Filed 6–12–23; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been

placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(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 SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://ofac.treasury.gov>).

Notice of OFAC Actions

On June 6, 2023, OFAC determined that the property and interests in

property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. GUERRERO COVARRUBIAS, Alonso (a.k.a. GUERRERO COVARRUBIAS, Adrian Alonso; a.k.a. "EL OCHO"), Mexico; DOB 10 Dec 1990; POB Michoacan de Ocampo, Mexico; nationality Mexico; Gender Male; C.U.R.P. GUCA901210HMNRVL04 (Mexico) (individual) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(b)(iii) of Executive Order 14059 of December 15, 2021, "Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade," 86 FR 71549 (December 17, 2021) (E.O. 14059) for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Cartel de Jalisco Nuevo Generacion (CJNG), a person sanctioned pursuant to E.O. 14059.

2. GUERRERO COVARRUBIAS, Javier, Mexico; DOB 14 Feb 1988; POB Michoacan de Ocampo, Mexico; nationality Mexico; Gender Male; C.U.R.P. GUCJ880214HMNRVV02 (Mexico) (individual) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, CJNG, a person sanctioned pursuant to E.O. 14059.

3. RODRIGUEZ AGUIRRE, Mary Cruz, Calle Paseo de los Artistas 1196, Colonia

Colinas de la Normal, Guadalajara, Jalisco, Mexico; DOB 03 May 1974; POB Veracruz, Mexico; nationality Mexico; Gender Female; C.U.R.P. ROAM740503MVZDGR00 (Mexico) (individual) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(b)(i)(B) of E.O. 14059 for having provided, or attempting to provide, financial, material, or technological support for, or goods or services in support of, CJNG, a person sanctioned pursuant to E.O. 14059.

Entity

1. NACER AGENCIA PANAMERICANA DE DIVISAS Y CENTRO CAMBIARIO, S.A. DE C.V., Avenida Naciones Unidas 5428 Int. 2, Col. Jardines Universidad, Zapopan, Jalisco 45110, Mexico; Organization Type: Other financial service activities, except insurance and pension funding activities, n.e.c.; R.F.C. NAP1110251B4 (Mexico) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Mary Cruz RODRIGUEZ AGUIRRE, a person sanctioned pursuant to E.O. 14059.

Dated: June 7, 2023.

Andrea M. Gacki,

*Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.*

[FR Doc. 2023-12571 Filed 6-12-23; 8:45 am]

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Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedure for Portable Electric Spas;
Final Rule

DEPARTMENT OF ENERGY**10 CFR Parts 429 and 430****[EERE–2022–BT–TP–0024]****RIN 1904–AF35****Energy Conservation Program: Test Procedure for Portable Electric Spas**

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (“DOE”) is establishing definitions, a test procedure, and representation provisions for portable electric spas. Currently, portable electric spas are not subject to DOE test procedures or energy conservation standards. DOE is adopting a test procedure for measuring the standby loss for portable electric spas. The test method references the relevant industry test standard with certain additions and modifications.

DATES: The effective date of this rule is July 13, 2023. Compliance with the final rule will be mandatory for representations of fill volume and standby loss made on or after the compliance date of any energy conservation standards for portable electric spas. The incorporation by reference of certain materials listed in this rule is approved by the Director of the Federal Register on July 13, 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-2022-BT-TP-0024. 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. Jeremy Domm, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000

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SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standards into 10 CFR part 430:

ANSI/APSP/ICC–14 2019 American National Standard for Portable Electric Spa Energy Efficiency; ANSI-approved November 19, 2019.

Copies of ANSI/APSP/ICC–14 2019 can be obtained from the Pool & Hot Tub Alliance (“PHTA”), 2111 Eisenhower Avenue, Suite 500, Alexandria, VA 22314, or by going to www.phta.org.

CSA C374:11 (R2021) Energy performance of hot tubs and spas; published November 2011, Update No. 1—National Standard of Canada—April 2012.

Copies of CSA C374:11 (R2021) can be obtained from CSA Group, 178 Rexdale Blvd., Toronto, ON, Canada M9W 1R3, or by going to www.csagroup.org.

See section IV.N of this document for a further discussion of these standards.

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I. Authority and Background

DOE defines “portable electric spa” as a factory-built electric spa or hot tub, supplied with equipment for heating and circulating water at the time of sale or sold separately for subsequent attachment. *See* 10 CFR 430.2. Currently, portable electric spas are not subject to DOE test procedures or energy conservation standards.

On September 2, 2022, DOE published a final determination in the **Federal Register** (“September 2022 Final Determination”) in which it determined that portable electric spas qualify as a “covered product” under Part A of Title III of the Energy Policy and Conservation Act, Public Law 94–163, as amended (“EPCA”).¹ 87 FR 54123. In the September 2022 Final Determination, DOE determined that coverage of portable electric spas is necessary or appropriate to carry out the purposes of EPCA, and that the average U.S. household energy use for portable electric spas is likely to exceed 100 kilowatt-hours (“kWh”) per year. *Id.* at 87 FR 54127.

Accordingly, portable electric spas are now included in the list of “covered products” for which DOE is authorized to establish and amend energy

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.

conservation standards and test procedures. (42 U.S.C. 6292(a)(20))

The following sections discuss DOE's authority to establish a test procedure for portable electric spas and relevant background information regarding DOE's consideration of a test procedure for this product.

A. Authority

EPCA 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 EPCA² established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain products, referred to as “covered products.”³ In addition to specifying a list of consumer products that are covered products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. To classify a consumer product as a covered product, the Secretary must determine that classifying the consumer product as a covered product is necessary or appropriate to carry out the purpose of EPCA and the average annual per household⁴ use by such a product is likely to exceed 100 kWh per year. (42 U.S.C. 6292(b)(1))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The testing requirements consist of test procedures that manufacturers of

covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

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, 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 procedure. The comment period on a proposed rule to prescribe a test procedure shall be at least 60 days and may not exceed 270

days. In prescribing 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))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)(i)–(ii)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (42 U.S.C. 6295(gg)(2)(A)(i)) Any such amendment must consider the most current versions of the International Electrotechnical Commission (“IEC”) Standard 62301⁵ and IEC Standard 62087⁶ as applicable. (42 U.S.C. 6295(gg)(2)(A))

DOE is publishing this final rule in accordance with the statutory authority in EPCA.

B. Background

DOE has not previously conducted a test procedure rulemaking for portable electric spas. DOE published in the **Federal Register** a notice of proposed rulemaking (“NOPR”) on October 18, 2022 (“October 2022 NOPR”). 87 FR 63356. DOE held a public meeting related to this NOPR on November 17, 2022 (hereafter, the “NOPR public meeting”).

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

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

Commenter(s)	Reference in this final rule	Comment No. in the docket	Commenter type
American Association for Laboratory Accreditation	A2LA	6	Accreditation Body.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Natural Resources Defense Council, New York State Energy Research and Development Authority, and the Northwest Energy Efficiency Alliance.	Joint Advocates	12	Advocacy Organizations.
Bullfrog International	Bullfrog	11	Manufacturer.

² For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

³ The enumerated list of covered products is at 42 U.S.C. 6292(a)(1)–(19).

⁴ The definition for “household” is found at 10 CFR 430.2.

⁵ IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

⁶ IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

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

Commenter(s)	Reference in this final rule	Comment No. in the docket	Commenter type
California Energy Commission	CEC	13	State Government Agency.
Jacuzzi Group (Sundance Spas, Jacuzzi Hot Tubs, Dimension One Spas, ThermoSpas).	Jacuzzi Group	9	Manufacturer.
Master Spas	Master Spas	7	Manufacturer.
Pacific Gas and Electric Company, San Diego Gas & Electric, and Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	8	Utilities.
Pool & Hot Tub Alliance, International Hot Tub Association	PHTA/IHTA	10	Trade Associations.
Texas A&M Master of Public Service & Administration students: Rachel Trusler, Madeline Luster, and Taylor Rapp.	Texas A&M Students	4	Individuals.
Watkins Wellness	Watkins	14	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.⁷ To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the NOPR public meeting, DOE cites the written comments throughout this final rule. DOE did not identify any oral comments provided during the NOPR public meeting that are not substantively addressed by written comments.

II. Synopsis of the Final Rule

In this final rule, DOE is establishing a test procedure for measuring the energy use of portable electric spas in a new appendix GG to subpart B of part 430 of title 10 of the Code of Federal Regulations (“CFR”) (“appendix GG”). DOE is incorporating the applicable industry test method published by the Pool & Hot Tub Alliance (“PHTA”)⁸ in partnership with the International Code Council (“ICC”) and approved by the American National Standards Institute (“ANSI”) in ANSI/APSP/ICC–14 2019, “American National Standard for Portable Electric Spa Energy Efficiency” (“ANSI/APSP/ICC–14 2019”), with certain exceptions and additions. The test method produces a measure of the energy consumption of portable electric spas that represents the average power consumed by the spa, normalized to a standard temperature difference

between the ambient air and the water in the spa, while the cover is on and the product is operating in its default operation mode. As discussed further in section III.C.3 of this final rule, DOE is referring to this power use metric as “standby loss.”

DOE reviewed the relevant sections of ANSI/APSP/ICC–14 2019 and has determined that ANSI/APSP/ICC–14 2019, in conjunction with the additional test methods and calculations adopted in appendix GG, produces test results that reflect the energy efficiency, energy use, or estimated operating costs of a portable electric spa during a representative average use cycle. (42 U.S.C. 6293(b)(3))

DOE also reviewed the burdens associated with conducting the portable electric spa test procedure adopted in this final rule and based on the results of such analysis, has determined that the test procedure would not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) DOE’s analysis of the burdens associated with the test procedure is presented in section III.F of this document.

This final rule also adopts definitions for certain categories of portable electric spas in appendix GG and establishes requirements regarding the sampling plan and representations for portable electric spas in 10 CFR part 429.

The effective date for the test procedure adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the test procedure beginning on the compliance date of any energy conservation standards for portable electric spas.

III. Discussion

In the following sections, DOE discusses each topic considered regarding the portable electric spa test procedure. For each discussion topic,

DOE provides relevant background information, summarizes the proposal from the October 2022 NOPR, summarizes stakeholder comments received, responds to those comments, and provides justification for the finalized test provisions adopted by this final rule.

A. General Comments

DOE received general comments in response to the October 2022 NOPR that are relevant to establishing a test procedure for portable electric spas.

PHTA/IHTA, the Jacuzzi Group, and Bullfrog encouraged DOE to move forward with both a test procedure and an energy conservation standard rule based on ANSI/APSP/ICC–14 2019. (PHTA/IHTA, No. 10 at p. 2; Jacuzzi Group, No. 9; Bullfrog, No. 11 at p. 1) A2LA, the CA IOUs, and the CEC generally supported the inclusion of ANSI/APSP/ICC–14 2019 in the proposed test procedure. (A2LA, No. 6 at p. 1; CA IOUs, No. 8 at p. 1; CEC, No. 13 at p. 2) The Texas A&M Students and the Joint Advocates expressed support for DOE advancing the rulemaking for portable electric spas. (Texas A&M Students, No. 4 at p. 2; Joint Advocates, No. 12 at p. 1) And Master Spas, Jacuzzi Group, and Bullfrog all supported the written responses from PHTA/IHTA. (Master Spas, No. 7 at p. 1; Jacuzzi Group, No. 9; Bullfrog, No. 11 at p. 1)

As discussed in the following sections, DOE is adopting a test procedure that is based on ANSI/APSP/ICC–14 2019 with certain additions and modifications.

Additionally, PHTA/IHTA commented that DOE may want to consider whether anything in the proposed DOE test procedure or future energy conservation standards could force manufacturers to insulate portable electric spas to such an extreme that portable electric spas overheat during hot weather. (PHTA/IHTA, No. 10 at p. 19) PHTA/IHTA explained that

⁷ The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to develop test procedures for portable electric spas (Docket No. EERE–2022–BT–TP–0024, which is maintained at www.regulations.gov). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

⁸ The PHTA is the result of a 2019 merger between the Association of Pool and Spa Professionals (“APSP”) and the National Swimming Pool Foundation (“NSPF”). The reference to APSP has been retained in the ANSI designation of ANSI/APSP/ICC–14 2019.

customer service departments receive calls from owners wanting to know how to cool off their portable electric spa, saying it is overheating from excess heat retention in warm climates. (*Id.*) PHTA/IHTA indicated that this can be a safety concern, and that it could happen more frequently with global warming and increasingly higher temperatures. (*Id.*) PHTA/IHTA questioned whether there is a tipping point between hot ambient temperatures versus energy savings on heat in cold climates in colder months that should be considered both in the proposed test procedure as well as a future energy conservation standard. (*Id.*) PHTA/IHTA stated that they looked forward to providing any needed data, testing, or analysis to DOE. (*Id.*)

In response, DOE notes that there is nothing in this test procedure final rule that will force manufacturers to change the amount that they insulate portable electric spas because the test procedure specifies only the method to measure energy performance and does not specify any required levels of energy performance. Required levels of energy performance would be considered in a separate energy conservation standard rulemaking, and DOE encourages PHTA/IHTA to provide comments on the topic of overheating to that rulemaking if PHTA/IHTA is concerned about portable electric spa overheating at that time.

B. Scope and Definitions

1. Scope of DOE Test Procedure

As part of the October 2022 NOPR, DOE reviewed the applicable industry test procedure ANSI/APSP/ICC-14 2019,⁹ which provides recommended minimum guidelines for testing the energy efficiency of factory-built residential portable electric spas. The standard methods included in ANSI/APSP/ICC-14 2019 provide a means to compare and evaluate the energy efficiency of different types of portable electric spas in conditions relevant to product use. Section 3 of ANSI/APSP/ICC-14 2019 defines “portable electric spa” as “a factory-built electric spa or hot tub, supplied with equipment for heating and circulating water at the time of sale or sold separately for subsequent attachment.” This ANSI/APSP/ICC-14 2019 definition is identical to the definition used by the CEC and adopted by DOE in the September 2022 Final Determination. 87 FR 54123, 54125. Section 3 of ANSI/APSP/ICC-14 2019 also defines certain categories of

portable electric spas, as discussed in section III.B.2 of this final rule.

In the October 2022 NOPR, DOE tentatively concluded that all products on the market can be tested using methods consistent with or similar to those in ANSI/APSP/ICC-14 2019. 87 FR 63356, 63359. DOE proposed that the scope of the test procedure include all products meeting the definition of “portable electric spa” in 10 CFR 430.2. *Id.*

DOE requested comment on its proposal for the scope of the test procedure to include all products that meet the definition of “portable electric spa.” *Id.* Additionally, DOE requested comment on whether any additional products should be included within the scope of the DOE test procedure and whether any products that meet the definition of “portable electric spa” should be excluded from the scope of the DOE test procedure, and if so, on what basis. *Id.*

The CEC commented in support of the scope and definitions proposed by DOE in the October 2022 NOPR. (CEC, No. 13 at p. 2)

PHTA/IHTA supported the inclusion of all products meeting the definition of portable electric spa within the scope of the test procedure. (PHTA/IHTA, No. 10 at p. 9) PHTA/IHTA also commented that sensory deprivation and cold/ice bath products could unintentionally fall under the proposed scope and that DOE could consider clarifying that these products are excluded from the scope. (*Id.*) PHTA/IHTA stated that although sensory deprivation and cold/ice bath products are similar to portable electric spas in some ways, they are very different in other ways and are not compatible with the current or proposed portable electric spa test procedures. (*Id.*) PHTA/IHTA noted that cold/ice bath products are not always supplied with heating functions. (PHTA/IHTA, No. 10 at p. 10)

In response to PHTA/IHTA’s recommendation to clarify the exclusion of sensory deprivation and cold/ice bath products from the scope of the test procedure, DOE has reviewed products on the market that appear to fit the description of these categories. Many of the models that DOE reviewed heat and circulate water. To the extent that such a product is supplied with equipment for heating and circulating water at the time of sale or sold separately for subsequent attachment, such a product would meet the definition of a portable electric spa. PHTA/IHTA also did not specify what product characteristics would differentiate sensory deprivation and cold/ice bath products that meet the portable electric spa definition from

other types of portable electric spas. As a result, in this final rule, DOE is not categorically excluding these products from the scope of the portable electric spa test procedure.

However, DOE notes that it may consider sensory deprivation and cold/ice bath products when evaluating potential energy conservation standards. To the extent that these products have significantly different design, operation, and efficiency characteristics as compared to other portable electric spas, DOE may consider whether separate treatment is appropriate. Any consideration of potential energy conservation standards for separate categories of portable electric spas would be addressed in a separate rulemaking. Further, as discussed in section III.F of this document, manufacturers are not required to test the subject portable electric spas in accordance with this test method until such time as compliance is required with any future applicable energy conservation standards.

For the reasons discussed in the October 2022 NOPR and in the preceding paragraphs, in this final rule, DOE is finalizing the scope of coverage to include all products that meet the definition of “portable electric spa.”

2. Definitions of Categories of Portable Electric Spas

Section 3 of ANSI/APSP/ICC-14 2019 defines the following categories of portable electric spas:

(1) *Standard Spa*: A portable electric spa that is not an inflatable spa, an exercise spa, or the exercise spa portion of a combination spa.

(2) *Exercise Spa* (also known as a swim spa): A variant of a portable electric spa in which the design and construction includes specific features and equipment to produce a water flow intended to allow recreational physical activity including, but not limited to, swimming in place.

(3) *Combination Spa*: A portable electric spa with two separate and distinct reservoirs, where (a) one reservoir is an exercise spa; (b) the second reservoir is a standard spa; and (c) each reservoir has an independent water temperature setting control.

(4) *Inflatable Spa*: A portable electric spa where the structure is collapsible and designed to be filled with air to form the body of the spa.

These categories of portable electric spas defined in ANSI/APSP/ICC-14 2019 differ in the way they are tested and in the allowed energy consumption specified in ANSI/APSP/ICC-14 2019. Based on DOE’s review of the portable electric spa market, DOE tentatively

⁹ ANSI/APSP/ICC-14 2019 is available at webstore.ansi.org/standards/apsp/ansiapspicc142019.

determined in the October 2022 NOPR that the category definitions defined in ANSI/APSP/ICC–14 2019 accurately categorize the products available on the market. 87 FR 63356, 63360. DOE proposed to include definitions for “standard spa,” “exercise spa,” “combination spa,” and “inflatable spa” in section 2 of appendix GG that are generally consistent with those category definitions in ANSI/APSP/ICC–14 2019.¹⁰ *Id.* For all definitions other than “exercise spa,” DOE proposed a definition identical to the wording in ANSI/APSP/ICC–14 2019. *Id.* For “exercise spa,” DOE proposed to include only the first paragraph of the definition from ANSI/APSP/ICC–14 2019 because the second paragraph¹¹ of the definition is informative, describing examples of products that may be included within the definition. *Id.*

DOE requested comment on whether the definitions for the categories of portable spas proposed in section 2 of appendix GG (*i.e.*, “standard spa,” “exercise spa,” “combination spa,” and “inflatable spa”) adequately delineate the categories of portable electric spas and whether any additional or different categories are warranted. *Id.*

In response to the October 2022 NOPR, the CA IOUs commented that, based on their market research, the current proposed definitions cover all products labeled as portable electric spas. (CA IOUs, No. 8 at p. 2) The CA IOUs stated that the current categories adequately delineate the portable electric spa market and that the terms are well understood by advocates, industry, and regulators. (*Id.*)

The CEC commented in support of the proposed definitions for standard spa, exercise spa, combination spa, and inflatable spa. (CEC, No. 13 at p. 2) The CEC noted that the proposed scope and definitions would align with ANSI/APSP/ICC–14 2019 and with California’s Code of Regulations and would maintain consistency with several States that have adopted ANSI/

APSP/ICC–14 2019 or that reference California’s regulations. (*Id.*)

PHTA/IHTA commented that, while they support DOE’s proposed definitions of “standard spa,” “combination spa,” and “inflatable spa,” they recommend also adopting the second paragraph of the definition of “exercise spa” in ANSI/APSP/ICC–14 2019. (PHTA/IHTA, No. 10 at p. 10) PHTA/IHTA explained that, although the second paragraph is descriptive, it actually defines the product because the first sentence separates an exercise spa from a standard spa, while the second sentence separates an exercise spa from a pool. (*Id.*) PHTA/IHTA stated that this additional description under the definition of “exercise spa” was created in response to multiple incidents of misclassification in order to prevent future misclassifications. (*Id.*) PHTA/IHTA expressed concern that eliminating the second paragraph from the definition in the DOE test procedure could imply that this classification is no longer accurate, thereby causing misclassifications and misapplications of DOE’s regulations. (*Id.*)

In response to PHTA/IHTA’s comment regarding the definition of “exercise spa,” DOE notes that the second paragraph of the definition as written in ANSI/APSP/ICC–14 2019 does not actually distinguish exercise spas from either standard spas or pools. The first sentence of the second paragraph lists potential features of exercise spas, including peripheral jetted seats, a heater, and a filtration and circulation system, all of which are also characteristic of standard spas. As a result, this sentence does not actually separate exercise spas from standard spas, as stated in PHTA/IHTA’s comment. The first sentence also says that an exercise spa “may be a separate distinct portion of a combination spa and may have separate controls,” but this phrase does not add descriptive detail beyond what is included in DOE’s proposed definition for “combination spa.” The second sentence states that an exercise spa holds an unobstructed volume of water sufficiently large for a 99th percentile man to swim in place. PHTA/IHTA’s comment states that this sentence distinguishes exercise spas from pools. However, as a lower bound on volume, the requirement to fit a 99th percentile man does not actually distinguish exercise spas from larger pools. Finally, DOE notes that the CEC regulations use a definition for “exercise spa” that is similar to DOE’s proposed definition and does not include the second paragraph of the definition as

stated in ANSI/APSP/ICC–14 2019.¹² Because a similar definition is used already as the basis of State coverage for portable electric spas, DOE concludes its own proposed single paragraph definition would not cause confusion among manufacturers or test labs.

For the reasons discussed in the October 2022 NOPR and in the preceding paragraphs, in this final rule, DOE is establishing definitions for categories of portable electric spas that are identical to those in the proposed appendix GG.

3. Therapeutic Spas

Section 1.3 of ANSI/APSP/ICC–14 2019 states that spas operated for medical treatment or physical therapy, among other types,¹³ are not included within the scope of ANSI/APSP/ICC–14 2019. However, DOE noted in the October 2022 NOPR that the definition of “exercise spa” in section 3 of ANSI/APSP/ICC–14 2019 indicates that exercise spas may include peripheral jetted seats intended for water therapy. 87 FR 63324, 63360. DOE discussed in the October 2022 NOPR that it had reviewed the market and found that “therapeutic,” “water therapy,” or “hydrotherapy” applications are frequently advertised in marketing materials for many portable electric spas, including many models that do not appear to have features that are different than those found on models that do not mention therapeutic applications in their marketing materials. *Id.*

In the October 2022 NOPR, DOE stated its presumption that the types of spas operated for medical treatment or physical therapy intended to be referenced by section 1.3 of ANSI/APSP/ICC–14 2019 would not be portable and, therefore, would not be considered a *portable* electric spa (emphasis added). *Id.* DOE noted in the October 2022 NOPR that, to the extent that any of the categories of spas referenced by section 1.3 of ANSI/APSP/ICC–14 2019 do not meet the definition of a portable electric spa, such products would not be within the scope of the test procedure. *Id.*

¹² The CEC defines exercise spas as follows: “Exercise spa’ (also known as a ‘swim spa’) means a portable electric spa that includes specific features and equipment to produce water flow for water physical therapy or physical fitness activity, including, but not limited to, swimming in place.” See section 1602(g)(2) of Article 4 of Division 2 of Title 20 of the California Code of Regulations.

¹³ Section 1.3 of ANSI/APSP/ICC–14 2019 states the following: These requirements do not apply to public spas (ANSI/APSP–2), permanently installed or inground spas (ANSI/APSP/ICC–3), or other spas, such as those operated for medical treatment, physical therapy, or other purposes.

¹⁰ Section numbers in appendix GG as proposed in the October 2022 NOPR were one whole number lower than the corresponding section numbers in appendix GG as finalized in this final rule. This final rule uses the section numbering as finalized in this final rule in all discussion of appendix GG to avoid potential confusion.

¹¹ The second paragraph of the definition of “exercise spa” in ANSI/APSP/ICC–14 2019 states the following: Exercise spas may include peripheral jetted seats intended for water therapy, heater, circulation and filtration system, or may be a separate distinct portion of a combination spa and may have separate controls. These aquatic vessels are of a design and size such that it has an unobstructed volume of water large enough to allow the 99th Percentile Man as specified in ANSI/APSP/ICC–16 to swim or exercise in place.

DOE requested comment on whether there are portable electric spas used for special purposes, such as those operated for medical treatment or physical therapy, that should be excluded from the scope of the proposed test procedure or tested in a different manner. *Id.* If so, DOE requested comment on the method to determine the spas to exclude or test differently. *Id.*

In response to the October 2022 NOPR, PHTA/IHTA stated that both portable electric spas and in-ground spas can be used for medical treatment or physical therapy, however in-ground spas are outside of the scope of this rulemaking. (PHTA/IHTA, No. 10 at p. 10) PHTA/IHTA noted they are not aware of any method to exclude or test differently portable electric spas that are used for medical treatment, physical therapy, or other special purposes. (*Id.*)

The CEC commented that spas intended for medical treatment or physical therapy would not be portable and, therefore, would not be considered portable electric spas. (CEC, No. 13 at p. 2) The CEC also indicated that it has not received inquiries regarding spas intended for medical treatment or physical therapy that would pose an issue in defining the scope. (*Id.*)

The Texas A&M Students commented that medical spas should still be subject to the same testing requirements as all other portable electric spas, because there is little distinction between what is and is not a medical spa and most medical spas are from the same manufacturers as recreational ones are but are simply sold and marketed on medical websites. (Texas A&M Students, No. 4 at p. 1)

Based on the comments received and DOE's review of the portable electric spa market, DOE has determined that there is no need to explicitly exclude any products used for special purposes—such as those for therapeutic purposes—that meet the definition of portable electric spa from the scope of the Federal test procedure.

Therefore, for the reasons discussed in the October 2022 NOPR and in the preceding paragraphs, DOE is finalizing the scope as proposed in the October 2022 NOPR and not adopting any specific exclusion for products that meet the definition of portable electric spa and are intended for special purposes, such as those for therapeutic purposes, in this final rule.

4. Portable Electric Spa Size

ANSI/APSP/ICC-14 2019 does not specify any minimum or maximum size of portable electric spas to limit the scope of ANSI/APSP/ICC-14 2019.

Based on DOE's tentative conclusion that all portable electric spas on the market can be tested using methods consistent with or similar to those in ANSI/APSP/ICC-14 2019, DOE tentatively concluded in the October 2022 NOPR that there is no need to limit the scope of the DOE test procedure based on the size of the portable electric spa. 87 FR 63356, 63360. Therefore, DOE did not propose to specify any minimum or maximum size to limit the scope of the proposed test procedure. *Id.*

DOE requested comment on its tentative determination not to propose a minimum or maximum size to limit the scope of the proposed test procedure. *Id.*

In response to the October 2022 NOPR, the CEC and PHTA/IHTA supported DOE's tentative determination not to propose a minimum or maximum size for portable electric spas in the scope of the test procedure. (CEC, No. 13 at p. 2; PHTA/IHTA, No. 10 at p. 10)

For the reasons discussed in the October 2022 NOPR and in the preceding paragraphs, DOE is not specifying any minimum or maximum size to limit the scope of the portable electric spa test procedure in this final rule.

C. Energy Consumption Metric

1. Background

As discussed previously in this document, EPCA requires that any test procedures prescribed or amended must be reasonably designed to produce test results which reflect energy efficiency, energy use, or estimated annual operating cost of a given type of covered product during a representative average use cycle, and that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, taking into consideration the most current versions of IEC Standards 62301 and 62087, unless the current test procedure already fully accounts for and incorporates the standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)(ii))

EPCA defines three different modes of operation in 42 U.S.C. 6295(gg)(1)(A). “Active mode” means the condition in

which an energy-using product is connected to a main power source, has been activated, and provides one or more main functions. “Standby mode” means the condition in which an energy-using product is connected to a main power source and offers one or more of the following user-oriented or protective functions: (a) to facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer; or (b) continuous functions, including information or status displays (including clocks) or sensor-based functions. “Off mode” means the condition in which an energy-using product is connected to a main power source and is not providing any standby or active mode function. (42 U.S.C. 6295(gg)(1)(A)(i)–(iii))

2. Modes of Use

Based on market research performed by DOE and analysis from the CEC,¹⁴ portable electric spas are typically connected to a main power source and activated, and provide one or more main functions 24 hours a day, 365 days per year. Although a portable electric spa is typically used for a small number of hours throughout the year, heating the water from ambient temperature to the use temperature takes a long time, and the water must be filtered regularly to keep it fresh. Therefore, most users maintain the spa at their preferred use temperature at all times with periodic or continuous water filtration, even when not in use.¹⁵

In the October 2022 NOPR, DOE tentatively concluded that all operational modes for portable electric spas would be considered “active modes” as defined in 42 U.S.C. 6295(gg)(1)(A)(i). 87 FR 63356, 63361. As such, portable electric spas would be considered to operate in active mode at all times, and standby mode and off mode, as defined by EPCA, would not be applicable to portable electric spas. *Id.* Therefore, DOE tentatively concluded that there is no standby mode or off mode energy consumption that can be accounted for or incorporated into the proposed DOE test procedure. *Id.*

DOE requested comment on whether it is necessary to measure standby or off

¹⁴ California Energy Commission Final Staff Report—Analysis of Efficiency Standards and Marking for Spas, 2018 Appliance Efficiency Rulemaking for Spas (Docket No. 18-AAER-02, TN No. 222413). Available at efiling.energy.ca.gov/GetDocument.aspx?tn=222413&DocumentContentId=31256.

¹⁵ *Ibid.*

mode energy consumption in the test procedure. *Id.*

PHTA/IHTA supported DOE's tentative determination that portable electric spas are in active mode at all times. (PHTA/IHTA, No. 10 at p. 10) Additionally, PHTA/IHTA stated they would have no objection to replacing the industry term "standby mode" in ANSI/APSP/ICC-14 2019 with the EPCA-defined term "active mode." (PHTA/IHTA, No. 10 at p. 11)

For the reasons discussed in the October 2022 NOPR and in the preceding paragraphs, DOE concludes that standby mode and off mode, as defined by EPCA, are not applicable to portable electric spas and that there is no standby mode or off mode energy consumption that can be accounted for or incorporated into the proposed DOE test procedure. Accordingly, this final rule does not include provisions for measuring standby mode or off mode.

3. Metric for Active Mode Energy Consumption

ANSI/APSP/ICC-14 2019 includes a method for measuring the energy consumption of portable electric spas while the cover is on and the spa is operating in its default operation mode. The metric used by ANSI/APSP/ICC-14 2019 is normalized standby power, which is the average power consumed by the portable electric spa while the cover is on and the spa is operating in its default operation mode, normalized to a standard temperature difference between the ambient air and the water in the spa.¹⁶ Normalized standby power is the metric used by the CEC and other States that use ANSI/APSP/ICC-14 2019 as the basis for their efficiency programs. It is also the metric used by CSA test method CSA C374:11 (R2021),¹⁷ "Energy performance of hot tubs and spas" ("CSA C374:11 (R2021)"), which is a method used for testing portable electric spas in Canada.

According to analyses from the CEC,¹⁸ the mode of operation measured in ANSI/APSP/ICC-14 2019 represents approximately 75 percent of the energy

consumed by a portable electric spa. DOE estimates that this percentage may be approximately 95 percent in some cases, based on investigative testing that DOE performed and data on typical spa usage from PKData.¹⁹ Taken together, the two estimates indicate the mode of operation measured in ANSI/APSP/ICC-14 2019 represents the largest portion of active mode energy consumption by far. Based on these data sources, DOE tentatively determined in the October 2022 NOPR that the most representative average use cycle or period of use of a portable electric spa is with the spa cover on (*i.e.*, with no consumers in the spa), and with the spa continually or periodically filtering and heating the water in the spa, such that the spa is always ready for use. 87 FR 63356, 63361. DOE indicated in the October 2022 NOPR that it was not aware of any existing test methods that measure the energy consumption in any other parts of active mode described in section III.C.2 of the October 2022 NOPR. *Id.* DOE also indicated that it has been unable to determine any representative durations for these portions of active mode use. *Id.*

Based on these considerations, DOE proposed to use normalized standby power from ANSI/APSP/ICC-14 2019 as the performance-based metric for representing the energy use of portable electric spas. *Id.* DOE further proposed to refer to this metric as "standby loss," rather than "normalized standby power," to avoid misinterpretation with the statutory definition of "standby mode" as defined in 42 U.S.C. 6295(gg)(1)(A)(iii). *Id.*²⁰ DOE also proposed to define the term "standby loss" in section 2.9 of appendix GG as "the mean normalized power required to operate the portable electric spa in default operation mode with the cover on, as calculated in section 3.3 of this appendix." *Id.*

DOE requested comment on its proposal to use standby loss, equivalent to the normalized standby power as defined by ANSI/APSP/ICC-14 2019, as the performance-based metric for representing the energy use of portable

electric spas, and on its proposed definition for "standby loss" in section 2.9 of appendix GG. *Id.* DOE also requested comment on data regarding the representative operation of spas when in use with the cover removed, including typical frequency and duration of use, operation of jets or other features, and number of users, and on how usage varies across spa types. *Id.* Lastly, DOE requested comment on any test methods that measure the operation of spas when in use with the cover removed. *Id.*

PHTA/IHTA commented in support of DOE's proposal to use normalized standby power from ANSI/APSP/ICC-14 2019 as the performance-based metric for representing the energy use of portable electric spas. (PHTA/IHTA, No. 10 at p. 11) PHTA/IHTA also supported referring to this metric as "standby loss" instead of "normalized standby power" due to concerns of misinterpretation with other statutory definitions. (*Id.*) PHTA/IHTA noted that they were not aware of data analysis existing on typical portable electric spa usage, but rather only anecdotal accounts that suggest a wide range of usage. (*Id.*) PHTA/IHTA also stated that they were not aware of test methods measuring the operation of spas when being used with the cover removed. (*Id.*)

For the reasons discussed in the October 2022 NOPR and in the preceding paragraphs, in this final rule, DOE is adopting the definition of "standby loss" in section 2.9 of appendix GG as "the mean normalized power required to operate the portable electric spa in default operation mode with the cover on, as calculated in section 3.3 of this appendix" and establishing "standby loss" as the performance-based metric for representing energy usage of portable electric spas.

D. Test Method

1. Referenced Industry Test Method

As discussed previously in this document, ANSI/APSP/ICC-14 2019 contains a test method for measuring the standby loss²¹ of portable electric spas. ANSI/APSP/ICC-14 2019 measures standby loss as the average power required to maintain the spa's water at a ready-to-use temperature over a period of at least 72 hours, while the spa

¹⁶ Section 5.1 of ANSI/APSP/ICC-14 2019 specifies that the purpose of ANSI/APSP/ICC-14 2019 is to measure the energy consumption in "standby mode." This use of "standby mode" is not consistent with the term as defined by EPCA but rather refers to a type of active mode as defined by EPCA, as explained in section III.C.2 of this final rule.

¹⁷ CSA 374:11 (R2021) is available at www.csagroup.org/store/product/2703317/.

¹⁸ California Energy Commission Final Staff Report—Analysis of Efficiency Standards and Marking for Spas, 2018 Appliance Efficiency Rulemaking for Spas (Docket No. 18-AAER-02, TN No. 222413). Available at efiling.energy.ca.gov/GetDocument.aspx?tn=222413&DocumentContentId=31256.

¹⁹ P.K. Data Inc. 2022 Hot Tub Market Data: Custom Compilation for Lawrence Berkeley National Laboratory (through 2021). 2022. Alpharetta, GA. Available at www.pkdata.com/reports-store.html (Last accessed April 24, 2023). (2022).

²⁰ DOE noted in the October 2022 NOPR that the term "standby loss" has been used previously to describe the energy use of a water heater associated with maintaining water temperature (*See* sections 1.13 and 6.3.3 of appendix E to subpart B of 10 CFR part 430). A portable electric spa is similar to a water heater in that regard, because both products consume energy to maintain their contents at a specified temperature over a long period of time.

²¹ As discussed in section III.C.3 of this document, ANSI/APSP/ICC-14 2019 uses the term "normalized standby power" to refer to the metric that DOE is referring to as "standby loss." To avoid confusion about multiple terms, the term "standby loss" is used throughout section III.D of this final rule to refer to "normalized standby power" in ANSI/APSP/ICC-14 2019.

remains covered in a controlled-temperature environment.

In the October 2022 NOPR, DOE discussed that it had reviewed ANSI/APSP/ICC–14 2019 and tentatively concluded that it is reasonably designed to produce test results to determine the energy use of portable electric spas during a representative average use cycle or period of use. 87 FR 63356, 63362.

In the October 2022 NOPR, DOE proposed to adopt specific sections of ANSI/APSP/ICC–14 2019 in its test procedure for portable electric spas, along with modifications and additions that DOE determined would improve repeatability and representativeness of test results. *Id.* DOE requested comment on its proposal. *Id.*

PHTA/IHTA, the CEC, and the CA IOUs commented in support of DOE adopting specific sections of ANSI/APSP/ICC–14 2019. (PHTA/IHTA, No. 10 at p. 11; CEC, No. 13 at p. 3; CA IOUs, No. 8 at p. 1)

For the reasons discussed in the October 2022 NOPR and in the preceding paragraphs, in this final rule, DOE is adopting specific sections of ANSI/APSP/ICC–14 2019 in its test procedure for portable electric spas. Specific modifications, additions, and exceptions are discussed in sections III.D.2 through III.D.11 of this final rule.

2. Excluded Sections of ANSI/APSP/ICC–14 2019

In the October 2022 NOPR, DOE proposed to exclude the following sections, subsections, and appendices of ANSI/APSP/ICC–14 2019 from DOE's test procedure:

- Sections 1, 2, 4, 6, and 7 in their entirety;
- Section 3 definitions for “cover, specified,” “fill volume,” “rated volume,” and “standby mode”;
- Subsections 5.1, 5.2, 5.5.2, 5.5.4, 5.5.5, and 5.7;
- Appendix A subsection “Chamber floor”; and
- Appendices B, C, and D.

87 FR 63356, 63362–63363.

DOE explained the rationale for each proposed exclusion in the October 2022 NOPR and requested comment on whether any of the sections of ANSI/APSP/ICC–14 2019 that DOE proposed to exclude should be included in the DOE test procedure. *Id.*

The CEC commented in support of excluding sections 1 and 2 of ANSI/APSP/ICC–14 2019 from the test procedure. (CEC, No. 13 at pp. 2–3)

PHTA/IHTA supported DOE's proposed exclusion of some sections of ANSI/APSP/ICC–14 2019 that are not appropriate for the Federal test

procedure, but they expressed concern with excluding or changing the ambient temperature, normalization formula, and chamber floor requirements of ANSI/APSP/ICC–14 2019. (PHTA/IHTA, No. 10 at p. 12) DOE addresses these specific areas of concern identified by PHTA/IHTA in sections III.D.3 and III.D.4.b of this final rule.

Watkins commented generally in support of the PHTA/IHTA comments. (Watkins, No. 14 at p. 1) Watkins also commented specifically that the proposed changes that deviate from ANSI/APSP/ICC–14 2019 would induce significant financial burden to manufacturers, create supply chain disruptions, and create a shortage of certified third-party laboratories. Watkins encouraged DOE to align as closely as possible with ANSI/APSP/ICC–14 2019. (*Id.* at p. 2)

A2LA commented that sections 4.1 and 4.2 of ANSI/APSP/ICC–14 2019 should be included,²² as accreditation of testing laboratories allows DOE to trust the validity of test results and ensures technical competency across testing laboratories and certification bodies. (A2LA, No. 6 at pp. 1–2)

In response to the concerns expressed by Watkins, DOE has aligned its finalized test procedure with ANSI/APSP/ICC–14 2019 to the greatest extent possible consistent with its obligations under EPCA to design test procedures that measure the energy use of a portable electric spa during a representative average use cycle or period of use without being unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) Where DOE has deviated from the provisions of ANSI/APSP/ICC–14 2019, DOE discusses throughout this final rule why such deviations are necessary to fulfill these statutory requirements. DOE has reviewed the burdens associated with conducting the portable electric spa test procedure adopted in this final rule. Based on the results of such analysis, DOE has determined that the test procedure would not be unduly burdensome to conduct. DOE's analysis of the burdens associated with the test procedure is presented in section III.F of this document. Accordingly, DOE does not expect the test procedure adopted in this final rule to adversely affect the availability of certified third-party laboratories to perform testing

²² Section 4.1 of ANSI/APSP/ICC–14 2019 requires that all certification bodies shall be accredited to ISO/IEC 17065. Section 4.2 of ANSI/APSP/ICC–14 2019 requires that all testing laboratories shall be qualified by a certification body or accredited by an accreditation body who is a member of the International Laboratory Accreditation Cooperation (“ILAC”).

consistent with the finalized test procedure. DOE also does not expect the test procedure adopted in this final rule to create any supply chain disruptions, as suggested by Watkins. As discussed in section III.G of this final rule, there is no need to perform testing according to the DOE test procedure until the compliance date of any future Federal energy conservation standards, were DOE to establish energy conservation standards. This compliance date leaves at least several years for all testing to be completed, which DOE expects to be an adequate duration to ensure that any needed testing will not create supply chain disruptions.

In response to the comment from A2LA, DOE's experience in conducting testing according to ANSI/APSP/ICC–14 2019 and to the DOE test procedure as finalized in this final rule demonstrates that the finalized DOE test procedure adequately outlines the details required to perform the test. As a result, the accreditation as specified in section 4.2 of ANSI/APSP/ICC–14 2019 is not necessary to achieve repeatable, reproducible, and representative test results from DOE's test procedure for portable electric spas. In addition, accreditation is not sufficient for ensuring a laboratory's test results are accurate because, although accreditation is a tool that can help a laboratory to become and remain technically competent, accreditation alone does not ensure the laboratory performs each test method correctly for each test. On this basis, DOE has concluded that the requirement for a testing laboratory to be qualified by a certification body accredited to ISO/IEC 17065 or accredited by an accreditation body who is a member of ILAC is not necessary for the purposes of conducting the DOE test procedure as finalized. Therefore, in this final rule, DOE is excluding the sections in ANSI/APSP/ICC–14 2019 regarding laboratory qualification from the DOE test procedure.

For the reasons discussed in the October 2022 NOPR and in the preceding paragraphs, DOE is finalizing its proposal to exclude the following sections, subsections, and appendices of ANSI/APSP/ICC–14 2019 from DOE's portable electric spa test procedure:

- Sections 1, 2, 4, 6, and 7 in their entirety;
- Section 3 definitions for “cover, specified,” “fill volume,” “rated volume,” and “standby mode”;
- Subsections 5.1, 5.2, 5.5.2, 5.5.4, 5.5.5, and 5.7;
- Appendix A subsection “Chamber floor”; and
- Appendices B, C, and D.

3. Ambient Air Temperature

As part of the October 2022 NOPR, DOE reviewed the ambient air temperature requirements specified in several existing or past test procedures for portable electric spas.

Section 5.5.4 of ANSI/APSP/ICC–14 2019 specifies that the ambient air temperature shall be a maximum of 63 °F for the duration of the test. This approach to specifying ambient air temperature (*i.e.*, in which a maximum temperature, rather than a target temperature, is specified) is used in conjunction with a normalization approach to determine a normalized standby loss value. Section 5.7.2 of ANSI/APSP/ICC–14 2019 specifies that for inflatable spas, standard spas, or the standard spa portion of a combination spa, the measured standby loss is normalized to represent a temperature difference of 37 °F between the average water temperature during the test and the average ambient air temperature during the test. For exercise spas or the exercise spa portion of a combination spa, the measured standby loss is normalized to represent a temperature difference of 22 °F between the average water temperature during the test and the average ambient air temperature during the test.

An earlier version of the CEC portable electric spa test procedure, on which ANSI/APSP/ICC–14 2019 is based, specified an ambient air temperature of 60 °F $\pm$ 3 °F.²³ DOE notes that 60 °F is approximately equal to the annual average temperature for all of California.²⁴

CSA C374:11 (R2021) specifies a mandatory test with ambient temperature of 44.6 °F $\pm$ 1.8 °F (7 °C $\pm$ 2 °C), and an optional cold-weather test with ambient temperature of 17.6 °F $\pm$ 1.8 °F (–8 °C $\pm$ 2 °C).

DOE noted in the October 2022 NOPR that the DOE test procedure will be used for representations of portable electric spa energy consumption throughout the United States; therefore, the specified ambient air temperature must reflect a nationally representative value. 87 FR 63324, 63363. To determine a nationally representative ambient air temperature that could be applicable to portable electric spas throughout the United States, DOE first determined the average annual air temperature across all states

in the contiguous United States, and then calculated a weighted average across all states, weighted by the estimated number of spas installed in each state.²⁵ *Id.* DOE used data from the National Oceanic and Atmospheric Administration²⁶ indicating average temperature in each state for the years 2012–2021, and data from PKData²⁷ indicating the number of spas installed in each state in 2020. *Id.* This methodology resulted in an average air temperature of 56.1 °F. Rounded to the nearest degree Fahrenheit, DOE tentatively determined in the October 2022 NOPR that 56 °F is a nationally representative ambient air temperature applicable to testing portable electric spas. *Id.*

Accordingly, based on this analysis, DOE proposed in the October 2022 NOPR to specify 56.0 °F as the target ambient air temperature in section 3.2.1 of appendix GG. *Id.* Consistent with the earlier CEC test procedure, DOE also proposed to specify a tolerance of $\pm$ 3.0 °F on the ambient air temperature during the test. *Id.* DOE tentatively determined in the October 2022 NOPR that specifying an allowable range of temperatures would provide greater assurance of reproducible and representative test results compared to the approach used in ANSI/APSP/ICC–14 2019 of specifying only a maximum ambient air temperature. *Id.* DOE also proposed to specify that this requirement applies to each individual ambient air temperature measurement taken for the duration of the test (*i.e.*, the requirement does not apply to the overall average ambient air temperature during the test). *Id.*

DOE requested comment on its determination that, rounded to the nearest degree, 56 °F is a nationally representative ambient air temperature applicable to testing portable electric spas. *Id.* DOE requested comment on its proposal to specify an ambient temperature of 56.0 $\pm$ 3.0 °F during testing. *Id.* If commenters recommend a different ambient temperature, DOE requested data demonstrating the representativeness of that ambient temperature. *Id.*

In response to the October 2023 NOPR, PHTA/IHTA stated that the

ambient temperature in ANSI/APSP/ICC–14 2019 is not meant to be representative of a national average but rather a point of reference to ensure consistency in testing. (PHTA/IHTA, No. 10 at pp. 5, 12) PHTA/IHTA asserted that DOE's proposal to use the national average temperature would not improve testing consistency or yield better results over ANSI/APSP/ICC–14 2019. (*Id.* at p. 5) Further, PHTA/IHTA stated that a 56 °F ambient temperature requirement would require some existing test chambers to be upgraded to full air makeup systems. (*Id.* at p. 5, 12) PHTA/IHTA noted that the current ambient temperature requirement specified in ANSI/APSP/ICC–14 2019 is used for various State programs spanning a diverse range of climates. (*Id.* at p. 5)

With regard to inflatable spas specifically, PHTA/IHTA commented that these products are typically used only during the 6–7 warmest months of the year and stored during the winter months when standby loss energy for other types of portable electric spas would be at its highest. (*Id.*) PHTA/IHTA presented data indicating that the simple (*i.e.*, unweighted by installation volume) average temperature in the 48 contiguous States over the last 12 years for the months April through October was 63.2 °F. (*Id.*) PHTA/IHTA asserted that this average temperature would warrant using the ambient temperature specified in ANSI/APSP/ICC–14 2019 (*i.e.*, maximum of 63 °F) for simplicity and to avoid what PHTA/IHTA characterized as the heavy burden manufacturers would face if having to retest based on DOE's proposed ambient temperature or other temperature that would better reflect the seasonal use for inflatable spas. (*Id.* at pp. 5–6)

PHTA/IHTA also presented data from manufacturer testing comparing the final normalized test results between the testing conducted at 56 °F (corresponding to DOE's proposed ambient air temperature) and testing conducted at 60 °F (corresponding to a higher ambient air temperature allowable by ANSI/APSP/ICC–14 2019). (*Id.* at pp. 4–5) This testing included five portable electric spas collected in four different test chambers. (*Id.* at p. 5) The measured standby loss for each test was normalized to represent a temperature difference of 37 °F between the average water temperature during the test and the average ambient air temperature during the test, as required by ANSI/APSP/ICC–14 2019. (*Id.*) The results of this testing indicated that the difference in final test results between the two ambient air temperatures deviated by an average of 1.4 percent,

²³ See table in p. 5 of the CEC Docket Number 12–AAER–2G, document TN 73027. Available at efiling.energy.ca.gov/GetDocument.aspx?tn=73027&DocumentContentId=8328.

²⁴ See climate data from National Oceanic and Atmospheric Administration. Available at: www.ncei.noaa.gov/cag/statewide/time-series/4/tavg/12/12/2012-2021?base_prd=true&begbaseyear=2012&endbaseyear=2021.

²⁵ DOE used only the contiguous U.S., excluding Alaska and Hawaii, because the data from PKData on the number of spas in each state excluded Alaska and Hawaii.

²⁶ www.ncei.noaa.gov/access/monitoring/climate-at-a-glance/statewide/time-series.

²⁷ P.K. Data Inc. 2022 Hot Tub Market Data: Custom Compilation for Lawrence Berkeley National Laboratory (through 2021). 2022. Alpharetta, GA. Available at www.pkdata.com/reports-store.html#/ (Last accessed April 24, 2023). (2022).

with a maximum deviation for one unit of 2.2 percent. (*Id.* at pp. 5, 12) PHTA/IHTA concluded that these test results demonstrate that it is not necessary to change the ambient temperature or the normalization formula (from what is currently specified in ANSI/APSP/ICC–14 2019), as retesting (according to DOE's proposed requirements) would achieve the same results. (*Id.*)

With regard to DOE's proposal to specify a tolerance of $\pm 3^\circ\text{F}$ around the target ambient air temperature, PHTA/IHTA commented that some test chambers cannot hold a $\pm 3^\circ\text{F}$ ambient tolerance without rapid and damaging cycling to the cooling system, which is the reason why ANSI/APSP/ICC–14 2019 no longer specifies a minimum ambient air temperature requirement and uses the normalization approach instead. (*Id.* at pp. 6, 12)

In summary, PHTA/IHTA recommended that DOE reference the ambient temperature requirement of 63°F or lower (*i.e.*, with no lower boundary) as specified in ANSI/APSP/ICC–14 2019, in lieu of specifying a target temperature with an allowable range of $\pm 3.0^\circ\text{F}$ during testing. (*Id.* at pp. 6, 12)

Master Spas commented that 56°F is not representative of all consumers, and that, given the wide range of temperature and climates experienced by portable electric spa consumers, it would be challenging to develop a temperature that it is representative for consumers across different regions. (Master Spas, No. 7 at p. 1) Master Spas stated that changing the ambient air temperature would be burdensome and unnecessary, especially when the results of the temperature change could be calculated without expensive testing. (*Id.*)

The CA IOUs commented that changing the ambient temperature would not affect the standby loss results because of the normalization approach used in the test procedure. (CA IOUs, No. 8 at p. 5) The CA IOUs presented data from the Alberta Research Council that the CA IOUs asserted provides experimental proof of the temperature normalization procedure. (*Id.* at p. 6) As described by the CA IOUs, the study measured eight portable spas at various ambient air and water temperature combinations, and the results demonstrated that when the difference between the ambient air and water temperature was increased by 2.6 times, the power consumption increase was 2.7 times greater. (*Id.*) Thus, the CA IOUs asserted that the temperature normalization method closely predicts energy consumption from experimental results. (*Id.*)

The CA IOUs also suggested that if DOE were to finalize its proposal to specify 56°F as the target ambient air temperature for testing, products currently certified for State programs could avoid retesting by using normalization to extrapolate new values from those currently reported, and that as products are tested at updated temperatures, such an exemption could be retired after a transition period of one year. (*Id.*)

As discussed earlier in this document, EPCA requires that any test procedures prescribed by DOE be reasonably designed to produce test results that measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, while not being unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) DOE recognizes that no single temperature specification would be representative of all portable electric spa installations throughout the United States. Defining a nationally representative average air temperature for portable electric spas, however, provides a consistent basis of comparison for measured test results among the diversity of portable electric spa models available on the market. DOE has determined that defining a single ambient air condition representing the average annual condition experienced by portable electric spas in the United States, weighted by estimated installation volume, satisfies EPCA's requirements for the test procedure to produce results that measure energy use during a representative average period of use, while not being unduly burdensome to conduct. Based on DOE's analysis of available climate data, and noting that interested parties have not provided other, installation-weighted data with which to determine a nationally representative average air temperature, DOE has determined that 56°F is a nationally representative ambient air temperature applicable to testing portable electric spas.

As discussed, PHTA/IHTA stated that the ambient temperature in ANSI/APSP/ICC–14 2019 is not meant to be representative of a national average, and that use of a national average temperature would not improve testing consistency or yield better results over ANSI/APSP/ICC–14 2019. (PHTA/IHTA, No. 10 at p. 5) In response, DOE notes that it is true that using a national average temperature will not improve testing consistency between tests in different laboratories or of different models because test results from different laboratories or of different models will be consistent with each

other as long as they all use the same ambient temperature regardless of the ambient temperature set in the test procedure. However, use of a national average ambient temperature will yield better results than the ambient temperature in ANSI/APSP/ICC–14 2019 in that the results will be more representative of the average standby loss of portable electric spas throughout the U.S. than results determined using ANSI/APSP/ICC–14 2019.

Testing with a 63°F ambient temperature for calculating standby loss in ANSI/APSP/ICC–14 2019 results in measures of standby loss that are approximately 15 to 23 percent lower than those would be if using a national average ambient temperature of 56°F . This change is because the rate of heat loss is approximately linearly related to the difference between the ambient temperature and the temperature of the water in the spa. This linear relationship between temperature difference and the rate of heat loss is the basis for the temperature normalization that is used in ANSI/APSP/ICC–14 2019 and that DOE is adopting in this final rule, as discussed later in this section. Use of a 63°F ambient temperature for calculating standby loss in ANSI/APSP/ICC–14 2019 results in a temperature difference that is 7°F less than it would be if using a nationally representative temperature of 56°F (*i.e.*, $63^\circ\text{F} - 56^\circ\text{F} = 7^\circ\text{F}$). That 7°F results in a 15.2 percent lower calculated standby loss for portable electric spas tested at a $102^\circ\text{F} \pm 2^\circ\text{F}$ water temperature [*i.e.*, $7^\circ\text{F} / (102^\circ\text{F} - 56^\circ\text{F}) = 15.2$ percent], and a 22.6 percent lower calculated standby loss for exercise spas tested at a $87^\circ\text{F} \pm 2^\circ\text{F}$ water temperature [*i.e.*, $7^\circ\text{F} / (87^\circ\text{F} - 56^\circ\text{F}) = 22.6$ percent]. This magnitude of understatement of standby loss means that results determined using the ambient temperature in ANSI/APSP/ICC–14 2019 are not representative of an average use cycle or period of use for portable electric spas in the U.S. Therefore, DOE has determined that the use of a national average ambient temperature of 56°F will yield results that are more representative of the average standby loss of portable electric spas throughout the U.S. than results determined using ANSI/APSP/ICC–14 2019. As discussed in section III.D.11 of this final rule, DOE is adopting the use of 56°F as the representative ambient temperature in the normalization approach used for the standby loss calculation.

Regarding the seasonality of inflatable spas and the potential that representative test conditions for inflatable spas might include an ambient air temperature different from

rigid spas, namely a temperature averaged across such the inflatable spa season, DOE considers that the use of different representative ambient temperatures for different categories of portable electric spas would produce test results that are not comparable among the different categories of portable electric spas. Comparability of energy use ratings would be important for any consumer comparing inflatable spas with hard-shelled spas to understand the relative efficiencies between the different models. For these reasons, this final rule reflects use of the same average representative ambient air temperature (*i.e.*, 56 °F) for inflatable portable electric spas as for hard-shelled portable electric spas.

Regarding comments received discussing the accuracy and advantages of the normalization approach, DOE has reviewed the data submitted by PHTA/IHTA and agrees with the conclusion that these test results demonstrate that the normalization approach produces accurate test results and can enable the use of a wider range of ambient air temperatures during testing than DOE had proposed in the October 2022 NOPR. As a result, DOE is adopting an ambient temperature during testing of up to 63.0 °F in this final rule.

DOE recognizes that specifying the ambient air temperature as a maximum value (*e.g.*, a maximum of 63 °F), rather than a target value within a specified tolerance (*e.g.*, 56.0 ± 3 °F), yields a less burdensome approach for testing, for the reasons described in PHTA/IHTA's comments. In considering the relative similarities in accuracy (*i.e.*, representativeness) of the two approaches, as well as the differences in test burden between the two approaches, DOE has determined that the general approach currently used in ANSI/APSP/ICC-14 2019 of specifying only a maximum ambient air temperature—in conjunction with the normalization of measured test results—produces test results that measure the energy use of a portable electric spa during a representative average period of use while not being unduly burdensome to conduct.

Finally, as previously noted, PHTA/IHTA stated that a 56 °F ambient temperature requirement would require some existing test chambers to be upgraded to full air makeup systems. (PHTA/IHTA, No. 10 at pp. 5, 12) Although DOE is adopting the use of 56 °F as the representative ambient temperature for the normalization approach used in the standby loss calculation, DOE is adopting a maximum ambient temperature during testing of 63 °F, as discussed in the

previous two paragraphs. These requirements on ambient temperature during testing are identical to those of ANSI/APSP/ICC-14 2019. As a result, DOE has determined that there is no need for any test chambers to be upgraded due to the ambient temperature requirements of the test procedure in this final rule.

In summary, for the reasons discussed in the preceding paragraphs, this final rule specifies in section 3.2.1 of appendix GG that ambient air temperature be maintained at a maximum of 63.0 °F for the duration of the test, consistent with ANSI/APSP/ICC-14 2019. This ambient temperature requirement applies to each individual ambient air temperature measurement taken for the duration of the stabilization period and test period, as proposed in the October 2022 NOPR. Furthermore, in this final rule, the normalization of measured values in section 3.3 of appendix GG is based on a temperature of 56 °F as a nationally representative ambient air temperature for testing portable electric spas, as proposed in the October 2022 NOPR. The normalization approach used for the standby loss calculation is discussed further in section III.D.11 of this final rule.

4. Chamber

a. Requirements in ANSI/APSP/ICC-14 2019

ANSI/APSP/ICC-14 2019 includes informative appendix A that provides minimum requirements for the test chamber in which the portable electric spa is installed. These include optional specifications regarding chamber internal dimensions, air circulation, chamber insulation, and chamber floor insulation.

In the October 2022 NOPR, DOE tentatively concluded that the specifications in appendix A to ANSI/APSP/ICC-14 2019 regarding chamber internal dimensions, air flow, and chamber insulation are appropriate for testing portable electric spas, and DOE proposed in section 3.1.1 of appendix GG to install portable electric spas in chambers meeting those specifications. 87 FR 63356, 63364. DOE requested comment on its tentative conclusion and proposal. *Id.*

In response to the October 2022 NOPR, PHTA/IHTA expressed support for DOE's tentative determination and proposal regarding chamber internal dimensions, air flow, and chamber insulation. (PHTA/IHTA, No. 10 at p. 13) The CA IOUs commented that standardizing internal chamber dimensions, air flow, and chamber

insulation would help to improve the repeatability of test results. (CA IOUs, No. 8 at p. 3) The CA IOUs also recommended that DOE require humidity controls and measurements to further improve the repeatability of test results. (*Id.* at p. 3) The CA IOUs explained that a portable electric spa in a sealed chamber with 100 percent relative humidity would have a lower evaporation rate and thereby a lower measured energy consumption than is representative of field use. (*Id.*) The CA IOUs also identified several test procedures for other products that require control of relative humidity and indicated that the CEC's portable electric spa test procedure adopted in 2004 required the measurement of average relative humidity during the test. (*Id.* at p. 4)

In response to the CA IOUs' recommendation to require humidity controls and measurements in the test procedure, DOE maintains that it is not clear these requirements are needed. Although the CA IOUs stated that evaporation is the primary source of standby loss from the portable electric spa, they did not provide any additional information aside from citing a CA IOUs report from 2014 submitted to the CEC ("2014 CA IOUs Report").²⁸ (CA IOUs, No. 8 at p. 3) That report provides no information on the amount of standby loss that is due to evaporation, aside from stating that "a majority of heat is lost through evaporation" and that spa covers with a good seal can reduce evaporation. As a result, it is possible that when the 2014 CA IOUs Report indicated that "a majority of heat is lost through evaporation," the authors were referring to the case when the portable electric spa is uncovered or has a poorly fitting cover. And it is not clear from these sources how much evaporation occurs during the proposed DOE test procedure, in DOE's investigative testing, however, the amount of portable electric spas' water lost to evaporation was very small. This testing was done with the spas' covers installed, as is required in the test procedure established in this final rule. Although the scenario described by the CA IOUs is technically possible, DOE's testing suggests it is unlikely to occur with portable electric spas commonly on the market.

In addition, the CA IOUs identified several test procedures for other products that require measurement and control of humidity. (CA IOUs, No. 8 at

²⁸ "Portable Electric Spas—California," California Energy Commission (California Investor-Owned Utilities, May 15, 2014). Available at, <https://efiling.energy.ca.gov/GetDocument.aspx?tm=73027&DocumentContentId=8328>.

p. 4) DOE notes that measurement and control of humidity is more important for those test procedures because each of those products either: actively modifies the humidity of the ambient or process air as part of their operation (*i.e.*, clothes dryers, dehumidifiers, central air conditioners, heat pump water heaters, and electric heat pump pool heaters); or moves air with a fan, for which humidity can affect air density and the resulting energy performance (*i.e.*, ceiling fans and furnace fans); or both. A portable electric spa does not do either of those things during the test for standby loss. Accordingly, DOE concludes that relative humidity does not significantly impact typical operation of a spa during testing and that it is unnecessary to require measurement and control of relative humidity. Therefore, DOE is not adopting requirements to measure and control relative humidity in the test procedure for portable electric spas.

For the reasons discussed in the October 2022 NOPR and in the preceding paragraphs, in this final rule, DOE is adopting specifications for chamber dimensions, air flow, and chamber insulation in section 3.1 of appendix GG, which refer to those provisions in appendix A to ANSI/APSP/ICC–14 2019.

b. Chamber Floor Requirements

Appendix A to ANSI/APSP/ICC–14 2019 specifies that the test chamber floor may be insulated with 2 inches of polyisocyanurate insulation, that the insulation shall be laid directly on a level surface, and that the insulating layer shall be sheathed with at least 0.5 inches of plywood.

In the October 2022 NOPR, DOE conducted an analysis to determine whether these requirements would produce test results that reflect representative consumer use in a proposed test procedure for portable electric spas. 87 FR 63324, 63364. DOE reviewed installation and owner's manuals for a representative sample of portable electric spas available on the market and found that the majority of manuals specify that the preferred method of installation is directly on a poured concrete slab. *Id.* A smaller portion of manuals specify installation on a wooden deck, and a small number of manuals specify other acceptable installation surfaces, such as concrete pavers or crushed gravel. *Id.* None of the manuals that DOE reviewed specify installing the portable electric spa with insulation between the ground and the spa. *Id.* Presuming that portable electric spas are installed consistently with the installation manual, DOE's findings in

the October 2022 NOPR suggested that the most representative installation of a portable electric spa is to be installed directly on a concrete slab with no insulation between that surface and the spa. *Id.*

In the October 2022 NOPR, DOE presented data from investigative testing to determine the extent to which installation with the optional insulation specified in the chamber floor section of appendix A to ANSI/APSP/ICC–14 2019 impacts energy use in comparison to installation with no insulation. *Id.* The data indicated that the amount of insulation and plywood specified in the chamber floor section of appendix A to ANSI/APSP/ICC–14 2019 reduced standby loss by up to 37 percent compared to testing with no insulation. *Id.* As discussed in the October 2022 NOPR, these results demonstrated that the inclusion or exclusion of chamber floor insulation has a significant impact on measured energy use. *Id.*

DOE further explained in the October 2022 NOPR that although DOE was not aware of any portable electric spas that include insulation and/or other materials such as plywood as part of the installation materials for the spa, DOE presumed that a consumer would be likely to install insulation and/or plywood if insulation and/or wood were to be included with the spa and specified by the installation instructions to be installed for use. *Id.* at 87 FR 63364–63365. In such case, DOE tentatively concluded in the October 2022 NOPR that testing with the insulation and/or plywood provided would produce test results that are representative of consumer use. *Id.* at 87 FR 63365.

To ensure that test results are representative of an average consumer use cycle or period of use, DOE proposed in the October 2022 NOPR to specify in section 3.1.2 of appendix GG that portable electric spas be installed directly on a level concrete floor or slab. *Id.* Additionally, DOE proposed to specify that if insulation and/or plywood is provided with the spa, and the manufacturer's instructions indicate that insulation and/or plywood be installed between the ground and the spa for normal use, the spa is to be installed with the minimum amount of insulation and/or plywood between the floor and the spa that is specified by the manufacturer's installation instructions. Otherwise, no insulation or plywood is to be installed between the floor and the spa. *Id.*

DOE requested comment on its tentative determination that the most representative installation of a portable electric spa is directly on concrete with

no insulation between that surface and the spa. *Id.* DOE also requested comment on its presumption that a consumer would be likely to install insulation and/or wood if insulation and/or wood were to be included with the portable electric spa and specified by the installation instructions to be installed for use, and that in such cases, testing with the insulation and/or wood provided would produce test results that are representative of consumer use. *Id.*

In addition, DOE requested comment on its proposal to specify installing the portable electric spa directly on the chamber floor without any insulation between the spa and the floor. *Id.* Finally, DOE requested comment on the availability of concrete floors or slabs within test facilities and whether any test chamber floor alternatives, such as solid or perforated steel or aluminum floors, would represent portable electric spa operation when installed on concrete floors or slabs. *Id.*

In response to the October 2022 NOPR, PHTA/IHTA commented that consumers install portable electric spas on a wide range of foundations, including concrete slabs, brick/pavers, pea gravel, tile, marble, wood decking (including both ground-mounted and elevated), synthetic decking (including both ground-mounted and elevated), coated steel decking, and urethane decking material. (PHTA/IHTA, No. 10 at p. 13) PHTA/IHTA also stated that concrete slab thickness requirements vary greatly in the United States. (*Id.*)

PHTA/IHTA commented on DOE's presumption that a consumer would be likely to install insulation and/or wood if it were included with the portable electric spa and specified in the installation instructions to be installed for use and that in such cases, testing with the insulation and/or wood provided would produce results that are representative of consumer use. (PHTA/IHTA, No. 10 at p. 14) PHTA/IHTA stated that for portable electric spas other than inflatable spas, it is not industry practice to include insulation and/or wood as part of the installation materials, and they have no data supporting the presumption that a consumer would be likely to install insulation and/or wood if it were included. (*Id.*) PHTA/IHTA also stated that the idea of manufacturers including or recommending insulation adds variability to the portable electric spa test method because there is no guarantee the consumer will use it in their final installation. (*Id.*) PHTA/IHTA added that removal of the floor variable with a standardized reproducible floor provides better data to the end

consumer when comparing models for purchase. (*Id.*) Finally, PHTA/IHTA stated that the proposal of including a foundation with portable electric spa purchases would increase consumer cost and manufacturers' liability. (*Id.*) Regarding inflatable spas, PHTA/IHTA stated that these products are typically supplied with an insulating ground cover that the consumer is instructed to place underneath the inflated tub. (*Id.* at p. 13) PHTA/IHTA stated that they expect consumers to utilize the provided insulating ground cover during installation of inflatable spas, because they are put up and taken down seasonally. (*Id.* at p. 14)

PHTA/IHTA commented that DOE's proposal to specify testing on concrete floors with no additional insulation would not be repeatable and that varying concrete temperatures or thicknesses could significantly impact test results. (*Id.* at p. 7) PHTA/IHTA noted that a concrete floor introduces an uncontrolled variable regardless of construction. (*Id.*) PHTA/IHTA added that test results need to be independent of both the geographical location of test labs and the season during which testing is conducted and that testing on bare concrete would make test results dependent on each of those. (*Id.*) In the event that DOE continues to pursue testing on concrete without insulation, PHTA/IHTA recommended more testing be conducted to better determine the effects of the chamber floor change. (*Id.* at p. 8)

PHTA/IHTA commented also that not enough information was provided in the October 2022 NOPR about DOE's testing regarding the effect of changing floor conditions on portable electric spa standby loss. (*Id.*) PHTA/IHTA stated that industry was not able to provide its own data in time for comment, but that an early industry research project determined that the heat loss through the bottom of the spa was a relatively small portion of the total energy. (*Id.* at pp. 7–8) PHTA/IHTA encouraged DOE, due to lack of data, to conduct more analysis and reconsider the approach in the October 2022 NOPR. (*Id.* at pp. 8, 13)

Furthermore, PHTA/IHTA commented that testing on concrete may not actually be representative of concrete installations because a spa in the field would reach thermal equilibrium with the concrete surface it is installed on whereas one in a lab would not, and such a difference would lead to results not representative of customer use. (*Id.* at p. 8)

PHTA/IHTA commented that testing on pallets or simulated decks would remove the variability of heat losses

through the floor of the spa. PHTA/IHTA noted, however, that the ANSI/APSP/ICC–14 2019 writing committee recognized that the proportion of portable electric spas installed on decks was small and this added heat loss would skew the results for the vast majority of installations. (*Id.* at p. 7) PHTA/IHTA recommended that DOE maintain the chamber floor conditions specified in appendix A to ANSI/APSP/ICC–14 2019. (*Id.* at pp. 8, 13) PHTA/IHTA explained that the insulated floor used in ANSI/APSP/ICC–14 2019 and the platform with air flow beneath the spa used in CSA C374:11 (R2021) are not meant to be representative of typical installations, but instead to ensure the consistency of test results. (*Id.* at p. 7) PHTA/IHTA also stated that they are not aware of any test chambers that currently use the CSA standard platform, as that standard is not currently required. (*Id.*)

In response to DOE's request for comment regarding the availability of concrete floors or slabs within test facilities, PHTA/IHTA noted that they are not aware of any test chambers that have the ability to test on a concrete floor or slab without major renovations and that current test labs were designed to meet the ANSI/APSP/ICC–14 2019 testing protocol. (*Id.* at p. 14)

Similarly, the CA IOUs recommended that DOE maintain the chamber floor conditions specified in appendix A to ANSI/APSP/ICC–14 2019. (CA IOUs, No. 8 at p. 5) The CA IOUs stated that it is unclear whether installing portable electric spas on concrete represents standard consumer practice, indicating that several spa dealers and online sources provided advice for installing spas on concrete, plastic spa pads, and compacted gravel. (*Id.*) The CA IOUs commented that DOE's proposal to specify testing on concrete floors with no additional insulation would not be repeatable and that varying concrete temperatures or thicknesses could significantly impact test results. (*Id.*) The CA IOUs added that not enough information was provided in the October 2022 NOPR about DOE's testing regarding the effect of changing floor conditions on portable electric spa standby loss. (*Id.*)

The CA IOUs also estimated that ANSI/APSP/ICC–14 2019 compliant spas are significantly less susceptible to ground effect conductivity loss than low insulation baseline spas and stated that they believe evaporative losses impact test results more than the ground effect. (*Id.*) The CA IOUs suggested that DOE collect and publicly display additional data to demonstrate the value of modifying a test method to measure the

interaction between uninsulated ground and portable electric spas. (*Id.*) The CA IOUs commented it was unclear whether testing on a bare concrete floor would overpredict energy due to concrete's higher thermal conductivity relative to other mounting surfaces. (*Id.*)

The CA IOUs stated that ANSI/APSP/ICC–14 2019 is suitable for spa performance measurement and comparison for arbitrary ground surfaces, and they encouraged DOE to develop equations to extrapolate ground effect by base type (*e.g.*, concrete, wood, gravel, ABS plastic) for minimally insulated as well as moderate and high insulation spas in the consumer analysis of energy conservation standards. (*Id.*)

Master Spas commented that, regardless of the representativeness of installing a portable electric spa on concrete, testing on concrete may not actually be representative of concrete installations because a spa in the field would reach thermal equilibrium with the concrete surface it is installed on whereas one in a lab would not, and such a difference would lead to results not representative of customer use. (Master Spas, No. 7 at p. 2) Master Spas stated that DOE's proposal to specify testing on concrete floors with no additional insulation would not be repeatable and that varying concrete temperatures could significantly impact test results. (*Id.*) Master Spas asserted that test results need to be independent of both the geographical location of test labs and the season during which testing is conducted and that testing on bare concrete would make test results dependent on each of those. (*Id.*)

Master Spas commented that it is not clear whether testing on a concrete floor would result in significantly different normalized standby loss values than testing on an insulated chamber floor, especially for portable electric spas that currently satisfy ANSI/APSP/ICC–14 2019 minimum performance standards and are likely to have more internal insulation to resist effects of varying floors. (*Id.*) Master Spas also stated that no test data exists right now to answer this question, and that adopting the DOE proposal for floor conditions would be risky. (*Id.*)

In the event that DOE continues to pursue testing on concrete without insulation, the CEC requested that DOE specify control conditions for preparing and maintaining the temperature of the concrete slab. (CEC, No. 13 at p. 3) The CEC recommended that DOE continue collecting information to establish a testing floor representative of consumer use with standardized conditions. (*Id.*) The CEC also commented that DOE did not state in the October 2022 NOPR

whether it had considered stock distribution when estimating the distribution of spas recommended to be installed on a concrete floor. (*Id.*) The CEC noted that DOE's test results in the October 2022 NOPR did demonstrate a significant impact when changing the chamber floor's level of insulation. (*Id.*)

In contrast, the Joint Advocates commented that they agreed with DOE's conclusion that the preliminary test results in the October 2022 NOPR suggest the use of chamber floor insulation may result in unrepresentative standby loss ratings, and they supported DOE's efforts to ensure that the test procedure is representative. (Joint Advocates, No. 12 at p. 2)

As discussed, EPCA requires test procedures to be representative of an average use cycle and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) DOE had proposed in the October 2022 NOPR that testing on a concrete floor or slab would meet these criteria because it would provide representative results while not being unduly burdensome. 87 FR 63356, 63365. However, comments from stakeholders suggest that, although concrete may be a representative material used by consumers, there is uncertainty regarding whether testing on concrete would provide reproducible test results—and therefore uncertainty regarding whether testing on concrete would reliably provide representative test results among different test laboratories. (PHTA/IHTA, No. 10 at p. 14; CA IOUs, No. 8 at p. 5; Master Spas, No. 7 at p. 2) Comments also suggest that ensuring reproducible results from a concrete slab might require measures—such as control of the slab temperature—that could introduce substantial burden. (CEC, No. 13 at p. 3) Therefore, based on feedback provided in stakeholder comments, DOE has determined that there is uncertainty regarding whether testing on concrete would reliably produce representative test results without being unduly burdensome.

Regarding suggestions to specify testing with insulation between the spa and the floor, DOE received no comments disputing its tentative determination that consumers are likely to install non-inflatable spas without any insulation between the supporting surface and the spa, and no comments stated it is common for consumers to install spas on top of insulation. While comments indicate that testing on insulation may yield repeatable and reproducible test results, for the reasons presented in the October 2022 NOPR (including DOE's test data), DOE has

determined that testing on insulation would not yield results that are representative of consumer use, as required by EPCA. Testing on insulation underestimates the standby loss of portable electric spas as compared to testing with no insulation installed between the floor and the spa, as shown in DOE's investigative testing results in the October 2022 NOPR. 87 FR 63324, 63364. As discussed, no comments stated it is common for consumers to install spas on top of insulation. As a result, it is most representative to test a portable electric spa when installed on a surface with a temperature and thermal conductivity that is similar to those of the surfaces on which portable electric spas are commonly installed, such as concrete, brick, gravel, tile, marble, or decking (*see* PHTA/IHTA, No. 10 at p. 13). Insulation has a much lower thermal conductivity than any of those materials, and therefore insulation reduces the rate of heat transfer from the bottom surface of the spa to the floor. This results in lower rate of heat transfer from the bottom surface of the spa to the floor than would occur if the spa was installed on one of the common mounting surfaces. As a result, DOE finds that measures of standby loss determined from spas installed on top of insulation are lower than what is representative of the spa. Although the CA IOUs suggested the possibility of developing equations to extrapolate the effect of the ground surface from the results of tests performed on insulation (CA IOUs, No. 8 at p. 5), this approach is not feasible for the test procedure because the magnitude of the underestimate of standby loss due to testing on insulation will vary between spas based on differences in product design, such as the amount of insulation installed inside the body of the spa.

Through further consideration of the rationales presented by DOE in the October 2022 NOPR, as well as review of installation materials and consideration of stakeholder comments, DOE is specifying an approach in this final rule that addresses the challenges articulated by stakeholders and will provide test results that are representative without being unduly burdensome. DOE's review of installation manuals confirms that wooden decking is a common installation surface, as it was the second-most commonly listed mounting surface. Decking was also one of the common mounting surfaces that PHTA/IHTA indicated in their comments. (PHTA/IHTA, No. 10 at p. 13) Additionally, PHTA/IHTA commented that testing on pallets or simulated

decks would remove the variability of heat losses through the floor of the spa. (*Id.* at p. 7) DOE has determined that this test approach would address the concerns noted by stakeholders regarding reproducibility and produce representative test results by not limiting heat transfer from the bottom of a portable electric spa. Clause 5.1.1(b) and Figure 1 of CSA C374:11 (R2021) specify a wooden decking test platform that is placed directly on the test room floor. The outside dimensions of the platform are large enough to support the entire base of the spa, and the platform is constructed using standard construction 2 inch by 6 inch planking with 0.236 inch spacing between the planks. The structure is supported by three equally spaced beams constructed using four layers of 2 inch by 6 inch planking laminated together, providing a standardized gap of free air space beneath the deck. PHTA/IHTA commented that the wooden decking specified by CSA C374:11 (R2021) is intended to provide consistent test results. (*Id.*) Based on consideration of the comments received in response to the October 2022 NOPR, DOE has determined that testing on wooden decking would provide repeatable and reproducible test results and would yield test results that are representative of average consumer use cycle or period of use.

As discussed, in response to the October 2022 NOPR, several commenters expressed concern about the lack of reproducibility of the concrete slab data, and the lack of supporting data, and encouraged DOE to compile more analysis and reconsider the chamber floor approach in the October 2022 NOPR. (PHTA/IHTA, No. 10 at pp. 8, 13; CA IOUs, No. 8 at p. 5; Master Spas, No. 7 at p. 2) As discussed, DOE has evaluated the comments, reconsidered, and is adopting an alternate approach for the chamber floor. This approach requires installing the spa on the wooden decking specified by CSA C374:11 (R2021). DOE expects that this approach will allay the concerns of PHTA/IHTA and other commenters because PHTA/IHTA, in particular, stated in their comments in response to the October 2022 NOPR that they worked collaboratively to assist CSA with testing and data, including testing 4 portable electric spas for CSA, prior to the finalization, publishing, and implementation of CSA C374:11 (R2021). (PHTA/IHTA, No. 10 at p. 4) PHTA/IHTA also stated that the platform specified by CSA C374:11 (R2021) is intended to provide consistent test results, which would

alleviate the repeatability concerns noted by commenters. (*Id.* at p. 7) As a result, DOE expects that stakeholders will be satisfied with the reproducibility of test data produced from tests performed using the platform specified in CSA C374:11 (R2021).

Regarding the question of burden, PHTA/IHTA suggested that test labs might not currently be equipped with the wooden platform specified by CSA C374:11 (R2021). (PHTA/IHTA, No. 10 at p. 7) However, DOE expects that the type of platform specified by CSA C374:11 (R2021) could be built at relatively modest cost (see section III.F of this final rule for more details on cost). Based on these considerations, DOE has determined that it would not be unduly burdensome to require testing on the wooden platform specified by CSA C374:11 (R2021).

In summary, in this final rule, DOE is requiring testing of portable electric spas on the wooden platform specified by CSA C374:11 (R2021). DOE has determined that this requirement will produce test results that are representative of an average consumer use cycle or period of use without being unduly burdensome. DOE is specifying this requirement in section 3.1.2 of appendix GG by incorporating by reference CSA C374:11 (R2021) in 10 CFR 430.3 and specifying in section 3.1.2 of appendix GG to install the portable electric spa on a platform as specified in Clause 5.1.1(b) and Figure 1 of CSA C374:11 (R2021).

5. Electrical Supply Voltage and Amperage Configuration

Section 5.5.6 of ANSI/APSP/ICC-14 2019 specifies that the voltage supplied to the portable electric spa be within 10 percent of the nameplate voltage during testing but specifies no other requirements for the electrical supply or amperage configuration. The following paragraphs discuss additional considerations regarding voltage supply and amperage configuration relevant to testing portable electric spas.

DOE's market research indicates that most portable electric spas operate at a single voltage (e.g., either 120 or 240 volts ("V"), nominally). Models that operate at 120 V are often referred to as "plug and play" models and are plugged into an ordinary 120 V electrical outlet. Models that operate at 240 V are typically required to be permanently connected (i.e., hard wired) into a 240 V circuit, similar to that which would supply an electric water heater. DOE is aware of models on the market that can be configured to operate at either 120 V or 240 V, depending on the preference of the consumer. Such models are most

often pre-configured by the manufacturer to operate at 120 V and include instructions for converting the model to operate at 240 V. The conversion process typically requires changing the configuration of internal wiring and controls in addition to changes to the external wiring.

Similarly, certain portable electric spas on the market allow the consumer to configure the maximum amperage at which the portable electric spa can operate at a particular voltage level. This configurability ensures that the operation of the portable electric spa is compatible with the electrical service of the home. For example, for a home with a 50 ampere ("A") circuit breaker available, all the features on a particular portable electric spa may be capable of operating at the same time; whereas, for a home with only a 30 A circuit breaker available, the portable electric spa may still operate, albeit with reduced or restricted functionality. Units that provide amperage configurability most commonly operate at 240 V. On such units, changing the maximum amperage corresponds to allowing more or fewer components to operate at the same time (e.g., whether the heater is able to be energized at the same time as a secondary pump), or setting the level of operation for certain components (e.g., varying the number of heating elements that can operate simultaneously).

The choice of voltage and maximum amperage can affect the rate of heating in the portable electric spa and the occurrence of multiple components of the spa (e.g., pump and heater) operating simultaneously. These differences in operation may affect measured energy use. Therefore, in the October 2022 NOPR, DOE tentatively concluded that additional specifications regarding the supply voltage and amperage configuration to be used during testing would ensure the reproducibility of the DOE test procedure across different test laboratories. 87 FR 63356, 63365.

In the October 2022 NOPR, DOE proposed in section 3.1.3 of appendix GG a hierarchy to use for configuring the voltage and amperage configuration of the portable electric spa during testing in section 3.1.3 of appendix GG. *Id.* Specifically, DOE proposed that if the portable electric spa can be installed or configured with multiple options of voltage, maximum amperage, or both, testing should use the as-shipped configuration. *Id.* If no configuration is provided in the as-shipped condition, DOE proposed that testing be conducted using the option specified in the manufacturer's instructions as the recommended configuration for normal

consumer use. *Id.* If no configuration is provided in the as-shipped condition and the manufacturer's instructions do not provide a recommended configuration for normal operation, DOE proposed that testing be conducted using the maximum voltage specified in the manufacturer's installation instructions and the maximum amperage that the manufacturer's installation instructions specify for use with the maximum voltage. *Id.*

DOE requested comment on the proposed hierarchy for specifying voltage and maximum amperage for portable electric spas that have multiple options for voltage and/or amperage. *Id.* DOE also requested comment on any cases for which the proposed language would not make clear the voltage and/or maximum amperage to be used during testing. *Id.*

In response to DOE's request for comment in the October 2022 NOPR, the Joint Advocates supported DOE's proposed hierarchy to add clarification and make the test procedure more reproducible. (Joint Advocates, No. 12 at p. 2) However, the CEC recommended using the maximum voltage and maximum amperage on the nameplate for testing rather than the proposed hierarchy. (CEC, No. 13 at pp. 3–4) The CEC stated that the proposed hierarchy method introduces variability by relying on as-shipped configurations and manufacturer's instructions, as each manufacturer may configure and operate their spas differently. (*Id.* at p. 4) In addition, the CEC noted that as-shipped configurations may or may not be included in the literature provided by manufacturers, and manufacturer manuals are typically updated annually while older dated manuals are archived and not accessible to the public after a certain period. (*Id.*) The CEC indicated that, to ensure compliance, manufacturers and test laboratories must keep records of all manuals for tested units and tests must be repeatable. (*Id.*) The CEC continued that it is more accessible and manageable to rely on information permanently marked on the nameplate of a spa than on manufacturer literature that may be amended or become unavailable. (*Id.*)

PHTA/IHTA stated that portable electric spas should be installed and tested to the manufacturer's instructions. (PHTA/IHTA, No. 10 at p. 14) PHTA/IHTA also stated that the amperage rating is not relevant to energy performance in the mode of operation in DOE's proposed test procedure because the amperage is only used for sizing the breaker relevant to manual operations such as turning on the jet pumps, which are not used in the proposed test

procedure. (*Id.*) Finally, PHTA/IHTA recommended the final rule clearly state that a 10 percent voltage fluctuation in the unregulated power source is allowed during testing. (*Id.*)

Regarding the CEC's recommendation to use the maximum voltage and current on the nameplate instead of using a hierarchy, DOE has determined that it is most representative to preferentially use the most commonly used voltage and maximum amperage settings instead of using only the maximum values on the nameplate. Although the nameplate maximums might be easier to identify and trace over several years, as suggested by the CEC, they are not necessarily the most commonly used settings. DOE considers it most likely that consumers would set up a portable electric spa using the as-shipped settings or the manufacturer's recommended configuration for normal consumer use and would only use the maximum values of each if no as-shipped or recommended configuration is available. For these reasons, DOE is using a hierarchy in this final rule.

Regarding the CEC's comment that as-shipped configurations may or may not be included in the literature provided by manufacturers, the as-shipped configuration does not need to be included in literature because it is the configuration that exists when the unit is shipped to the customer. Regarding the CEC's comment that older dated manuals are archived and not accessible to the public after a certain period, appliance efficiency tests are typically performed on new products, which are typically shipped with a manual. As a result, older manuals are not typically required for appliance efficiency testing.

In response to PHTA/IHTA's comment that the amperage is not relevant to energy performance in the DOE test procedure, it is likely that the setting for maximum amperage has no impact on the measured standby loss for many or most models. It is also possible that there are some models for which the setting for maximum amperage does have an impact on the measured standby loss, due to variations in the heating or pump settings in different maximum amperage settings. As a result, DOE considers it most representative to include the setting for maximum amperage in the hierarchy, instead of including only the setting for voltage, to ensure that the unit is set up with the setting for maximum amperage that is commonly used in the field. DOE also notes that adjusting the setting for maximum amperage of a portable electric spa is typically performed by adjusting settings on the setup panel of the spa, and therefore is not unduly

burdensome. For these reasons, DOE is including the setting for maximum amperage in the hierarchy being adopted in this final rule.

In response to PHTA/IHTA's comment about allowing voltage to be within 10 percent of the nameplate rating during testing, that tolerance is currently specified in section 5.5.6 of ANSI/APSP/ICC-14 2019, which DOE is adopting in the test procedure.

For the reasons discussed in the October 2022 NOPR and in the preceding paragraphs, in this final rule, DOE is adopting the requirements on electrical voltage and maximum amperage configuration in section 3.1.3 of appendix GG as proposed in the October 2022 NOPR. DOE is also dividing the requirements into subsections 3.1.3.1 and 3.1.3.2 in section 3.1.3 of appendix GG to make the requirements clearer.

6. Fill Volume

Section 3 of ANSI/APSP/ICC-14 2019 defines two quantities for the volume of water in a portable electric spa: fill volume and rated volume. "Fill volume" is the amount of water that is required to be in the spa during testing and is defined as the halfway point between the bottom of the skimmer opening and the top of the skimmer opening. In the absence of a wall skimmer, the fill volume is 6 inches (152 mm) below the overflow level of the spa. "Rated volume" is defined as the water capacity of a portable electric spa, in gallons (liters), as specified by the manufacturer on the spa, on the spa packaging, or the spa marketing materials. ANSI/APSP/ICC-14 2019 provides no requirement for the rated volume to correspond to the fill volume. ANSI/APSP/ICC-14 2019 also does not specify any tolerance on the fill volume measurement.

DOE compared fill volume and rated volume of portable electric spas on the market by reviewing certification records available in the CEC Modernized Appliance Energy Efficiency Database System ("MAEDbS").²⁹ Fill volume and rated volume are equivalent for some models but differ for other models. For most models with differing values of fill volume and rated volume, the variation is within a few percent. For example, in some cases, the value of rated volume corresponds to the fill volume rounded to the nearest multiple of 10. For other models, however, the difference

between rated and fill volume is much greater than any difference due to rounding, ranging from 10 to 50 percent of fill volume.

The volume of the water in a portable electric spa has a significant effect on the energy consumption of the spa, such that any significant difference between fill volume and rated volume for particular portable electric spas suggests that the standby loss determined for those models (based on fill volume) may not be representative of the way those models are advertised or used by consumers (presumably, rated volume). Furthermore, lack of tolerance on the fill level specification may result in variation in the fill level that could reduce repeatability and reproducibility of the test.

In the October 2022 NOPR, DOE made several proposals on how the volume of water in portable electric spas would be defined, determined during testing, and represented. 87 FR 63324, 63366.

First, DOE proposed to exclude from incorporation by reference the definitions of "fill volume" and "rated volume" in ANSI/APSP/ICC-14 2019, and to create a new definition of "fill volume" in section 2.5 of appendix GG. *Id.* DOE proposed to define "fill volume" as the volume of water held by the portable electric spa when it is filled according to the filling instructions specified in section 3.1.4 of appendix GG. *Id.* DOE made this proposal to prevent the ambiguity in representations of volume that DOE had identified for some models in the CEC MAEDbS. *Id.*

Second, to ensure that the volume of water in the portable electric spa during testing is representative of consumer use, DOE proposed to exclude the spa filling instructions in section 5.5.2 of ANSI/APSP/ICC-14 2019 and to define new filling instructions that refer to manufacturer's instructions in section 3.1.4 of appendix GG. *Id.* Section 3.1.4 of appendix GG would specify filling the spa with water as follows:

(a) If the manufacturer's instructions specify a single fill level, fill to that level with a tolerance of ± 0.125 inches.

(b) If the manufacturer's instructions specify a range of fill levels and not a single fill level, fill to the middle of that range with a tolerance of ± 0.125 inches.

(c) If the manufacturer's instructions do not specify a fill level or range of fill levels, fill to the halfway point between the bottom of the skimmer opening and the top of the skimmer opening with a tolerance of ± 0.125 inches.

(d) If the manufacturer's instructions do not specify a fill level or range of fill levels, and there is no wall skimmer, fill to 6.0 inches ± 0.125 inches below the overflow level of the spa. *Id.*

²⁹ The CEC Modernized Appliance Efficiency Database System. Available at cacerappliances.energy.ca.gov (Last accessed May 23, 2023).

Third, to ensure that the fill volume includes the water in all components of the portable electric spa, DOE proposed in section 3.1.4 of appendix GG to follow the manufacturer's instructions for filling the spa with water, connecting and/or priming the pump(s), and starting up the spa. *Id.* After verifying that the portable electric spa is operating normally and that all water lines are filled, DOE proposed to power off the spa and adjust the fill level as needed. *Id.* DOE proposed to measure the volume of water added to the portable electric spa with a water meter while filling the spa, and to measure any water removed from the spa using a water meter, graduated container, or scale with an accuracy of ± 2 percent of the quantity measured. *Id.* DOE proposed to define "fill volume" as the volume of water held by the portable electric spa when the spa is filled, as specified in section 3.1.4 of appendix GG. *Id.*

Finally, DOE proposed that all representations of fill volume be within 5 gallons of the mean fill volume measured for the sample of the basic model. *Id.* The proposed requirement would allow manufacturers to continue to represent fill volume as a value rounded to the nearest multiple of 10, because any such rounded value would vary by no more than 5 gallons from the measured value. *Id.* Further discussion of DOE's proposals regarding represented values is detailed in section III.E.2 of this final rule.

DOE requested comment on its proposals to exclude from incorporation by reference the definitions of "fill volume" and "rated volume" in ANSI/APSP/ICC-14 2019, to define a new term for "fill volume," and to specify new filling instructions in appendix GG. *Id.* DOE also requested comment on its proposal to specify a tolerance of ± 0.125 inches on the defined fill level and on whether any other tolerances on fill level, such as ± 0.0625 inches or ± 0.25 inches, would be more appropriate than ± 0.125 inches. *Id.* at 87 FR 63367. Finally, DOE requested comment on its proposal to allow represented values of fill volume to be within 5 gallons of the mean fill volume measured for the sample of the basic model. *Id.*

DOE received comments from the CEC, the Joint Advocates, and PHTA/IHTA on the proposals in the October 2022 NOPR for definitions and fill level instructions. The CEC supported DOE's proposal to exclude the definition of "rated volume" from incorporation by reference because DOE is not proposing labeling requirements in the proposed rulemaking. (CEC, No. 13, at p. 4) The Joint Advocates commented in support

of the additional proposed specifications to ensure that the fill volume in testing is representative. (Joint Advocates, No. 12 at p. 2) PHTA/IHTA expressed no position on the proposed change from the filling instructions in ANSI/APSP/ICC-14 2019 and deferred to individual manufacturer comments. (PHTA/IHTA, No. 10 at p. 15) DOE received no individual manufacturer comments on this topic.

PHTA/IHTA stated that they do not see any significant issue with using manufacturer-recommended fill level for the test, as it provides clarity to the end user. (*Id.*) PHTA/IHTA also explained that, although ANSI/APSP/ICC-14 2019 sets a uniform method for filling a portable electric spa, the ANSI/APSP/ICC-14 2019 fill level requirements do not always agree with typical user fill levels. (*Id.*) PHTA/IHTA stated that the ANSI/APSP/ICC-14 2019 fill level is often similar to the user fill level, but the user fill level can differ from the ANSI/APSP/ICC-14 2019 fill level due to the way the portable electric spa is designed to meet a specific consumer experience or other physical, operational, or cosmetic requirements. (*Id.*) PHTA/IHTA stated that the recommended fill line for inflatable spas is lower than the ANSI/APSP/ICC-14 2019 fill level. (*Id.*) PHTA/IHTA also stated that there are other models for which the recommended fill line is approximately 2 inches higher than the ANSI/APSP/ICC-14 2019 fill level, and for which the ANSI/APSP/ICC-14 2019 fill volume would interfere with normal operation because it would not cover all the jets. (*Id.*)

PHTA/IHTA and the CEC commented in support of DOE's proposal to allow a tolerance of ± 0.125 inches on fill level requirements. (PHTA/IHTA, No. 10 at p. 15; CEC, No. 13 at p. 4) The CEC supported adding instructions specifying that all water lines are filled, but the CEC recommended using the filling instructions in ANSI/APSP/ICC-14 2019 rather than the hierarchy proposed in the October 2022 NOPR. (CEC, No. 13, at p. 4) The CEC indicated that relying on manufacturer's instructions is not necessarily representative of consumer use if each manufacturer is different in providing instructions with various setup options. (*Id.*) The CEC recommended that DOE specify testing conditions that are identical for all manufacturers to ensure standardized conditions and comparable testing results across all products. (*Id.*)

Regarding representations of fill volumes, the CEC supported specifying

the value of the fill volume to be a whole number within 5 gallons to allow consumers to easily compare similarly sized spas. (*Id.* at p. 5) Conversely, PHTA/IHTA commented that 5 gallons is a very tight tolerance for represented fill volumes, even with the proposed ± 0.125 -inch fill tolerance, and that changes to plumbing or configuration could affect the volume and affect whether portable electric spas that would otherwise be grouped under the same basic model could be represented as having the same fill volume. (PHTA/IHTA, No. 10 at p. 15)

In response to the CEC's comments recommending the use of the filling instructions in ANSI/APSP/ICC-14 2019 rather than the hierarchy proposed in the October 2022 NOPR, DOE concludes that the hierarchy proposed in the October 2022 NOPR is more representative than the fill level specified by ANSI/APSP/ICC-14 2019 because the hierarchy uses the fill level that is specified in the model-specific manufacturer's instructions, if available, instead of relying only on the geometrical relationships in ANSI/APSP/ICC-14 2019 that are not specific to the model. Although the CEC indicated that relying on manufacturer's instructions is not necessarily representative of consumer use if each manufacturer provides different instructions and instead recommended that DOE specify testing conditions that are identical for all manufacturers (CEC, No. 13, at p. 4), DOE has concluded that the most representative fill level to use for each model is the fill level that would be used most commonly for that model by consumers. As indicated in comments by PHTA/IHTA, the ANSI/APSP/ICC-14 2019 fill level is often similar to the user fill level, but the user fill level can differ from the ANSI/APSP/ICC-14 2019 fill level due to the way the portable electric spa model is designed to meet a specific consumer experience or other physical, operational, or cosmetic requirements. (PHTA/IHTA, No. 10 at p. 15) DOE concludes that the manufacturer's instructions, if available, provide the best indication of the typical user fill level because the manufacturer's instructions take into consideration the design and intended use of the model, and the instructions are the primary literature used by a consumer to determine the proper use of the portable electric spa. As a result, DOE concludes that the filling instructions in ANSI/APSP/ICC-14 2019 are not as representative of an average use cycle or period of use as the filling instructions proposed in the October 2022 NOPR.

In response to PHTA/IHTA's comment on the proposed tolerance for represented value for fill volume, it is true that a ± 0.125 -inch fill level tolerance could allow for a variation in total fill volume of greater than 5 gallons between multiple tests on the same portable electric spa. However, the 5-gallon allowance in representations of fill volume does not necessarily delineate basic models, as suggested by PHTA/IHTA's comment. Rather, as described in section III.E.1 of this final rule, manufacturers have the ability to determine how they want to group individual models into basic models, as long as the individual model used to represent each basic model has the highest standby loss of all individual models in that basic model. As a result, a manufacturer could group multiple individual models of similar volumes into a single basic model and use test results from the individual model with the highest standby loss to represent that basic model. The 5-gallon allowance applies only to the flexibility that the manufacturer has in representing the mean fill volume from the testing of the individual model being used to represent the basic model. Therefore, DOE concludes that the 5-gallon allowance on represented fill volume is not overly narrow, and DOE is proceeding with its proposal.

For the reasons discussed in the October 2022 NOPR and in the preceding paragraphs, in this final rule, DOE is finalizing its proposals on fill volume as proposed in the October 2022 NOPR.

7. Spa Cover

Portable electric spas are typically covered when not in active use. The standby loss of a portable electric spa is significantly affected by the presence and thermal properties of a spa cover. Section 5.5.5 of ANSI/APSP/ICC-14 2019 requires that the manufacturer's specified cover be used during the test. Section 3 of ANSI/APSP/ICC-14 2019 defines "cover, specified" as the cover that is provided or specified by the manufacturer. However, ANSI/APSP/ICC-14 2019 does not specify how to conduct testing if the manufacturer does not specify a cover. For such cases, differences in laboratory decisions regarding the spa cover to be used for testing could result in significant variation in results between laboratories (*i.e.*, low reproducibility of test results) and could also produce test results that are not representative of average consumer use.

In the October 2022 NOPR, DOE proposed to exclude section 5.5.5 of ANSI/APSP/ICC-14 2019, which

requires use of the manufacturer's specified cover during testing, and to exclude the definition in ANSI/APSP/ICC-14 2019 for "cover, specified." 87 FR 63356, 63367. DOE proposed instead to specify in section 3.1.5 of appendix GG to install the spa cover following the manufacturer's instructions. *Id.* Additionally, DOE proposed that if a basic model is distributed with multiple covers designated by the spa manufacturer for use with the basic model, the manufacturer must determine all represented values for that basic model based on the cover that results in the highest standby loss, except the manufacturer may choose to identify specific individual combinations of spa and cover as additional basic models. *Id.*

In the October 2022 NOPR, DOE proposed to provide instructions for testing if the manufacturer does not specify a particular cover to be used with a portable electric spa. *Id.* DOE tentatively concluded that some consumers would opt to use a low-cost, minimally insulative cover if the spa manufacturer does not specify use of a particular cover. *Id.* As such, if a cover were not specified for use with a basic model, DOE proposed to specify the following in section 3.1.5 of appendix GG: If no cover is designated by the spa manufacturer for use with the portable electric spa, cover the spa with a single layer of 6 mil thickness (0.006 in; 0.15 mm) plastic film. Cut the plastic to cover the entire top surface of the spa and extend over each edge of the spa approximately 6 inches below the top surface of the spa. Use fasteners or weights to keep the plastic in place during the test, but do not seal the edges of the plastic to the spa (by using tape, for example). *Id.*

DOE also noted in the October 2022 NOPR that this proposal may not be applicable when the spa manufacturer specifically designates a portable electric spa model for use without a cover or with "no cover" as one of multiple cover options designated by the spa manufacturer. *Id.* In both of these cases, testing the spa with a cover made of 6 mil plastic might not be representative of field use and, therefore, it might be more representative to test the spa without a cover. *Id.* DOE requested comment on its proposed requirements for testing a portable electric spa that does not have a cover designated for use by the spa manufacturer, on whether manufacturers would ever designate a portable electric spa model to be used without a cover, or designate a "no cover" option, and how such a spa should be tested to determine the

highest standby loss. *Id.* at 87 FR 63366–63367.

In response to the October 2022 NOPR, the CEC, the CA IOUs, and the Joint Advocates expressed support for DOE's proposal regarding spa cover specifications during testing. (CEC, No. 13 at pp. 4–5; CA IOUs, No. 8 at p. 2; Joint Advocates, No. 12 at pp. 2–3) Both PHTA/IHTA and the CEC commented that they are not aware of manufacturers that designate a "no cover" option or manufacturers that do not ship an approved cover with the portable electric spa. (PHTA/IHTA, No. 10 at p. 16; CEC, No. 13 at p. 5) PHTA/IHTA emphasized that no spa would be able to pass a reasonable minimum energy efficiency standard without a cover and stated that they presumed any DOE test procedure would provide a minimum requirement that could not be met without a cover. (PHTA/IHTA, No. 10 at p. 16) Instead of the plastic film proposed by DOE to cover a portable electric spa without a designated cover, the CEC suggested using a cover that uses the same material and design as an inflatable spa cover. (CEC, No. 13 at pp. 4–5)

In response to the CEC's comment regarding covers of the same design and material as inflatable spa covers, DOE notes that portable electric spas consume significantly more energy when the spa cover is removed and manufacturer's instructions that do not specify the use of a cover may lead some consumers to use only a low-cost, minimally protective cover that would prevent debris from entering the spa but would not provide substantial insulative properties. Therefore, it is necessary to simulate a low-cost, minimally protective cover for testing if a cover is not specified by a manufacturer. Although covers resembling those used by inflatable spas may represent a lower-efficiency option than common covers for rigid spas, DOE finds that these covers provide more insulation than the plastic film proposed in the October 2022 NOPR. As a result, such covers would not meet the requirement of a low-cost, minimally protective cover as well as the plastic film proposed by DOE.

Therefore, for the reasons discussed in the October 2022 NOPR and in the preceding paragraphs, in this final rule, DOE is finalizing its requirements for installing a spa cover in section 3.1.5 of appendix GG.

DOE discusses its proposal on representations related to spa covers in section III.E.2 of this final rule.

8. Air Temperature Measurement Location

Section 5.6.3 of ANSI/APSP/ICC–14 2019 requires that ambient air temperature be measured at one point located 12 to 18 inches above the level of the spa cover and a minimum of 8 inches from the wall of the chamber. The temperature probe will be positioned and out of direct airflow from the circulation fan. ANSI/APSP/ICC–14 2019 does not provide any further requirements on the location of the ambient air temperature measurement point, such that it would be possible in a large chamber for the measurement point to be located beyond the immediate proximity of the portable electric spa. In the October 2022 NOPR, DOE noted that this lack of direction presents the possibility that the temperature could be taken at a location in the chamber with an ambient temperature that is different than the ambient temperature immediately around the portable electric spa. 87 FR 63356, 63368.

In the October 2022 NOPR, DOE proposed further requirements on the horizontal location of the ambient air temperature measurement point. *Id.* Specifically, DOE proposed in section 3.1.6 of appendix GG that the ambient air temperature measurement point specified in section 5.6.3 of ANSI/APSP/ICC–14 2019 must be located above the center of the portable electric spa. *Id.* DOE tentatively concluded that this proposed requirement ensures that ambient temperature is measured in the immediate vicinity of the portable electric spa and in the same general location each time, thereby increasing test repeatability. *Id.*

DOE requested comment on its proposal. *Id.* PHTA/IHTA commented that DOE's proposal reflects what is intended in ANSI/APSP/ICC–14 2019 and is common practice in the industry. (PHTA/IHTA, No. 10 at p. 16) PHTA/IHTA continued that it fully supports DOE's proposal to clarify ambient air temperature measurement location. (*Id.*) The CEC also commented in support of clarifying the horizontal position at which to measure the ambient temperature to ensure the measurement is taken in the same location in every test. (CEC, No. 13 at p. 5)

For the reasons stated in the October 2022 NOPR and in the preceding paragraphs, in this final rule, DOE is adopting specifications in section 3.1.6 of appendix GG that the ambient air temperature measurement point specified in section 5.6.3 of ANSI/APSP/ICC–14 2019 must be located

above the center of the portable electric spa.

9. Water Temperature Settings

The definition of “standby mode” in ANSI/APSP/ICC–14 2019 indicates that water temperature settings may be adjusted to meet the test conditions.³⁰ ANSI/APSP/ICC–14 2019 does not specify, however, whether adjustments to the water temperature settings can be made during the test. Spa users typically leave a portable electric spa at the desired water temperature setting while the spa is operating in default operation mode with the cover on. Based on these consumer usage patterns, water temperature adjustments during a test would be unrepresentative of field use. In addition, the permitting of water temperature setting adjustments during a test could influence the outcome of the test.

In the October 2022 NOPR, DOE tentatively concluded that water temperature setting adjustments would not be appropriate during the test, and that its proposed specification is required to ensure repeatable, reproducible, and representative test results. 87 FR 63356, 63368. DOE proposed in section 3.2.2 of appendix GG to specify that portable electric spa water temperature settings be adjusted to meet the test requirements, but that spa water temperature settings must not be adjusted between the start of the stabilizing period specified in section 5.6.1 of ANSI/APSP/ICC–14 2019 and the end of the test period specified in section 5.6.4.7 of ANSI/APSP/ICC–14 2019. *Id.*

DOE requested comment on its proposed requirement that water temperature settings must not be adjusted between the start of the stabilizing period and the end of the test period. *Id.* In response to DOE's request for comment in the October 2022 NOPR, both PHTA/IHTA and the CEC expressed support for DOE's proposal to clarify to not adjust water temperature settings during testing periods. (PHTA/IHTA, No. 10 at p. 16; CEC, No. 13 at p. 5) The CEC also noted that DOE's proposal reflects the intention of ANSI/APSP/ICC–14 2019 and current practice in the industry. (CEC, No. 13 at p. 5)

For the reasons stated in the October 2022 NOPR and in the preceding paragraphs, in this final rule, DOE is adopting in section 3.2.2 of appendix GG a specification that portable electric

spa water temperature settings be adjusted to meet the test requirements, but that spa water temperature settings must not be adjusted between the start of the stabilizing period specified in section 5.6.1 of ANSI/APSP/ICC–14 2019 and the end of the test period specified in section 5.6.4.7 of ANSI/APSP/ICC–14 2019.

10. Water Temperature Requirements

The sub-sections within section 5.6.1 of ANSI/APSP/ICC–14 2019 specify the range of water temperatures that are allowed during the test based on the capabilities of the portable electric spa.³¹ In the October 2022 NOPR, DOE interpreted these requirements to apply to every temperature measurement taken during the test. 87 FR 63356, 63368. However, some consumer product test procedures specify requirements for the average temperature during a test instead of the individual temperature measurements.³² In the October 2022 NOPR, DOE stated that the phrasing used in section 5.6.1 of ANSI/APSP/ICC–14 2019 could be interpreted to refer to requirements on the average temperature during the test instead of every temperature measurement taken during the test. *Id.*

DOE proposed in the October 2022 NOPR to specify explicitly in section 3.2.3 of appendix GG that each individual water temperature measurement taken during the stabilization period and test period must meet the applicable water temperature requirements specified in section 5.6.1 of ANSI/APSP/ICC–14 2019. *Id.* DOE proposed this specification to ensure that the water temperature requirements are interpreted consistently and repeatably because DOE tentatively determined the phrasing used in section 5.6.1 of ANSI/APSP/ICC–14 2019 creates the possibility that the range of water temperatures could vary between tests based on a laboratory's interpretation of whether the water temperature requirements apply to the average temperature or each individual measurement. *Id.* DOE conducted investigative testing and found that its

³¹ For example, section 5.6.1.1 states that for exercise spas or the exercise portion of a combination spa, that are capable of maintaining a minimum water temperature of 100 °F (38 °C) for the duration of the test, the spa shall be tested at 102 °F ±2 °F (39 °C ±1 °C) and maintain a minimum water temperature of 100 °F (38 °C) for the duration of the test.

³² For example, the test procedure for refrigerators and refrigerator-freezers at appendix A to subpart B of part 430 contains several requirements on the average temperature of the compartment(s) within the appliance.

³⁰ The definition of standby mode in section 3 of ANSI/APSP/ICC–14 2019 is as follows: All settings at default as shipped by the manufacturer, except water temperature, which may be adjusted to meet the test conditions. No manual operations are enabled.

proposed requirement can be met in typical spa operation. *Id.*

DOE requested comment on its proposal. *Id.* In response to the October 2022 NOPR, PHTA/IHTA commented that industry currently interprets requirements for individual water temperature measurements as proposed by DOE and that it supports DOE's proposal as it may better describe the original intent of what is provided for in ANSI/APSP/ICC-14 2019. (PHTA/IHTA, No. 10 at p. 16)

For the reasons stated in preceding paragraphs and in the October 2022 NOPR, in this final rule, DOE is adopting in section 3.2.3 of appendix GG a specification that each individual water temperature measurement taken during the stabilization period and test period must meet the applicable water temperature requirements specified in section 5.6.1 of ANSI/APSP/ICC-14 2019.

11. Standby Loss Calculation

Section 5.7 of ANSI/APSP/ICC-14 2019 contains calculations for normalized standby power. This includes calculating the measured standby power and normalizing that standby power to a normalized temperature difference between the water in the spa and the ambient air. As discussed in section III.C.3 of this final rule, DOE is adopting a requirement to use the term "standby loss" instead of "normalized standby power." In addition, as discussed in section III.D.3 of this final rule, DOE is adopting a requirement to specify a representative ambient air temperature of 56 °F.

In the October 2022 NOPR, DOE proposed standby loss calculations in section 3.3 of appendix GG, including a normalized temperature difference of 46 °F (*i.e.*, 102 °F – 56 °F) for units tested at a water temperature of 102 °F ± 2 °F, and a normalized temperature difference of 31 °F (*i.e.*, 87 °F – 56 °F) for units tested at a water temperature of 87 °F ± 2 °F. 87 FR 63356, 63369. DOE calculated each proposed normalized temperature difference as the difference between the midpoints of the allowable water temperature and ambient air temperature ranges, which DOE tentatively concluded as being the most representative method for determining a normalized temperature difference. *Id.*

DOE's proposed approach to calculate the normalized temperature differs from the approach used in section 5.7 of ANSI/APSP/ICC-14 2019, which normalizes to a temperature difference equal to the minimum of the allowed water temperature range (*i.e.*, 100 °F or 85 °F) minus the maximum of the allowed ambient air temperature range

(*i.e.*, 63 °F). *Id.* DOE tentatively concluded that this approach may not be representative of an average use cycle because it normalizes standby loss to the minimum expected temperature difference resulting from the two defined ranges. *Id.*

DOE requested comment on the proposed standby loss calculations, including the method used to calculate normalized temperature differences based on the midpoint of the allowable temperature ranges. *Id.* DOE also requested comment on its tentative conclusion that normalizing standby loss to the midpoint of the allowable temperature ranges would produce test results that are more representative than normalizing standby loss to the minimum expected temperature difference between the allowable ranges. *Id.*

PHTA/IHTA strongly recommended that there be no change to the normalized temperature difference and that DOE use the minimum water temperature and maximum ambient temperature to determine the normalized temperature difference. (PHTA/IHTA, No. 10 at pp. 7, 17) PHTA/IHTA indicated that the particular normalized temperature difference has no effect on the comparison between portable electric spas at a given temperature difference, in that the ranking of portable electric spa standby loss will stay the same no matter the normalized temperature difference used. (*Id.* at pp. 6, 17) PHTA/IHTA also indicated that the minimum water temperature and maximum ambient air temperature were chosen to reduce the number of test results discarded due to temperatures being out of tolerance. (*Id.* at p. 17) Finally, PHTA/IHTA stated that if DOE feels strongly that the normalized temperature difference should be 46 °F, the formula specifying the allowed standby loss must be changed accordingly. (*Id.* at p. 7) Master Spas also commented that the current normalization method should be left intact, as it is representative, it is proven to be reproducible, and changing it would impose burden on the industry. (Master Spas, No. 7 at p. 2)

Regarding PHTA/IHTA's comment that use of the minimum water temperature and maximum ambient air temperature minimizes the discarding of test results, DOE concludes that the normalized temperature difference has no effect on whether test results are discarded. The validity of test results is based on the water and ambient air temperature tolerances during the test, which are different than the normalized temperature difference used for

normalizing the standby loss. The DOE test procedure uses the water temperature tolerances from ANSI/APSP/ICC-14 2019, and the ambient air temperature tolerances are discussed in section III.D.3 of this final rule.

PHTA/IHTA's statement that the ranking of portable electric spa standby loss will stay the same regardless of whether the normalized temperature difference used is accurate. DOE proposed to change the normalized temperature difference not to change the ranking of portable electric spa standby loss, but to make representations of standby loss more representative. To this end, it is more representative to base the normalized temperature difference on an air temperature of 56 °F—the ambient air temperature that DOE has determined as the representative national ambient temperature for portable electric spas in section III.D.3 of this final rule—than it is to base it on air temperature of 63 °F. It is also more representative to use the midpoint of the allowed water temperature range than it is to use the minimum of the allowed water temperature range, because it is DOE's understanding that the midpoint of each allowed temperature range (*i.e.*, 102 °F for most portable electric spas and 87 °F for exercise spas that cannot maintain a minimum water temperature of 100 °F) is the most commonly used temperature setting for the products using the respective range.

Regarding PHTA/IHTA's comment that the allowed standby loss must be changed if the normalized temperature difference is changed, DOE notes that if it were to establish an energy conservation standard for portable electric spas, that energy conservation standard would be based on the standby loss as measured by the DOE test procedure. As a result, any energy conservation standard would take into account the normalized temperature difference used in the DOE test procedure.

Therefore, for the reasons discussed in the October 2022 NOPR and in the preceding paragraphs, in this final rule, DOE is finalizing in section 3.3 of appendix GG the standby loss calculations that were proposed in the October 2022 NOPR.

E. Represented Values Provisions

1. Basic Model

In the course of regulating consumer products, DOE has developed the concept of a "basic model" to determine the specific product or equipment configuration(s) to which the regulations would apply. DOE's existing

definition of this term at 10 CFR 430.2 states that “basic model” means all units of a given type of covered product (or class thereof) manufactured by one manufacturer that have the same primary energy source and have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.³³

In the October 2022 NOPR, DOE tentatively determined that the general definition of “basic model” is appropriate for portable electric spas. 87 FR 63356, 63379. For the purposes of applying the proposed portable electric spa regulations, DOE proposed to rely on the definition of “basic model” as currently defined at 10 CFR 430.2. *Id.* As proposed, manufacturers would be required to test only a representative number of units of a basic model in lieu of testing every individual model they manufacture, and individual models of portable electric spas would be permitted to be grouped under a single basic model so long as all grouped models have the same representative energy performance, which is representative of the unit with the highest standby loss. *Id.*

DOE also proposed that if a basic model is distributed in commerce with multiple covers designated by the spa manufacturer for use with the basic model, a manufacturer must determine all represented values for that basic model based on the cover that results in the highest standby loss, except that the manufacturer may choose to identify specific individual combinations of spa and cover as additional basic models. *Id.* DOE addresses comments on this proposal regarding spa covers in section III.E.2 of this final rule.

DOE requested comment on the proposed applicability of the definition of “basic model” at 10 CFR 430.2 to portable electric spas. *Id.*

In written comments responding to the October 2022 NOPR, the CEC supported applying the definition of “basic model.” (CEC, No. 13 at p. 5) However, PHTA/IHTA and Master Spas stated that there is a lack of clarity on the features that constitute different basic models, and, without more clarity, manufacturers would only group basic models that have different aesthetic features (e.g., cabinet colors). (PHTA/IHTA, No. 10 at p. 17; Master Spas, No. 7 at pp. 2–3) Master Spas identified differences in fill volume, shape, size,

electric characteristics, and hydraulic characteristics as items that might be used to differentiate basic models.

(Master Spas, No. 7 at pp. 2–3) PHTA/IHTA also indicated that the use of a circulation pump and the number of jets are additional characteristics that might be used to distinguish models. (PHTA/IHTA, No. 10 at p. 17) PHTA/IHTA also argued that while DOE mentioned that basic models can help minimize test burden, the proposed method does not account for the testing required to determine the most consumptive spa within a given basic model. (*Id.*)

In response to the lack of clarity that PHTA/IHTA and Master Spas identified regarding the features that constitute a basic model, DOE notes that manufacturers can choose how they interpret the term “essentially identical” in the basic model definition, as long as the individual model used to represent the basic model has the highest standby loss of all individual models in that basic model. The more broadly they choose to interpret this term, the more individual models can potentially be grouped within a single basic model. Therefore, manufacturers have the ability to determine the number of basic models they want to represent, as long as the individual model used to represent each basic model has the highest standby loss of all individual models in that basic model.

Regarding PHTA/IHTA’s concern that DOE’s claim that basic models can help minimize test burden does not account for the testing required to determine the most consumptive spa within a given basic model, DOE notes that, as discussed, manufacturers have the ability to determine the number of basic models they want to represent, as long as the individual model used to represent each basic model has the highest standby loss of all individual models in that basic model. When determining that number, manufacturers can consider the testing required to determine the most consumptive spa within a given basic model to ensure that their total testing burden, including tests to determine the most consumptive spa within a given basic model, will be manageable. In addition, DOE notes that manufacturers of other products have used the basic model approach to considerably reduce the number of individual models that require testing. There is no clear reason why portable electric spa manufacturers should not be able to do the same thing by combining their product knowledge with judicious use of the basic model definition. The alternative approach would be to have manufacturers test and rate individual models with any difference in design as

unique basic models, which would increase testing burden far beyond PHTA/IHTA and Master Spas’s estimates. As a result, DOE concludes that the basic model approach should reduce the testing burden on portable electric spa manufacturers considerably, even when including the testing required to determine the most consumptive spa within a given basic model, when compared to testing all individual models.

Therefore, for the reasons discussed in the October 2022 NOPR and in the preceding paragraphs, in this final rule, DOE is finalizing its proposal in the October 2022 NOPR to rely on the definition of “basic model” as currently defined at 10 CFR 430.2.

2. Represented Values

DOE provides requirements for represented values and sampling plans for all covered products in subpart B to 10 CFR part 429. The purpose of a statistical sampling plan is to provide a method to determine represented values of energy- and non-energy-related metrics for each basic model.

In the October 2022 NOPR, DOE proposed to create a new section at 10 CFR 429.66³⁴ for portable electric spas and to require that, for each basic model, a sample of sufficient size must be randomly selected and tested to ensure that any represented value of standby loss or other measure of energy consumption of a basic model for which customers would favor lower values is greater than or equal to the higher of the following two values:

- (1) The mean of the sample, where:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^n x_i$$

and $\bar{x}$ is the sample mean, n is the number of samples, and x_i is the maximum of the i^{th} sample;

Or,

- (2) The upper 95-percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{0.95} \left(\frac{s}{\sqrt{n}} \right)$$

and $\bar{x}$ is the sample mean, s is the sample standard deviation, n is the number of samples, and $t_{0.95}$ is the t statistic for a 95-percent one-tailed confidence interval with $n - 1$ degrees of freedom (from appendix A of subpart B

³³ The definition of “basic model” in 10 CFR 430.2 also includes several product-specific paragraphs that are not relevant to portable electric spas.

³⁴ The section was proposed as 10 CFR 429.66 in the October 2022 NOPR, but it is being finalized in this final rule as 10 CFR 429.76, due to additional sections that have been added between the dates of the proposal and the final rule.

of 10 CFR part 429). 87 FR 63356, 63369.

DOE proposed in 10 CFR 429.66 that the represented value of standby loss must be a whole number of watts. *Id.* Additionally, DOE proposed that the represented value of fill volume must be a whole number of gallons that is within 5 gallons of the mean of the fill volumes measured for the units in the sample used to determine the represented value of standby loss. *Id.* DOE's proposal on fill volume representations is discussed in section III.D.6 of this final rule.

Portable electric spas are often available with more than one model of cover, and the characteristics of the cover can significantly affect measured standby loss. In the October 2022 NOPR, DOE proposed that if a basic model is distributed in commerce with multiple covers designated by the spa manufacturer for use with the basic model, a manufacturer must determine all represented values for that basic model based on the cover that results in the highest standby loss, except the manufacturer may choose to identify specific individual combinations of spa and cover as additional basic models. *Id.* at 87 FR 63370. DOE also proposed that if a basic model is distributed in commerce with no cover designated by the spa manufacturer for use with the basic model, a manufacturer must determine all represented values for that basic model by testing as specified in section 3.1.5.2 of appendix GG to subpart B of part 430. *Id.* DOE's proposal on testing units without a designated cover is discussed in section III.D.7 of this final rule.

DOE requested comment on the proposed statistical sampling procedures and representations requirements for portable electric spas. *Id.* DOE also requested comment on the proposal that represented values be based on testing with the designated cover that results in the highest standby loss or by testing as specified in section 3.1.5.2 of appendix GG to subpart B of part 430 if there is no designated cover. *Id.*

In response to the October 2022 NOPR, the CEC commented in support of DOE's proposal for providing calculation instructions on represented values and sampling plans. (CEC, No. 13 at p. 5) PHTA/IHTA requested clarification on the number of units for each basic model that would be required for testing to generate the 95-percent confidence level. (PHTA/IHTA, No. 10 at p. 17) PHTA/IHTA indicated that ANSI/APSP/ICC-14 2019 requires only a single unit to be tested and requested that DOE consider their concerns on how basic models are defined, as well

as the amount of time necessary to test each model, given that some test labs only have the capacity to test one portable electric spa at a time. (*Id.* at p. 17–18) Master Spas also highlighted the amount of time required for testing and requested that DOE allow manufacturers to test only a single unit of a basic model when grouping of models is not exercised. (Master Spas, No. 7 at p. 3) Master Spas also stated that they supported testing at least two spas per basic model if grouping was performed. (*Id.*)

PHTA/IHTA, the CEC, and the CA IOUs commented in support of DOE's proposal on the spa cover to use for representations. (PHTA/IHTA, No. 10 at p. 18; CEC, No. 13 at p. 4; CA IOUs, No. 8 at p. 2)

Regarding PHTA/IHTA's request for clarification of the number of units of each basic model that need to be tested, the proposed section 10 CFR 429.66(a)(2) states that the sampling requirements of 10 CFR 429.11 are applicable to portable electric spas. 10 CFR 429.11(b) states that the minimum number of units tested shall be no less than two, except where a different minimum limit is specified for the product or only one unit of the basic model is produced, in which case that single unit must be tested. As a result, at least two units of a basic model of portable electric spas must be tested, unless only one unit of the basic model is produced, in which case that single unit must be tested. Additionally, although PHTA/IHTA stated that ANSI/APSP/ICC-14 2019 requires only a single unit to be tested, DOE has not been able to identify any specification of the number of units to be tested in ANSI/APSP/ICC-14 2019. As a result, DOE surmises that agencies that choose to use ANSI/APSP/ICC-14 2019 as part of a State or local energy conservation program or energy code, or manufacturers that choose to use ANSI/APSP/ICC-14 2019 on a voluntary basis, would choose the number of units to be tested per basic model.

Regarding the comments from PHTA/IHTA and Master Spas on the potential for testing only one unit of a basic model instead of two, DOE notes that, as discussed, manufacturers have the ability to determine the number of basic models they want to represent, as long as the individual model used to represent each basic model has the highest standby loss of all individual models in that basic model. When determining that number, manufacturers can consider the need to test at least two units for each basic model to ensure that their total testing burden, including testing at least two units for each basic

model, will be manageable. DOE surmises that this ability to define the grouping of individual models into basic models addresses the concerns of Master Spas and PHTA/IHTA, because Master Spas stated that they supported testing at least two spas per basic model if grouping were performed, and PHTA/IHTA referred to their concerns on basic model definition (discussed in section III.E.1) as part of their comment on the sample size. DOE also notes that these same minimum requirements are used across almost all products with DOE test procedures, with a wide range of required test durations. PHTA/IHTA did not make clear why manufacturers of portable electric spas would require a sample size smaller than those of other products. As a result, DOE is not including a smaller required sample size in this final rule.

For the reasons discussed in the October 2022 NOPR and in the preceding paragraphs, in this final rule, DOE is establishing in 10 CFR 429.76 the requirements for represented values and sampling plans that were proposed in the October 2022 NOPR. DOE is also updating paragraphs (a) and (b)(1) in 10 CFR 429.11, which lists the general sampling requirements for selecting units to be tested, to change the referenced sections from “10 CFR 429.14 through 10 CFR 429.69” to “10 CFR 429.14 through 10 CFR 429.69 and 10 CFR 429.76.”

F. Test Procedure Costs

Use of the DOE test procedure established in this final rule will not be required for use until new energy conservation standards are established, if they are established. As a result, this test procedure will not in itself impose any costs on any manufacturers. Although use of the test procedure is not required as a result of this test procedure final rule, DOE has undertaken a study of the costs of testing a portable electric spa in the event of new energy conservation standards.

In the October 2022 NOPR, DOE estimated the per-test cost for third-party laboratory testing of portable electric spas according to the current industry consensus test procedure, ANSI/APSP/ICC-14 2019, to be \$5,000 for standard and inflatable spas, \$9,000 for exercise spas, and \$11,000 for combination spas. 87 FR 63356, 63370. In the October 2022 NOPR, DOE estimated the per-unit test cost for third-party lab testing according to the proposed DOE test procedure to be approximately the same except for an additional \$150 per test to account for the purchase of equipment to control

ambient temperature. In this final rule, DOE has adjusted the test procedure, factoring in public comments that will be discussed further in the remainder of this section, to no longer require the use of this equipment. Accordingly, DOE expects per-unit test costs to be the same as the existing industry consensus test procedure. Two units will need to be tested per basic model to certify compliance under this test procedure. Although ANSI/APSP/ICC-14 2019 does not specify the number of units of a basic model that need to be tested, DOE generally requires that at least two units be tested to certify compliance with energy conservation standards (*see* 10 CFR 429.11(b)) to ensure that such determinations of compliance are representative of actual basic model performance and is finalizing that requirement in this final rule. Additionally, this final rule includes a requirement that testing be conducted on a raised wood deck rather than a foam bed (which is used in the industry test procedure). DOE expects the total cost of constructing this new flooring would be \$877.01 per test station.³⁵

In response to the October 2022 NOPR, commenters expressed concern for the financial burden that would ensue by deviating from the ANSI/APSP/ICC-14 2019 test procedure. The Texas A&M Students noted that increased cost for companies would result in higher cost to consumers, but that is not too concerning because spas are a luxury item. (Texas A&M Students, No. 4 at pp. 1–2) PHTA/IHTA commented that retesting all ANSI/APSP/ICC-14 2019 compliant products would cost a minimum of \$5,000 per portable electric spa and more for exercise spas. (PHTA/IHTA, No. 10 at p. 18) PHTA/IHTA argued that the \$150 increase for equipment to control ambient temperature described by DOE does not consider retesting, and that the number of models that would need to be retested is likely undervalued because manufacturers may be selling portable electric spas in states noncompliant with CA Title 20. (*Id.*) Watkins also expressed concern for the significant financial burden that would result from deviation from ANSI/APSP/ICC-14 2019. (Watkins, No. 14 at p. 2)

Regarding retesting portable electric spas, Master Spas commented that

testing every spa twice would cause immense burden, and that even with advanced testing capacities, retesting would still take about 60 weeks. (Master Spas, No. 7 at p. 3) Master Spas added that most labs do not have such testing capacities, which means their testing would take much longer, and retesting would be burdensome to the spa industry. (*Id.*) Because the industry cannot afford to lose time, Master Spas urged DOE to consider special exceptions for testing models twice. (*Id.*) PHTA/IHTA commented that retesting due to the proposed changes in ambient temperature, normalization, and chamber floor requirements in the October 2022 NOPR would incur millions of dollars in expenses with no significant increase in energy efficiency and could make costs to consumers higher. (PHTA/IHTA, No. 7 at pp. 3–4) PHTA/IHTA mentioned collaborating on CA Title 20 regulation and CSA C374:11 (R2021)³⁶ and said that there is currently not enough testing data on the proposed changes to the test procedure to prove these changes will produce a net benefit. (*Id.*) Master Spas agreed that retesting would cost millions and that there is a lack of existing data, which would require additional trial and error testing. (Master Spas, No. 7 at p. 3) PHTA/IHTA also commented that any substantive changes would require additional data analysis, as data mentioned in the October 2022 NOPR was not made available. (PHTA/IHTA, No. 7 at p. 4)

In response to these comments, DOE notes that many of DOE's proposals in the October 2022 NOPR, specifically those regarding ambient temperature, normalization, and floor conditions, would have required retesting and imposed further burden on manufacturers in the event of new energy conservation standards. However, DOE has accounted for this potential burden in this final rule and modified its final proposal to mitigate unnecessary time and financial burden. These modifications are discussed in more detail in sections III.D.3 and III.D.4 of this final rule.

In finalizing this test procedure, DOE finds that the testing of two units per basic model, including the retesting of models previously tested under the industry test procedure, is necessary for appropriate representativeness. As stated, use of the test procedure established in this final rule will not be required for use until the compliance

date of any new energy conservation standards for portable electric spas, if such standards are finalized. DOE expects that the time period until any energy conservation standards on these products would allow sufficient time for manufacturers to conduct testing. Additionally, application of the basic model provisions, as discussed in section III.E.1 of this document, would limit the number of individual models manufacturers would be required to test to make representations of efficiency.

In regard to possible impacts on consumers associated with this test procedure, DOE does not expect that these increased test costs for manufacturers will lead to significantly higher prices for consumers. Commenters are correct that, if energy conservation standards are finalized, test costs across the industry would constitute several millions of dollars—however, additional costs related to a given model are very small relative to overall production costs associated with that model and would not justify a significant increase to its selling price. DOE expects that the finalized test procedure will produce more representative efficiency metrics that consumers can use to inform purchasing choices to their benefit as well as better support compliance with potential energy conservation standards. Costs associated with this test procedure will be part of the cost-benefit analysis conducted for potential energy conservation standards, which DOE uses to evaluate whether potential standards are economically justified.

G. Effective and Compliance Dates

The effective date for the prescribed test procedure will be 30 days after publication of this final rule in the **Federal Register**.

EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended or new test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2)) To the extent the test procedure established in this final rule is required only for the evaluation and issuance of new efficiency standards, compliance with the test procedure does not require use of such test procedure until the compliance date of new standards.

For portable electric spas, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with the test procedure in this final rule,

³⁵ DOE expects that the required materials would consist of 77 10 ft 2 x 6 wooden beams, for a cost of \$8.95 each, and decking screws costing \$22.94. Labor costs are expected to be four hours at a rate of \$41.23 (national median wage of a mechanical engineering technician is 29.07, wages account for 70.5 percent of total employment costs). All together, these supplies and labor (\$8.95 * 77 + \$22.94 * 4) equal \$877.01.

³⁶ The standard CSA 374:11 (R2021) was referred to as CAN/CSA-C374-11 or CAN/CSA-C374-11 (R2021) by PHTA/IHTA and was referred to as CAN/CSA-C374-11 (R2021) in the October 2022 NOPR.

beginning on the compliance date of any Federal energy conservation standards for portable electric spas.

DOE is specifying a compliance date later than 180 days after the publication of the final rule in the **Federal Register** because several States have test procedures and energy conservation standards in place for portable electric spas. The test procedure in this final rule establishes measures of energy consumption that are different than those currently used by States. As a result, compliance with the DOE test procedure would require all State programs to be adjusted to use the measures of energy consumption in the DOE test procedure.

By requiring compliance with the DOE test procedure beginning on the compliance date of any Federal energy conservation standards for portable electric spas, DOE is avoiding the necessity for State programs to be adjusted to use the measures of energy consumption in the DOE test procedure. This compliance date also provides States and manufacturers additional time to adjust to the new rating method in the DOE test procedure and to align all changes with the compliance date of any Federal energy conservation standards. In addition, the extended compliance date will alleviate the potential burden, raised by some commenters in response to the October 2022 NOPR, for manufacturers to test a large number of models within a short duration with limited testing facilities.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14904

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 this 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.

As noted in section III.F of this document, no mandatory costs will be incurred by any manufacturers as a result of this final rule. Use of the test procedure would not be required until the compliance date of any new energy conservation standards established for portable electric spas. Therefore, DOE concludes that the impacts of the test procedure in this 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 will transmit the 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).

Despite a FRFA not being required, in the following sections, DOE has conducted an analysis of the cost impacts to small businesses associated with this test procedure in the event of any new energy conservation standards for portable electric spas.

1. Description and Estimate of Small Entities Regulated

DOE uses the Small Business Administration (“SBA”) small business size standards to determine whether manufacturers qualify as “small businesses,” which are listed by the North American Industry Classification System (“NAICS”).³⁷ The SBA considers a business entity to be a small business if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121.

Portable electric spa manufacturers, who produce the products covered by this final rule, are classified under NAICS code 333414, “Heating Equipment (except Warm Air Furnaces) Manufacturing.” In 13 CFR 121.201, the SBA sets a threshold of 500 employees or fewer for an entity to be considered as a small business in this category. This employee threshold includes all employees in a business’s parent company and any other subsidiaries. DOE used available public information, such as the MAEDbS, to identify potential manufacturers. Once DOE created a list of potential manufacturers, DOE used market research tools to determine whether any met the SBA’s definition of a small entity.

DOE identified 28 companies potentially manufacturing portable electric spas covered by this test procedure. DOE screened out companies that do not meet the small entity definition and, additionally, screened out companies that are largely or

³⁷ Available at: www.sba.gov/document/support-table-size-standards.

entirely foreign owned and operated. Of the 28 companies, 14 were identified as a small business. Each of these small businesses were further identified—through a review of their websites and online documentation—to be original equipment manufacturers manufacturing covered portable electric spas as opposed to rebranding spas, integrating the spas into some broader product offering, or producing spas for strictly commercial applications.

2. Description and Estimate of Compliance Requirements

DOE's test procedure is largely consistent with the current industry consensus test method ANSI/APSP/ICC-14 2019. As such, DOE anticipates that this final rule will be unlikely to significantly increase existing per-unit test burden given that DOE is referencing the prevailing industry test procedure. However, this test procedure does require two tests per basic model, which would be a substantial cost

increase, as well as requiring tests to be conducted on decking rather than a foam pad—in the event energy conservation standards are established.

Commenting on the October 2022 NOPR, the Texas A&M Students stated that companies may have to pay anywhere from \$5,000–\$11,150 to retest spas, and though that may not be a huge burden to large companies, it would be a burden for smaller companies. (Texas A&M Students, No. 4 at pp. 1–2) However, the Texas A&M Students noted that the cost would be somewhat mitigated because many States already have many of the proposed changes and tests in place. (*Id.* at p. 2)

DOE agrees that costs imposed by the test procedure may be relatively higher for small manufacturers than large manufacturers. Still, DOE does not expect these costs to be a significant burden to small manufacturers. In the following paragraph and table, DOE reviews the estimated test costs for each identified small business and places

those test costs in terms of the businesses estimated revenue.

DOE understands that most portable electric spa manufacturers elect to test units at a third-party testing facility. DOE estimates the per unit model test costs for third-party lab testing to be \$5,000 for standard and inflatable spas, \$9,000 for exercise spas, and \$11,000 for combination spas. In the table below, DOE provides estimates of the possible cost impacts (based on estimated basic model counts from MAEDbS) for each small business, estimated small business revenue, and those costs as a percentage of revenue. The cost to build decking for the purposes of the test is included on the assumption that a small business will need to cover the cost of decking for one testing station—estimated to total \$877.01. On average, estimated testing costs represent 1.2 percent of annual revenue for a given small business.

TABLE IV.1—ESTIMATED TESTING BURDEN FOR SMALL, DOMESTIC MANUFACTURERS

Manufacturer	Estimated testing burden (2022\$m)	Annual revenue (2022\$m)	Percent of annual revenue (%)
Manufacturer A	0.16	51.4	0.3
Manufacturer B	0.01	10.3	0.1
Manufacturer C	0.12	29.6	0.4
Manufacturer D	0.05	0.6	8.5
Manufacturer E	0.03	111	0.0
Manufacturer F	0.28	62.0	0.5
Manufacturer G	0.34	27.0	1.3
Manufacturer H	0.12	20.0	0.6
Manufacturer I	0.14	7.52	1.9
Manufacturer J	0.04	23.7	0.2
Manufacturer K	0.04	40.0	0.1
Manufacturer L	0.09	12.7	0.7
Manufacturer M	0.06	7.73	0.8
Manufacturer N	0.02	2.19	1.0

Based on this analysis, DOE does not expect the testing costs to be a significant burden to small manufacturers.

C. Review Under the Paperwork Reduction Act of 1995

Although no energy conservation standards have been established for portable electric spas as of the publication of this final rule, manufacturers of portable electric spas would need to certify to DOE that their products comply with any potential future 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. (*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.

Certification data will be required for portable electric spas once any energy

conservation standards have been established for portable electric spas; however, DOE is not establishing certification or reporting requirements for portable electric spas in this final rule. Instead, DOE may consider proposals to establish certification requirements and reporting for portable electric spas 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 a test procedure that it expects will be used to develop and implement future energy conservation standards for portable electric spas. 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. For the reasons described below, DOE has examined this final rule and has determined that this rule meets the relevant standards of E.O. 13132.

E.O. 13132 includes special requirements for preemption, including that Federal agencies must only construe a Federal statute to preempt State law where the statute includes express preemption or some other clear evidence that Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. 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) As such, any State regulation regarding portable electric spa testing will be preempted on the compliance dates listed in the **DATES** section. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297)

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)) 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 final 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 test procedure for portable electric spas adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: Pool & Hot Tub Alliance ANSI/APSP/ICC–14 2019, “American National Standard for Portable Electric Spa Energy Efficiency,” and CSA C374:11 (R2021) “Energy performance of hot tubs and spas.” DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.*, whether they were developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

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

N. Description of Materials Incorporated by Reference

ANSI/APSP/ICC–14 2019 and CSA C374:11 (R2021) are industry-accepted test standards that specify methods for measuring the energy efficiency of portable electric spas that differ in certain installation requirements.

Specifically, the test procedure codified by this final rule references ANSI/APSP/ICC–14 2019 for measuring the energy efficiency of portable electric spas. ANSI/APSP/ICC–14 2019 is reasonably available from PHTA (www.phta.org).

Specifically, the test procedure codified by this final rule references CSA C374:11 (R2021) for specifying the platform on which to install portable electric spas during testing. CSA C374:11 (R2021) is reasonably available from the CSA Group (www.csagroup.org).

V. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

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

Signed in Washington, DC, on May 30, 2023.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends parts 429 and 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

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

§ 429.11 [Amended]

■ 2. Amend paragraphs (a) and (b)(1) by removing the text “§§ 429.14 through 429.69” and adding in its place “§§ 429.14 through 429.69 and § 429.76”.

- 3. Add § 429.76 to subpart B to read as follows:

§ 429.76 Portable electric spas.

(a) *Determination of represented values.* Manufacturers must determine the represented values for each basic model of portable electric spas by testing in conjunction with the following provisions.

(1) For spa covers:

(i) If a basic model is distributed in commerce with multiple covers designated by the spa manufacturer for use with the basic model, a manufacturer must determine all represented values for that basic model based on the cover that results in the highest standby loss, except that the manufacturer may choose to identify specific individual combinations of spa and cover as additional basic models.

(ii) If a basic model is distributed in commerce with no cover designated by the spa manufacturer for use with the basic model, a manufacturer must determine all represented values for that basic model by testing as specified in section 3.1.5.2 of appendix GG to subpart B of this part.

(2) The sampling requirements of § 429.11 are applicable to portable electric spas; and

(3) For each basic model of portable electric spas, a sample of sufficient size must be randomly selected and tested to ensure that any representation of standby loss or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(i) The mean of the sample, where:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^n x_i$$

and $\bar{x}$ is the sample mean, n is the number of samples, and x_i is the i^{th} sample; or,

(ii) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{0.95} \left(\frac{s}{\sqrt{n}} \right)$$

and $\bar{x}$ is the sample mean, s is the sample standard deviation, n is the number of samples, and $t_{0.95}$ is the t statistic for a 95 percent one-tailed confidence interval with $n-1$ degrees of freedom (from appendix A of subpart B of part 429).

(4) The represented value of standby loss must be a whole number of watts.

(5) The represented value of fill volume of a basic model must be a

whole number of gallons that is within 5 gallons of the mean of the fill volumes measured for the units in the sample selected as described in paragraph (a)(3) of this section.

(b) [Reserved]

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

- 4. The authority citation for part 430 continues to read as follows:

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

- 5. Amend § 430.3 by:

■ a. Revising paragraph (a);

■ b. Revising paragraph (k) introductory text;

■ c. Adding paragraph (k)(2);

■ d. Redesignating paragraphs (w) through (x) as paragraphs (x) through (y); and

■ e. Adding a new paragraph (w).

The revision and additions read as follows:

§ 430.3 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the U.S. Department of Energy (DOE) must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at DOE and at the National Archives and Records Administration (NARA).

Contact DOE at: The U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 1000 Independence Ave. SW, EE-5B, Washington, DC 20585, (202) 586-9127, Buildings@ee.doe.gov, <https://www.energy.gov/eere/buildings/appliance-and-equipment-standards-program>. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html or email fr.inspection@nara.gov. The material may be obtained from the sources in the following paragraphs of this section.

* * * * *

(k) CSA. CSA Group, 178 Rexdale Blvd., Toronto, ON, Canada M9W 1R3, 1-800-463-6727 or 416-747-4044, www.csagroup.org.

* * * * *

(2) CSA C374:11 (R2021), Energy performance of hot tubs and spas, published November 2011, Update No.

1—National Standard of Canada—April 2012; IBR approved for appendix GG to subpart B of this part.

* * * * *

(w) PHTA. Pool & Hot Tub Alliance, 2111 Eisenhower Avenue, Suite 500, Alexandria, VA 22314 (www.phta.org), (703) 838-0083.

(1) ANSI/APSP/ICC-14 2019, American National Standard for Portable Electric Spa Energy Efficiency, ANSI-approved November 19, 2019; IBR approved for appendix GG to subpart B of this part.

(2) [Reserved]

* * * * *

- 6. Amend § 430.23 by adding a new paragraph (ii) to read as follows:

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

* * * * *

(ii) *Portable electric spas.* Measure the standby loss in watts and the fill volume in gallons of a portable electric spa in accordance with appendix GG to this subpart.

- 6. Add appendix GG to subpart B of part 430 to read as follows:

Appendix GG to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Portable Electric Spas

Note: Beginning on the compliance date of any energy conservation standards for portable electric spas specified in § 430.32, all representations of fill volume, energy efficiency, and energy use of portable electric spas, including those made on marketing materials and product labels, must be made in accordance with this test procedure.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3, the entire standard for ANSI/APSP/ICC-14 2019 and CSA C374:11 (R2021). However, only enumerated provisions of ANSI/APSP/ICC-14 2019 and CSA C374:11 (R2021), as listed in this section 0 are required. To the extent there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control. Non-enumerated provisions of ANSI/APSP/ICC-14 2019 are specifically excluded.

0.1. ANSI/APSP/ICC-14 2019

(a) Section 3—Definitions (excluding the definitions for *cover*, *specified*, *fill volume*, *rated volume*, and *standby mode*), as specified in section 2.1 of this appendix;

(b) Section 5—Test Method (excluding Sections 5.1, 5.2, 5.5.2, 5.5.4, 5.5.5, and 5.7), as specified in sections 3, 3.1.6, 3.2.2, and 3.2.3 of this appendix;

(c) Appendix A—Minimum Chamber Requirements (excluding section titled *Chamber floor*), as specified in section 3.1.1 of this appendix.

0.2. CSA C374:11 (R2021)

(a) Clause 5.1.1—Test room, as specified in section 3.1.2 of this appendix;

(b) Figure 1—Test platform, as specified in section 3.1.2 of this appendix.

1. Scope

This appendix provides the test procedure for measuring the standby loss in watts and the fill volume in gallons of portable electric spas.

2. Definitions

2.1. Section 3, Definitions, of ANSI/APSP/ICC-14 2019 applies to this test procedure. In case of conflicting terms between ANSI/APSP/ICC-14 2019 and DOE's definitions in this appendix or in § 430.2, DOE's definitions take priority.

2.2. *Combination spa* means a portable electric spa with two separate and distinct reservoirs, where—

- (a) One reservoir is an exercise spa;
- (b) The second reservoir is a standard spa; and
- (c) Each reservoir has an independent water temperature setting control.

2.3. *Exercise spa* means a variant of a portable electric spa in which the design and construction includes specific features and equipment to produce a water flow intended to allow recreational physical activity including, but not limited to, swimming in place. An exercise spa is also known as a swim spa.

2.4. *Exercise spa portion* means the reservoir of a combination spa that is an exercise spa.

2.5. *Fill volume* means the volume of water held by the portable electric spa when it is filled as specified in section 3.1.4 of this appendix.

2.6. *Inflatable spa* means a portable electric spa where the structure is collapsible and is designed to be filled with air to form the body of the spa.

2.7. *Standard spa* means a portable electric spa that is not an inflatable spa, an exercise spa, or the exercise spa portion of a combination spa.

2.8. *Standard spa portion* means the reservoir of a combination spa that is a standard spa.

2.9. *Standby loss* means the mean normalized power required to operate the portable electric spa in default operation mode with the cover on, as calculated in section 3.3 of this appendix.

3. Test Method

Determine the standby loss in watts and fill volume in gallons for portable electric spas in accordance with section 5, *Test Method*, of ANSI/APSP/ICC-14 2019, except as follows.

3.1. Test Setup

3.1.1. Chamber

Install the portable electric spa in a chamber satisfying the requirements specified for *Chamber internal dimensions*,

Air flow, and *Chamber insulation* in appendix A, *Minimum Chamber Requirements*, to ANSI/APSP/ICC-14 2019.

3.1.2. Chamber Floor

Install the portable electric spa on a platform as specified in Clause 5.1.1(b) and Figure 1 of CSA C374:11 (R2021).

3.1.3. Electrical Supply Voltage and Amperage Configuration

3.1.3.1. General

If the portable electric spa can be installed or configured with multiple options of voltage, maximum amperage, or both, use the hierarchy in section 3.1.3.2 of this appendix to determine the configuration for testing.

3.1.3.2. Hierarchy

Use the as-shipped configuration, if such a configuration is provided.

If no configuration is provided in the as-shipped condition, use the option specified in the manufacturer's instructions as the recommended configuration for normal consumer use.

If no configuration is provided in the as-shipped condition and the manufacturer's instructions do not provide a recommended configuration for normal consumer use, use the maximum voltage specified in the manufacturer's installation instructions and maximum amperage that the manufacturer's installation instructions specify for use with the maximum voltage.

3.1.4. Fill Volume

Follow the manufacturer's instructions for filling the portable electric spa with water, connecting and/or priming the pump(s), and starting up the spa. After verifying that the spa is operating normally and that all water lines are filled, power off the spa and adjust the fill level as needed to meet the following specifications before starting the test.

If the manufacturer's instructions specify a single fill level, fill to that level with a tolerance of ± 0.125 inches.

If the manufacturer's instructions specify a range of fill levels and not a single fill level, fill to the middle of that range with a tolerance of ± 0.125 inches.

If the manufacturer's instructions do not specify a fill level or range of fill levels, fill to the halfway point between the bottom of the skimmer opening and the top of the skimmer opening with a tolerance of ± 0.125 inches.

If the manufacturer's instructions do not specify a fill level or range of fill levels, and there is no wall skimmer, fill to 6.0 inches ± 0.125 inches below the overflow level of the spa.

Measure the volume of water added to the spa with a water meter while filling the spa. Measure any water removed from the spa using a water meter, graduated container, or scale, each with an accuracy of ± 2 percent of the quantity measured. The fill volume is the

volume of water held by the spa when the spa is filled as specified above.

3.1.5. Spa Cover

3.1.5.1. Cover Is Designated by the Spa Manufacturer

Install the spa cover following the manufacturer's instructions.

3.1.5.2. No Cover Is Designated by the Spa Manufacturer

If no cover is designated by the spa manufacturer for use with the spa, cover the portable electric spa with a single layer of 6 mil thickness (0.006 inches; 0.15 mm) plastic film. Cut the plastic to cover the entire top surface of the spa and extend over the edge of the spa approximately 6 inches below the top surface of the spa. Use fasteners or weights to keep the plastic in place during the test, but do not seal the edges of the plastic to the spa (by using tape, for example).

3.1.6. Ambient Temperature Measurement Location

The ambient air temperature measurement point specified in section 5.6.3 of ANSI/APSP/ICC-14 2019 must be located above the center of the spa.

3.2. Test Conditions and Conduct

3.2.1. Ambient Air Temperature

Maintain the ambient air temperature at a maximum of 63.0 °F for the duration of the test. This requirement applies to each individual ambient air temperature measurement taken for the duration of the stabilization period and test period.

3.2.2. Water Temperature Settings

Adjust the spa water temperature settings to meet the applicable temperature requirements in section 5.6.1 of ANSI/APSP/ICC-14 2019. The spa water temperature settings must not be adjusted between the start of the stabilizing period specified in section 5.6.1 of ANSI/APSP/ICC-14 2019 and the end of the test period specified in section 5.6.4.7 of ANSI/APSP/ICC-14 2019.

3.2.3. Water Temperature Requirements

Each individual water temperature measurement taken during the stabilization period and test period must meet the applicable water temperature requirements specified in section 5.6.1 of ANSI/APSP/ICC-14 2019.

3.3. Standby Loss Calculation

Calculate standby loss in watts by calculating the measured standby loss using Equation 1 of this appendix, calculating the measured temperature difference using Equation 2 of this appendix, and normalizing the standby loss using Equation 3 of this appendix. Use the standby loss calculated in Equation 3 as the standby loss value for the test.

Equation 1

$$SL_{meas} = \frac{E}{t}$$

Equation 2

$$\Delta T_{meas} = T_{water\ avg} - T_{air\ avg}$$

Equation 3

$$SL = SL_{meas} \times \frac{\Delta T_{std}}{\Delta T_{meas}}$$

Where:

SL_{meas} = Measured standby loss (watts)

E = Total energy use during the test (watt-hours)

t = Length of test (hours)

ΔT_{meas} = Measured temperature difference (°F)

$T_{water\ avg}$ = Average water temperature during test (°F)

$T_{air\ avg}$ = Average air temperature during test (°F)

SL = Standby loss (W)

ΔT_{std} = Normalized temperature difference (°F), as follows:

46.0 °F for all inflatable spas, standard spas, standard spa portions of a combination spa, exercise spas, and exercise spa portions of a combination spa tested to a minimum

water temperature of 100 °F; or 31.0 °F for all exercise spas or exercise spa portions of a combination spa tested to a minimum water temperature of 85 °F.

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Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 571 and 596

Federal Motor Vehicle Safety Standards: Automatic Emergency Braking
Systems for Light Vehicles; Proposed Rule

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Parts 571 and 596**

[Docket No. NHTSA–2023–0021]

RIN 2127–AM37

Federal Motor Vehicle Safety Standards: Automatic Emergency Braking Systems for Light Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes to adopt a new Federal Motor Vehicle Safety Standard to require automatic emergency braking (AEB), including pedestrian AEB (PAEB), systems on light vehicles. An AEB system uses various sensor technologies and sub-systems that work together to detect when the vehicle is in a crash imminent situation, to automatically apply the vehicle brakes if the driver has not done so, or to apply more braking force to supplement the driver's braking. The AEB system proposed in this NPRM would detect and react to an imminent crash with a lead vehicle or pedestrian. This NPRM promotes NHTSA's goal to equip vehicles with AEB and PAEB, and advances DOT's January 2022 National Roadway Safety Strategy that identified requiring AEB, including PAEB technologies, on new passenger vehicles as a key Departmental action to enable safer vehicles. This NPRM also responds to a mandate under the Bipartisan Infrastructure Law directing the Department to promulgate a rule to require that all passenger vehicles be equipped with an AEB system.

DATES: Comments must be received on or before August 14, 2023.

Proposed compliance date: Vehicles manufactured on or after September 1, four years after the publication date of a final rule, would be required to meet all requirements. Vehicles manufactured on or after September 1, three years after the publication date of a final rule, but before September 1, four years after the publication date of a final rule, would be required to meet all requirements except that lower speed PAEB performance test requirements specified in S5(b) would apply. Small-volume manufacturers, final-stage manufacturers, and alterers would be provided an additional year (added to those above) to meet the requirements of

the final rule. Early compliance is permitted but optional.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call 202–366–9332 before coming.

- *Fax:* 202–493–2251.

Regardless of how you submit your comments, please provide the docket number of this document.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.transportation.gov/privacy. In order to facilitate comment tracking and response, the agency encourages commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov, or the street address listed above. To be sure someone is there to help you, please call 202–366–9332 before coming. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Markus Price, Office of Crash Avoidance Standards (telephone:

202–366–1810). For legal issues: David Jasinski, Office of the Chief Counsel (telephone: 202–366–2992, fax: 202–366–3820). The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

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I. Executive Summary

In 2019, there were 6,272 pedestrian fatalities in motor vehicle crashes, representing 17 percent of all motor vehicle fatalities.¹ This represents the continuation of the recent trend of increased pedestrian deaths on our nation's roadways.² A further 76,000 pedestrians were injured in motor vehicle crashes. In addition, there were nearly 2.2 million rear-end police-reported crashes involving light vehicles, which led to 1,798 deaths and 574,000 injuries. Deaths and injuries in more recent years are even greater. However, the agency's analysis of the safety problem focuses on the calendar year 2019 because it is the most recent year without the prominent effect of the COVID-19 pandemic.

This NPRM proposes to address this significant safety problem by proposing a new Federal Motor Vehicle Safety Standard (FMVSS) to require automatic emergency braking (AEB) systems on light vehicles that are capable of reducing the frequency and severity of both rear-end and pedestrian crashes. This proposed action represents a crucial step forward in implementing DOT's January 2022 National Roadway Safety Strategy (NRSS) to address the rising numbers of transportation deaths and serious injuries occurring on this country's streets, roads, and highways, including actions to protect vulnerable road users, including pedestrians.³

The Department's Safe System Approach emphasizes that multiple, complementary safety interventions to prevent crashes are critical to improving safety and protecting people. Through the NRSS, the Department is focusing on advancing initiatives that will significantly enhance roadway safety. These initiatives include infrastructure design and interventions along with proposed vehicle regulations such as this one. The Department is advancing support for the implementation of Complete Streets policies to help transportation agencies across the United States plan, develop, and operate roads, streets, and networks. Complete Streets policies prioritize safety, comfort, and connectivity to destinations for all users, including pedestrians, bicyclists, those who use wheelchairs and mobility devices, transit riders, micro-mobility users, shared ride services, motorists, and

freight delivery services. NHTSA is providing technical assistance to States to encourage the adoption of a safe system approach with emphasis on partnering with State Departments of Transportation and Emergency Medical Service agencies to comprehensively address various roadway issues including those affecting those who walk, bike and roll. NHTSA awards annual formula grants to the States to conduct lifesaving highway safety programs and is also assisting States as they conduct meaningful public engagement to ensure that affected communities are involved in program planning and implementation.

The crash problem that can be addressed by AEB is substantial.⁴ For example, 60 percent of fatal rear-end crashes and 73 percent of injury crashes were on roads with posted speed limits of 60 mph or below. Similarly, most of these crashes occurred in clear, no adverse atmospheric conditions—72 percent of fatal crashes and 74 percent of injury crashes. Also, about 51 percent of fatal and 74 percent of rear-end crashes involving light vehicles resulting in injuries occurred in daylight conditions. In addition, 65 percent of pedestrian fatalities and 67 percent of pedestrian injuries were the result of a strike by the front of a light vehicle. Of those, 77 percent, and about half of the pedestrian injuries, occur in dark lighting conditions. This NPRM proposes to adopt a new FMVSS to require AEB systems on light vehicles that are capable of reducing the frequency and severity of both lead vehicle and pedestrian collisions.⁵ AEB systems employ sensor technologies and sub-systems that work together to sense when the vehicle is in a crash imminent situation, to automatically apply the vehicle brakes if the driver has not done so, and to apply more braking force to supplement the driver's braking. Current systems primarily use radar- and camera-based sensors, while there are also emerging systems that use lidar and thermal sensors. These systems can reduce both lead vehicle rear-end (lead vehicle AEB) and pedestrian crashes (PAEB). Importantly, this proposal would require that systems are able to avoid pedestrian crashes in darkness testing conditions. AEB systems have

⁴ The Insurance Institute for Highway Safety (IIHS) estimates a 50 percent reduction in front-to-rear crashes of vehicles with AEB (IIHS, 2020) and a 25 to 27 percent reduction in pedestrian crashes for PAEB (IIHS, 2022).

⁵ For the purpose of this NPRM, "light vehicles" means passenger cars, multipurpose passenger vehicles (MPVs), trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less.

¹ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813079> Pedestrian Traffic Facts 2019 Data, May 2021.

² *Id.*, Table 1 Pedestrian fatalities 2010—4,302, 2019—6,272.

³ https://www.transportation.gov/sites/dot.gov/files/2022-01/USDOT_National_Roadway_Safety_Strategy_0.pdf.

reached a level of maturity such that they will be able to reduce the frequency and severity of crashes and are thus ready to be mandated on all new light vehicles.

This proposal is issued under the authority of the National Traffic and Motor Vehicle Safety Act of 1966. Under 49 U.S.C. Chapter 301, the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. The responsibility for promulgation of FMVSSs is delegated to NHTSA. This rulemaking addresses a statutory mandate under the Bipartisan Infrastructure Law (BIL), codified as the Infrastructure Investment and Jobs Act (IIJA),⁶ which added 49 U.S.C. 30129, directing the Secretary of Transportation to promulgate a rule requiring that all passenger motor vehicles for sale in the United States be equipped with a FCW system and an AEB system.

The decision to mandate AEB builds on decades of research and development, which began in the 1990s, with initial research programs to support development of AEB technologies and methods by which system performance could be assessed. NHTSA began testing AEB systems as part of New Car Assessment Program (NCAP) in 2010 and reporting on the respective research and progress surrounding the technologies shortly thereafter.⁷ These research efforts led to the incorporation of AEB into incentive programs designed to raise consumer awareness of AEB, such as NCAP. NHTSA included FCW systems as a “recommended advanced technology” in NCAP in model year 2011, and in November 2015, added crash imminent braking (CIB) and dynamic brake support (DBS) technologies to the program with assessments of these technologies to begin in model year 2018.⁸ Most recently, NHTSA proposed upgrades to the lead vehicle AEB test in its March 2022 request for comment on NCAP.⁹ Separate from NCAP, in March 2016, NHTSA and Insurance Institute for Highway Safety (IIHS) announced a commitment by 20 manufacturers representing more than 99 percent of the U.S. light vehicle market to equip low-speed AEB as a standard feature on nearly all new light vehicles not later than September 1, 2022. As part of this

voluntary commitment, manufacturers would include both FCW and a CIB system that would reduce a vehicle’s speed in certain rear-end crash-imminent test conditions.

NHTSA also conducted research to understand the capabilities of PAEB systems beginning in 2011. This work began with an assessment of the most common pedestrian crash scenarios to determine how test procedures could be designed to address them. As part of this development, NHTSA also looked closely at a potential pedestrian mannequin to be used during testing and explored several aspects of the mannequin, including size and articulation of the arms and legs. This work resulted in a November 2019 draft research test procedure providing the methods and specifications for collecting performance data on PAEB systems for light vehicles.¹⁰ This procedure was expanded to cover updated vehicle speed ranges and different ambient conditions and included in a March 2022 request for comments notice proposing to include PAEB, higher speed AEB, blind spot warning and blind spot intervention into NCAP.¹¹

While these actions have increased market penetration of AEB systems, reduced injuries, and saved lives, NHTSA believes that mandating AEB systems that can address both lead vehicle and pedestrian crashes is necessary to better address the safety need. NHTSA incorporated FCW into NCAP beginning in model year 2011 and AEB into NCAP beginning in model year 2018. This has achieved success, with approximately 65% of new vehicles meeting the lead vehicle test procedures included in NCAP.¹² Similarly, the voluntary commitment resulted in approximately 90 percent of new light vehicles having an AEB system.

However, the test speeds and performance specifications in NCAP and the voluntary commitment would not ensure that the systems perform in a way that will prevent or mitigate crashes resulting in serious injuries and fatalities. The vast majority of fatalities, injuries, and property damage crashes occur at speeds above 40 km/h (25 mph), which are above those covered by the voluntary commitment.

NCAP and, even more so, other voluntary measures are intended to supplement rather than substitute for

the FMVSS, which remain NHTSA’s core way of ensuring that all motor vehicles are able to achieve an adequate level of safety performance. Thus, though the NCAP program provides valuable safety-related information to consumers in a simple to understand way, the agency believes that gaps in market penetration will continue to exist for the most highly effective AEB systems. NHTSA has also observed that, in the case of both electronic stability control and rear visibility, only approximately 70 percent of vehicles had these technologies during the time they were part of NCAP. Thus, while NCAP serves a vital safety purpose, NHTSA also recognizes its limitations and concludes that only regulation can ensure that all vehicles are equipped with AEB that meet the proposed performance requirements.

These considerations are of even greater weight when considering whether to require a system that can reduce pedestrian crashes. Pedestrian fatalities are increasing, and NHTSA’s testing has established that PAEB systems will be able to significantly reduce these deaths.¹³ Manufacturers’ responses to adding lead vehicle AEB and other technologies into NCAP suggests that it would take several years after PAEB is introduced into NCAP before the market began to see significant numbers of new vehicles that would be able to meet a finalized NCAP test. Moreover, as pedestrian safety addresses the safety of someone other than the vehicle occupant, it is not clear if past experiences with NCAP are necessarily indicative of how quickly PAEB systems would reach the levels of lead vehicle AEB, if pedestrian functionality that would meet NCAP performance levels was offered as a separate cost to consumers. NHTSA believes that there can be a significant safety benefit in NCAP providing consumers with information about new safety technologies before it is prepared to mandate them, but this is not a requirement.

A final factor weighing in favor of requiring AEB is that the technology is a significantly more mature level than what it was at the time of the voluntary commitment or when it was introduced into NCAP. NHTSA’s most recent testing has shown that higher performance levels than those in the voluntary commitment or the existing NCAP requirements are now practicable. Many model year 2019 and 2020 vehicles were able to repeatedly avoid impacting the lead vehicle in CIB

¹³ The accompanying PRIA estimates the impacts of the rule.

⁶ Public Law 117–58, 24208 (Nov. 15, 2021).

⁷ 77 FR 39561 (Jul. 2, 2012).

⁸ 80 FR 68604 (Nov. 5, 2015).

⁹ 87 FR 13452 (Mar. 9, 2022). See www.regulations.gov, docket number NHTSA–2021–0002.

¹⁰ 84 FR 64405 (Nov. 21, 2019).

¹¹ 87 FR 13452 (Mar. 9, 2022).

¹² Percentage based on the vehicle manufacturer’s model year 2022 projected sales volume reported through the New Car Assessment Program’s annual vehicle information request.

tests and the pedestrian test mannequin in PAEB tests, even at higher test speeds than those prescribed currently in the agency's CIB and PAEB test procedures.

These results show that AEB systems are capable of reducing the frequency and severity of both lead vehicle and pedestrian crashes. Mandating AEB systems would address a clear and, in the case of pedestrian deaths, growing safety problem. To wait for market-driven adoption, even to the extent spurred on by NCAP, would lead to deaths and injuries that could be avoided if the technology were required, and would be unlikely to result in all vehicles having improved AEB. Thus, in consideration of the safety problem and NHTSA's recent test results, and consistent with the Safety Act and BIL, NHTSA has tentatively concluded that a new Federal motor vehicle safety standard requiring AEB systems that can address both lead vehicle and pedestrian collisions on all new light vehicles is necessary to address the problem of rear-end crashes resulting in property damage, injuries, and fatalities. The proposed lead vehicle AEB test procedures build on the existing FCW, CIB, and DBS NCAP procedures, but include higher speed performance requirements. Collision avoidance is required at speeds up to 100 km/h (62 mph) when manual braking is applied and up to 80 km/h (50 mph) when no manual braking is applied during the test. Based on data from the 2019 and 2020 research programs, NHTSA believes that it is practicable to require this higher level of system performance. Performance at these speeds would address the injuries and fatalities resulting from rear-end crashes. As part of this proposal, NHTSA is including testing under both daylight and darkness lighting conditions. In the darkness testing condition, NHTSA is proposing testing with both lower beam and upper beam headlamps activated. NHTSA believes darkness testing of PAEB is necessary because more than three-fourths of all pedestrian fatalities occur in conditions other than daylight.

The proposed standard includes four requirements for AEB systems for both lead vehicles and pedestrians. First, vehicles would be required to have an AEB system that provides the driver with a FCW at any forward speed greater than 10 km/h (6.2 mph). NHTSA is proposing that the FCW be presented via auditory and visual modalities when a collision with a lead vehicle or a pedestrian is imminent. Based on NHTSA's research, this proposal includes specifications for the auditory and visual warning components.

Additional warning modes, such as haptic, would be allowed.

Second, vehicles would be required to have an AEB system that applies the brakes automatically at any forward speed greater than 10 km/h (6.2 mph) when a collision with a lead vehicle or a pedestrian is imminent. This requirement would serve to ensure that AEB systems operate at all speeds above 10 km/h (6.2 mph), even if these speeds are above the speeds tested by NHTSA and provide at least some level of AEB system performance in those rear-end crashes. An AEB system active at any speed above 10 km/h (6.2 mph) will be able to mitigate collisions at high speeds through, at a minimum, speed reduction.

Third, the AEB system would be required to prevent the vehicle from colliding with the lead vehicle or pedestrian test mannequin when tested according to the proposed standard's test procedures. These track test procedures have defined parameters that will ensure that AEB systems prevent crashes in a controlled testing environment. There are three general test scenarios each for testing vehicles with a lead vehicle and four scenarios for testing vehicles with a pedestrian test mannequin. These test scenarios are designed to ensure that AEB systems are able to perform appropriately in common crash scenarios. In particular, the agency has proposed that pedestrian tests be done in both daylight and darkness. The proposed requirements also include two false positive tests (driving over a steel trench plate and driving between two parked vehicles) in which the vehicle would not be permitted to brake in excess of 0.25g in addition to any manual brake application.

The final proposed requirement is that a vehicle must detect AEB system malfunctions and notify the driver of any malfunction that causes the AEB system not to meet the minimum proposed performance requirements. Malfunctions would include those attributable to sensor obstruction or saturation, such as accumulated snow or debris, dense fog, or sunlight glare. The proposal only includes a specification that the notification be visual.

To ensure test repeatability that reflects how a subject vehicle—that is the vehicle under test, would respond in the real world, this proposal includes specifications for the test devices that NHTSA would use in both the lead vehicle and pedestrian compliance tests, relying in large part on relevant International Organization for Standardization standards.

This proposal would require that all of the AEB requirements be phased in within four years of publication of a final rule. All vehicles would be required to meet all requirements associated with lead vehicle AEB and all daylight test requirements for PAEB within three years. With respect to darkness testing, there are lower maximum test speed thresholds that would have to be met within three years for some specified test procedures. All vehicles would have to meet the minimum performance requirements with higher darkness test speeds four years after the publication of a final rule. Small-volume manufacturers, final-stage manufacturers, and alterers would be provided an additional year of lead time for all requirements.

NHTSA has issued a Preliminary Regulatory Impact Analysis (PRIA) that analyzes the potential impacts of this proposed rule. The PRIA is available in the docket for this NPRM. The proposed rule is expected to substantially decrease the safety problems associated with rear-end and pedestrian crashes.

NHTSA's assessment of available safety data indicates that between 2016 and 2019, there were an average of 1.12 million rear-impact crashes involving light vehicles annually. These crashes resulted in an approximate annual average of 394 fatalities, 142,611 non-fatal injuries, and an additional 1.69 million damaged vehicles. Additionally, between 2016 and 2019, there were an average of approximately 23,000 crashes that could potentially be addressed by PAEB annually. These crashes resulted in an annual average of 2,642 fatalities and 17,689 non-fatal injuries.

AEB systems meeting the requirements of this proposed rule would have a dramatic impact on risks associated with rear-end and pedestrian crashes, even beyond the benefits assumed to occur due to NCAP and other voluntary industry adoption. In order to determine the benefits and costs of this rulemaking, NHTSA developed a baseline, which reflects how the world would look in the absence of regulation. This baseline includes an assumption that all new light vehicles will have some AEB system and that approximately 65 percent of these vehicles will have systems meeting the NCAP test procedures. Thus, the impacts of this rule are less than the impacts of AEB as a technology, as it only accounts for marginal improvements over the baseline. Accordingly, NHTSA projects that this proposed rule would reduce fatalities by 362 (124 rear-end and 238 pedestrian) annually and reduce injuries by 24,321 (21,649 rear-end and 2,672

pedestrian) annually.¹⁴ In addition, lead vehicle AEB systems would likely yield substantial benefits over the lifetime of the vehicle in property damage avoided. Further, when calculating benefits, the agency excluded many scenarios where AEB systems are still likely to lead to safety benefits but where the agency has not conducted sufficient research to quantify those benefits, including crashes involving impacts into the rear of heavy vehicles. Further, the agency excluded calendar years 2020 and 2021 from its analysis of the safety problem, as those years may be atypical, but did include a sensitivity case in the RIA, which shows greater benefits.

With regard to costs NHTSA anticipates that systems can achieve the proposed requirements through upgraded software, as all vehicles are assumed to have the necessary hardware. Therefore, the incremental cost associated with this proposed rule reflects the cost of a software upgrade that will allow current systems to achieve lead vehicle AEB and PAEB functionality that meets the requirements specified in this proposed rule. The incremental cost per vehicle is estimated at \$82.15 for each design cycle change of the model.¹⁵ When accounting for design cycles and annual sales of new light vehicles, the total

annual cost associated with this proposed rule is approximately \$282.16 million in 2020 dollars.

Table 1 summarizes the finding of the benefit-cost analysis. The projected benefits of this proposed rule greatly exceed the projected costs. The lifetime monetized net benefit of this proposed rule is projected to be between \$5.24 and \$6.52 billion with a cost per equivalent life saved of between \$500,000 and \$620,000, which is far below the Department's existing value of a statistical life saved, which is currently calculated as \$11.8 million.

TABLE 1—LIFETIME SUMMARY OF BENEFITS AND COSTS FOR PASSENGER CARS AND LIGHT TRUCKS (MILLIONS 2020\$), DISCOUNT RATE

	3% Discount rate	7% Discount rate
Benefits		
Lifetime Monetized	\$6,802	\$5,518
Costs		
Lifetime Monetized	282.16	282.16
Net Benefits		
Lifetime Monetized	6,520	5,235

TABLE 2—ESTIMATED QUANTIFIABLE BENEFITS

Benefits	
Fatalities Reduced	362
Injuries Reduced	24,321

TABLE 3—ESTIMATED INSTALLATION COSTS

Costs (2020\$)	
System installation per vehicle per design cycle	\$82.15
Total Fleet per year	282.16 M

TABLE 4—ESTIMATED COST EFFECTIVENESS

Cost per Equivalent Life Saved	
AEB Systems ...	\$0.50 to \$0.62 million *

* The range presented is from a 3% to 7% discount rate.

NHTSA seeks comments and suggestions on all aspects of this proposal and any alternative

requirements that would address this safety problem. NHTSA also requests comments on the proposed lead time for meeting these requirements, and how the lead time can be structured to maximize the benefits that can be realized most quickly while ensuring that the standard is practicable.

Summary of Technical Terms

The following is a brief explanation of terms and technologies used to describe AEB systems. More detailed information can be found in Appendix A to this preamble.

Radar-Based Sensors

Many AEB systems employ radar sensors. At its simplest, radar is a time-of-flight sensor technology that measures the time between when a radio wave is transmitted and when its reflection is received back at the radar sensor. This time-of-flight sensor input is used to calculate the distance between the sensor and the object that caused the reflection. Multiple or continuous sampling can also provide information about the reflecting object,

such as the speed at which it is travelling.

Camera Sensors

Cameras are passive sensors in which optical data are recorded and then processed to allow for object detection and classification. Cameras are an important part of many automotive AEB systems and are typically mounted behind the front windshield near the rearview mirror, sometimes in groups of two or more. Cameras at this location provide a good view of the road and are protected by the windshield from debris, grease, dirt, and other contaminants that could obstruct the sensor. Some systems that use two or more cameras can see stereoscopically, allowing the processing system to better determine range information along with detection and classification.

Forward Collision Warning

A forward collision warning (FCW) system uses sensors that detect objects in front of vehicles and provides an alert to the driver. An FCW system is able to use the sensors' input to determine the speed of an object in front of it and the

main assumption. Importantly, though, even under the higher assumption, benefits still greatly exceed costs.

¹⁴ A breakdown of the severity of the injuries that would be reduced by this proposed rule can be found in Section 4.3 of the accompanying PRIA.

¹⁵ The agency includes a higher potential cost value in the RIA for "disruptive" software changes,

which could also serve as a proxy for potential additional costs, including hardware costs. However, as discussed in the RIA, that value represents a less-likely higher end assumption, while the value used here represents the agency's

distance between the vehicle and the object. If the FCW system determines that the closing distance and velocity between the vehicle and the object is such that a collision may be imminent, the system is designed to induce an immediate forward crash avoidance response by the vehicle operator. FCW systems may detect impending collisions with any number of roadway obstacles, including vehicles and pedestrians. Warning systems in use today provide drivers with a visual display, such as an illuminated telltale on or near the instrument panel, an auditory signal, or a haptic signal that provides tactile feedback to the driver to warn the driver of an impending collision so the driver may intervene. FCW systems alone do not brake the vehicle.

Electronically Modulated Braking Systems

Automatic actuation of a vehicle's brakes requires more than just technology to sense when a collision is imminent. In addition to the sensing system, hardware is needed to apply the brakes without relying on the driver to depress the brake pedal. The automatic braking system relies on two foundational braking technologies—electronic stability control to automatically activate the vehicle brakes and an antilock braking system to mitigate wheel lockup. Not only do electronic stability control and antilock braking systems enable AEB operation, these systems also modulate the braking force so that the vehicle remains stable while braking during critical driving situations where a crash with a vehicle or pedestrian is imminent.

AEB Perception and Decision System

The performance of each AEB system depends on the ability of the system to

use sensor data to appropriately detect and classify forward objects. The AEB system uses this detection and classification to decide if a collision is imminent and then avoid or mitigate the potential crash. Manufacturers and suppliers of AEB systems have worked to address unnecessary AEB activations through techniques such as sensor fusion, which combines and filters information from multiple sensors, and advanced predictive models.

Lead Vehicle Automatic Emergency Braking

A lead vehicle AEB system automatically applies the brakes to help drivers avoid or mitigate the severity of rear-end crashes. Lead vehicle AEB has two similar functions that NHTSA has referred to as crash imminent braking and dynamic brake support. Crash imminent braking (CIB) systems apply automatic braking when forward-looking sensors indicate a crash is imminent and the driver has not applied the brakes. Dynamic brake support (DBS) systems use the same sensors to supplement the driver's application of the brake pedal with additional braking when sensors determine the driver has applied the brakes, but the brake application is insufficient to avoid an imminent crash.

This NPRM does not split the terminology of these CIB and DBS functionalities, but instead considers them both as parts of AEB. When NHTSA first tested implementation of these systems, NHTSA found that DBS systems operated with greater automatic braking application than CIB systems. However, more recent testing has shown that vehicle manufacturers' CIB systems provide the same level of braking as DBS systems. Nevertheless, the proposed standard includes performance tests that would require an

AEB system that has both CIB and DBS functionalities.

Pedestrian Automatic Emergency Braking

PAEB systems function like lead vehicle AEB systems but detect pedestrians in front of the vehicle. PAEB systems intervene in crash imminent situations in which the pedestrian is either directly in the path of a vehicle or entering the path of the vehicle. Current PAEB systems operate primarily when the vehicle is moving in a straight line. Sensor performance is defined by sensing depth, field of view, and resolution. However, performance may be degraded during low light conditions. This NPRM proposes requiring PAEB system performance in darkness conditions using the vehicle's headlights for illumination.

“AEB” as Used in This NPRM

When this NPRM refers to “AEB” generally, unless the context clearly indicates otherwise, it refers to a system that has: (a) an FCW component to alert the driver to an impending collision with a forward obstacle; (b) a CIB component that automatically applies the vehicle's brakes if the driver does not respond to the FCW; and (c) a DBS component that automatically supplements the driver's brake application if the driver applies insufficient manual braking to avoid a crash. Furthermore, unless the context indicates otherwise, reference to AEB includes both lead vehicle AEB and PAEB.

Abbreviations Frequently Used in This Document

The following table is provided for the convenience of readers for illustration purposes only.

TABLE 5—ABBREVIATIONS

Abbreviation	Full term	Notes
AEB	Automatic Emergency Braking	Applies a vehicle's brakes automatically to avoid or mitigate an impending forward crash.
ADAS	Advanced driver assistance system.	
CIB	Crash Imminent Braking	Applies automatic braking when forward-looking sensors indicate a crash is imminent and the driver has not applied the brakes.
CRSS	Crash Report Sampling System	A sample of police-reported crashes involving all types of motor vehicles, pedestrians, and cyclists, ranging from property-damage-only crashes to those that result in fatalities.
DBS	Dynamic Brake Support	Supplements the driver's application of the brake pedal with additional braking when sensors determine the driver-applied braking is insufficient to avoid an imminent crash.
FARS	Fatality Analysis Reporting System	A nationwide census providing annual data regarding fatal injuries suffered in motor vehicle crashes.
FCW	Forward Collision Warning	An auditory and visual warning provided to the vehicle operator that is designed to induce an immediate forward crash avoidance response by the vehicle operator.
FMVSS	Federal Motor Vehicle Safety Standard.	

TABLE 5—ABBREVIATIONS—Continued

Abbreviation	Full term	Notes
IIHS	Insurance Institute for Highway Safety.	Public Law 117–58 (Nov. 15, 2021).
IJA	Infrastructure Investment and Jobs Act.	
ISO	International Organization for Standardization.	An AEB system that is capable of avoiding or mitigating collisions with a lead vehicle.
Lead Vehicle AEB	Lead Vehicle Automatic Emergency Braking.	
MAIS	Maximum Abbreviated Injury Scale	A means of describing injury severity based on an ordinal scale. An MAIS 1 injury is a minor injury and an MAIS 5 injury is a critical injury.
NCAP	New Car Assessment Program.	Activates when a crash imminent situation occurs between the equipped vehicle and a pedestrian in the forward path.
PAEB	Pedestrian AEB	
RFC	Request for Comments.	A test device used to test AEB system performance.
VTD	Vehicle Test Device	

II. Safety Problem

There were 38,824 fatalities in motor vehicle crashes on U.S. roadways in 2020 and early estimates put the number of fatalities at 42,915 for 2021.¹⁶ This is the highest number of fatalities since 2005. While the upward trend in fatalities may be related to increases in risky driving behaviors during the COVID–19 pandemic,¹⁷ agency data show an increase of 3,356 fatalities between 2010 and 2019.¹⁸ Motor vehicle crashes have also trended upwards since 2010, which corresponds to an increase in fatalities, injuries, and property damage.

A. Overall Rear-End Crash Problem

This NPRM proposes a new FMVSS to reduce the frequency and severity of vehicle-to-vehicle rear-end crashes and to reduce the frequency and severity of

vehicle crashes into pedestrians. NHTSA uses data from its Fatality Analysis Reporting System (FARS) and the Crash Report Sampling System (CRSS) to account for and understand motor vehicle crashes. As defined in a NHTSA technical manual relating to data entry for FARS and CRSS, rear-end crashes are incidents where the first event is defined as the frontal area of one vehicle striking a vehicle ahead in the same travel lane. In a rear-end crash, as instructed by the 2020 FARS/CRSS Coding and Validation Manual, the vehicle ahead is categorized as intending to head either straight, left or right, and is either stopped, travelling at a lower speed, or decelerating.¹⁹

In 2019, rear-end crashes accounted for 32.5 percent of all crashes, making them the most prevalent type of crash.²⁰ Fatal rear-end crashes increased from

1,692 in 2010 to 2,363 in 2019 and accounted for 7.1 percent of all fatal crashes in 2019, up from 5.6 percent in 2010. Because data from 2020 and 2021 may not be representative of the general safety problem due to the COVID–19 pandemic, the following discussion refers to data from 2010 to 2020 when discussing rear-end crash safety problem trends, and 2019 data when discussing specific characteristics of the rear-end crash safety problem. While injury and property damage-only rear-end crashes from 2010 (476,000 and 1,267,000, respectively) and 2019 (595,000 and 1,579,000, respectively) are not directly comparable due to the difference in database structure and sampling, the data indicate that these numbers have not significantly changed from 2010–2015 (NASS–GES sampling) and 2016–2019 (CRSS sampling).

TABLE 6—2010–2020 REAR-END CRASHES ALL VEHICLE TYPES BY CRASH SEVERITY²¹

First harmful event	Rear-end crash severity			
	Fatal	Injury	Property-damage-only	Total rear-end
	Number	Number	Number	Number
2010	1,692	476,000	1,267,000	1,745,000
2011	1,808	475,000	1,245,000	1,721,000
2012	1,836	518,000	1,327,000	1,847,000
2013	1,815	503,000	1,326,000	1,831,000
2014	1,971	522,000	1,442,000	1,966,000
2015	2,225	556,000	1,543,000	2,101,000
2016	2,372	661,000	1,523,000	2,187,000
2017	2,473	615,000	1,514,000	2,132,000
2018	2,459	594,000	1,579,000	2,175,000
2019	2,363	595,000	1,597,000	2,194,000
2020	2,428	417,000	1,038,000	1,457,000

¹⁶ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813266>, <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813283>.

¹⁷ These behaviors relate to increases in impaired driving, the non-use of seat belts, and speeding. NHTSA also cited external studies from telematics providers that suggested increased rates of cell

phone manipulation during driving in the early part of the pandemic.

¹⁸ NHTSA's Traffic Safety Facts Annual Report, Table 2, <https://cdan.nhtsa.gov/tsftables/tsfar.htm#>. Accessed March 28, 2023.

¹⁹ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813251> Category II Configuration D. Rear-End.

²⁰ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813141> Traffic Safety Facts 2019, Table 29.

²¹ Compiled from NHTSA's Traffic Safety Facts Annual Report, Table 29 from 2010 to 2020, <https://cdan.nhtsa.gov/tsftables/tsfar.htm#>. Accessed March 28, 2023.

Table 7 presents a breakdown of all the crashes in 2019 by the first harmful event where rear-end crashes represent

7.1 percent of the fatal crashes, 31.1 percent of injury crashes and 33.2

percent (or the largest percent) of property damage only crashes.

TABLE 7—2019 CRASHES, BY FIRST HARMFUL EVENT, MANNER OF COLLISION, AND CRASH SEVERITY ²²

First harmful event	Crash severity					
	Fatal		Injury		Property damage only	
	Number	Percent	Number	Percent	Number	Percent
Collision with Motor Vehicle in Transport						
Angle	6,087	18.2	531,000	27.7	956,000	19.9
Rear-end	2,363	7.1	595,000	31.1	1,597,000	33.2
Sideswipe	917	2.7	138,000	7.2	739,000	15.4
Head On	3,639	10.9	91,000	4.7	86,000	1.8
Other/Unknown	150	0.4	8,000	0.4	69,000	1.4
Collision with a Fixed Object Collision with Object Not Fixed						
	9,579	28.6	281,000	14.7	657,000	13.7
	7,826	23.4	214,000	11.2	648,000	13.5
Non-collision	2,870	8.6	58,000	3.0	54,000	1.1

The following paragraphs provide a breakdown of rear-end crashes by vehicle type, posted speed limit, light conditions and atmospheric conditions for the year 2019 based on NHTSA's FARS, CRSS and the 2019 Traffic Safety Facts sheets.

B. Rear-End Crashes by Vehicle Type

In 2019, passenger cars and light trucks were involved in the vast

majority of rear-end crashes. NHTSA's "Manual on Classification of Motor Vehicle Traffic Accidents" provides a standardized method for crash reporting. It defines passenger cars as "motor vehicles used primarily for carrying passengers, including convertibles, sedans, and station wagons," and light trucks as "trucks of 10,000 pounds gross vehicle weight

rating or less, including pickups, vans, truck-based station wagons, and utility vehicles."²³ The 2019 data show that crashes where a passenger car or light truck is a striking vehicle represent at least 70 percent of fatal rear-end crashes, 95 percent of crashes resulting in injury, and 96 percent of damage only crashes (See Table 8).²⁴

TABLE 8—REAR-END CRASHES WITH IMPACT LOCATION—FRONT, BY VEHICLE TYPE, IN 2019 ²⁵

Vehicle body type, initial impact-front	Fatal	Injury	Property damage only
Passenger Car	888	329,000	906,000
Light Truck	910	245,000	642,000
All Other	762	31,000	57,000

C. Rear-End Crashes by Posted Speed Limit

When looking at posted speed limit and rear-end crashes, data show that the

majority of the crashes happened in areas where the posted speed limit was 60 mph (97 km/h) or less. Table 9 shows the rear-end crash data by posted speed limit and vehicle type from 2019. About

60 percent of fatal crashes were on roads with a speed limit of 60 mph (97 km/h) or lower. That number is 73 percent for injury crashes and 78 percent for property damage-only crashes.

TABLE 9—2019 REAR-END CRASHES INVOLVING PASSENGER CARS, MPVS, AND LIGHT TRUCKS WITH FRONTAL IMPACT BY POSTED SPEED LIMIT ^{26 27}

Vehicles by posted speed limit	Passenger cars, light trucks, by crash severity					
	Fatal		Injury		Property-damage-only	
	Number	Percent	Number	Percent	Number	Percent
25 mph or less	16	1	28,000	5	103,000	7
30	30	2	24,000	4	78,000	5
35	95	5	91,000	16	267,000	17
40	87	5	66,000	11	175,000	11
45	223	12	129,000	22	373,000	24

²² NHTSA's Traffic Safety Facts Annual Report, Table 29 for 2019, <https://cdan.nhtsa.gov/tsftables/tsfar.htm#>. Accessed March 28, 2023.

²³ <https://www.fars.nhtsa.dot.gov/help/terms.aspx>.

²⁴ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813141> Traffic Safety Facts 2019.

²⁵ Generated from FARS and CRSS databases (<https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/FARS/2019/National/>, <https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/CRSS/2019/>, accessed October 17, 2022).

TABLE 9—2019 REAR-END CRASHES INVOLVING PASSENGER CARS, MPVs, AND LIGHT TRUCKS WITH FRONTAL IMPACT BY POSTED SPEED LIMIT^{26 27}—Continued

Vehicles by posted speed limit	Passenger cars, light trucks, by crash severity					
	Fatal		Injury		Property-damage-only	
	Number	Percent	Number	Percent	Number	Percent
50	99	6	19,000	3	58,000	4
55	401	22	55,000	10	122,000	8
60	133	7	12,000	2	31,000	2
65 and above	684	38	75,000	13	153,000	10
All other	30	2	75,000	13	187,000	12
Total	1,798	100	574,000	100	1,547,000	100

D. Rear-End Crashes by Light Condition

Slightly more fatal rear-end crashes (51 percent) occurred during daylight than during dark-lighted and dark-not-lighted conditions combined (43

percent) in 2019. However, injury and property damage-only rear-end crashes were reported to have happened overwhelmingly during daylight, at 76 percent for injury rear-end crashes and 80 percent for property-damage-only

rear-end crashes. Table 10 presents a summary of all 2019 rear-end crashes of light vehicles by light conditions, where the impact location is the front of a light vehicle.

TABLE 10—2019 REAR-END CRASHES WITH LIGHT VEHICLE FRONT IMPACT, BY LIGHT CONDITION²⁸

Light condition	Crash severity					
	Fatal		Injury		Property Damage-only	
	Percent	Number	Percent	Number	Percent	Number
Daylight	925	51	436,000	76	1,232,000	80
Dark—Not Lighted	438	24	28,000	5	59,000	4
Dark—Lighted	349	19	86,000	15	192,000	12
All Other	86	5	24,000	4	65,000	4
Total	1,798	100	574,000	100	1,547,000	100

E. Rear-End Crashes by Atmospheric Conditions

In 2019, the majority of rear-end crashes of light vehicles were reported to occur during clear skies with no

adverse atmospheric conditions. These conditions were present for 72 percent of all fatal rear-end crashes, while 14 percent of fatal rear-end crashes were reported to occur during cloudy conditions. Similar trends are reported

for injury and property damage only crashes. A brief summary of 2019 rear-end crashes of light vehicle with frontal impact by atmospheric conditions is presented in Table 11.

TABLE 11—2019 REAR-END CRASHES INVOLVING LIGHT VEHICLES WITH FRONTAL IMPACT, BY ATMOSPHERIC CONDITIONS²⁹

Crashes atmospheric conditions	Crash severity					
	Fatal		Injury		Property damage-only	
	Percent	Number	Percent	Number	Percent	Number
Clear, No Adverse	1,295	72	426,000	74	1,113,000	72
Cloudy	247	14	87,000	15	245,000	16
All Other	256	14	61,000	11	189,000	12
Total	1,798	100	574,000	100	1,547,000	100

²⁶ Generated from FARS and CRSS databases (<https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/FARS/2019/National/>, <https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/CRSS/2019/>, accessed October 17, 2022).

²⁷ Total percentages may not equal the sum of individual components due to independent rounding throughout the Safety Problem section.

²⁸ Generated from FARS and CRSS databases (<https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/FARS/2019/National/>, <https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/CRSS/2019/>, accessed October 17, 2022).

²⁹ Generated from FARS and CRSS databases (<https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/FARS/2019/National/>, <https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/CRSS/2019/>, accessed October 17, 2022).

F. Pedestrian Fatalities and Injuries

While the number of fatalities from motor vehicle traffic crashes is increasing, pedestrian fatalities are increasing at a greater rate than the general trend and becoming a larger percentage of total fatalities. In 2010, there were 4,302 pedestrian fatalities (13 percent of all fatalities), which has increased to 6,272 (17 percent of all fatalities) in 2019. The latest agency

estimation data indicate that there were 7,342 pedestrian fatalities in 2021.³⁰ Since data from 2020 and 2021 may not be representative of the general safety problem due to the COVID-19 pandemic, the following sections refer to data from 2010 to 2020 when discussing pedestrian safety problem trends, and 2019 data when discussing specific characteristics of the pedestrian safety problem. While the number of

pedestrian fatalities is increasing, the number of pedestrians injured in crashes from 2010 to 2020 has not changed significantly, with exception of the 2020 pandemic year. In Table 12, the number and percentage of pedestrian fatalities and injuries for the 2010 to 2020 period is presented in relationship to the total number of fatalities and total number of people injured in all crashes.

TABLE 12—2010–2020 TRAFFIC CRASH FATALITIES AND PEDESTRIAN FATALITIES, AND INJURED PEOPLE AND PEDESTRIANS INJURED³¹

Year	Total fatalities ¹	Pedestrian fatalities ¹		Total people injured ²	Pedestrian injured ²	
		Number	Percent of total fatalities		Number	Percent of total injured
2010	32,999	4,302	13	2,248,000	70,000	3
2011	32,479	4,457	14	2,227,000	69,000	3
2012	33,782	4,818	14	2,369,000	76,000	3
2013	32,893	4,779	15	2,319,000	66,000	3
2014	32,744	4,910	15	2,343,000	65,000	3
2015	35,484	5,494	15	2,455,000	70,000	3
2016	37,806	6,080	16	3,062,000	86,000	3
2017	37,473	6,075	16	2,745,000	71,000	3
2018	36,835	6,374	17	2,710,000	75,000	3
2019	36,355	6,272	17	2,740,000	76,000	3
2020	38,824	6,516	17	2,282,015	55,000	2

¹ Data source: FARS 2010–2019, 2020 Annual Report (ARF).

² Data source: NASS GES 2010–2015, CRSS 2016–2019.

The following sections present a breakdown of pedestrian fatalities and injuries by initial impact point, vehicle type, posted speed limit, lighting condition, pedestrian age, and light conditions for the year 2019.

G. Pedestrian Fatalities and Injuries by Initial Point of Impact and Vehicle Type

In 2019, the majority of pedestrian fatalities, 4,638 (74 percent of all pedestrian fatalities), and injuries, 52,886 (70 percent of all pedestrian injuries), were in crashes where the

initial point of impact on the vehicle was the front. When the crashes are broken down by vehicle body type, the majority of pedestrian fatalities and injuries occur where the initial point of impact was the front of a light vehicle (4,069 pedestrian fatalities and 50,831 pedestrian injuries) (see Table 13).³²

TABLE 13—2019 PEDESTRIAN FATALITIES AND INJURIES, BY INITIAL POINT OF IMPACT FRONT AND VEHICLE BODY TYPE³³

Vehicle body type, initial impact—front	Crash severity			
	Pedestrian fatalities		Pedestrian injuries	
	Number	Percent	Number	Percent
Passenger Car	1,976	43	30,968	59
Light Truck	2,093	45	19,863	38
All Other	569	12	2,055	4
Total	4,638	100	52,886	100

H. Pedestrian Fatalities and Injuries by Posted Speed Limit Involving Light Vehicles

In 2019, the majority of pedestrian fatalities from crashes involving light

vehicles with the initial point of impact as the front occurred on roads where the posted speed limit was 45 mph or less, (about 70 percent). There is a near even split between the number of pedestrian

fatalities in 40 mph and lower speed zones and in 45 mph and above speed zones (50 percent and 47 percent respectively with the remaining unknown, not reported or lacking). As

³⁰ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813298> Early Estimates of Motor Vehicle Traffic Fatalities And Fatality Rate by Sub-Categories in 2021, May 2022.

³¹ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813079> Pedestrian Traffic Facts

2019 Data, May 2021, <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813310> Pedestrian Traffic Facts 2020, Data May 2022.

³² As described previously, passenger cars and light trucks are the representative population for

vehicles with a GVWR of 4,536 kg (10,000 lbs.) or less.

³³ NHTSA's Traffic Safety Facts Annual Report, Table 99 for 2019, <https://cdan.nhtsa.gov/tsftables/tsfar.htm#Accessed> March 28, 2023.

for pedestrian injuries, in a large number of cases, the posted speed limit is either not reported or unknown (*i.e.*, about 34 percent of the sampled data). In situations where the posted speed

limit is known, 57 percent of the pedestrians were injured when the posted speed limit was 40 mph or below, and 9 percent when the posted speed limit was above 40 mph. Table 14

shows the number of pedestrian fatalities and injuries for each posted speed limit.

TABLE 14—2019 PEDESTRIAN FATALITIES AND INJURIES INVOLVING LIGHT VEHICLES, BY POSTED SPEED LIMIT ³⁴

Posted speed limit	Crash severity			
	Pedestrians fatalities		Pedestrian injuries	
	Number	Percent	Number	Percent
5 mph	3	0.07	185	0.36
10 mph	7	0.17	287	0.56
15 mph	10	0.25	865	1.70
20 mph	14	0.34	479	0.94
25 mph	346	8.50	9,425	18.54
30 mph	325	7.99	4,254	8.37
35 mph	765	18.80	9,802	19.28
40 mph	551	13.54	3,703	7.28
45 mph	821	20.18	3,094	6.09
50 mph	177	4.35	302	0.59
55 mph	463	11.38	546	1.07
60 mph	105	2.58	130	0.26
65 mph	199	4.89	241	0.47
70 mph	103	2.53	105	0.21
75 mph	19	0.47	4	0.01
80 mph	2	0.05	25	0.05
Not Reported	118	2.90	15,017	29.54
Unknown	16	0.39	176	0.35
No Statutory Limit/Non-Trafficway Area	25	0.61	2,191	4.31
Total	4,069	100	50,831	100

I. Pedestrian Fatalities and Injuries by Lighting Condition Involving Light Vehicles

The majority of pedestrian fatalities where a light vehicle strikes a

pedestrian with the front of the vehicle occurred in dark lighting conditions, 3,131 (75 percent). There were 20,645 pedestrian injuries (40 percent) in dark lighting conditions and 27,603

pedestrian injuries (54 percent) in daylight conditions.

TABLE 15—2019 PEDESTRIAN FATALITIES AND INJURIES INVOLVING LIGHT VEHICLES, BY LIGHTING CONDITION ³⁵

Light condition	Crash severity			
	Pedestrian fatalities		Pedestrian injuries	
	Number	Percent	Number	Percent
Daylight	767	19	27,603	54
Dark—Not Lighted	1,464	36	4,551	9
Dark—Lighted	1,621	40	15,996	31
Dark—Unknown Light	46	1	98	0
All Other	171	4	2,583	5
Total	4,069	100	50,831	100

J. Pedestrian Fatalities and Injuries by Age Involving Light Vehicles

In 2019, 646 fatalities and approximately 106,600 injuries involved children aged 9 and below. Of these, 68 fatalities and approximately 2,700 injuries involved pedestrians aged 9 and below in crashes with the front of a light

vehicle. As shown in Table 16, the first two age groups (less than age 5 and 5 to 9) each represent less than 1 percent of the total pedestrian fatalities in crashes with the front of a light vehicle. These age groups also represent about 1.5 and 3.8 percent of the total pedestrian injuries in crashes with the

front of a light vehicle, respectively. In contrast, age groups between age 25 and 69 each represent approximately 7 percent of the total pedestrian fatalities in crashes with the front of a light vehicle, with the 55 to 59 age group having the highest percentage at 10.9 percent. Pedestrian injury percentages

³⁴ The accompanying PRIA estimates the impacts of the rule based on the estimated travel speed of the striking vehicle. This table presents the speed

limit of the roads on which pedestrian crashes occur.

³⁵ Generated from FARS and CRSS databases (<https://www.nhtsa.gov/file-downloads?p=nhtsa/>

[downloads/FARS/2019/National/](https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/FARS/2019/National/), <https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/CRSS/2019/>, accessed October 17, 2022).

were less consistent, but distributed similarly, to pedestrian fatalities, with lower percentages reflected in children

aged 9 and below and adults over age 70.

TABLE 16—2019 PEDESTRIANS FATALITIES AND INJURIES IN TRAFFIC CRASHES INVOLVING LIGHT VEHICLES BY INITIAL POINT OF IMPACT FRONT³⁶ AND AGE GROUP³⁷

Age group	United States population (thousand)	Percent of population	Pedestrian fatalities		Pedestrians injuries	
			Light vehicle front-impact ped. fatalities	Percent of total pedestrian fatalities in light vehicle front-impact crashes	Light vehicle front-impact ped. injuries	Percent of total pedestrian injuries in light vehicle front-impact crashes
<5	19,736	6.1	37	0.9	770	1.5
5–9	20,212	6.2	31	0.8	1,907	3.8
10–14	20,827	6.4	58	1.4	2,830	5.6
15–20	20,849	6.4	159	3.9	5,673	11.2
21–24	21,254	6.6	173	4.3	3,190	6.3
25–29	23,277	7.2	287	7.1	4,394	8.6
30–34	21,932	6.8	315	7.7	3,735	7.3
35–39	21,443	6.6	316	7.8	3,636	7.2
40–44	19,584	6.0	277	6.8	2,812	5.5
45–49	20,345	6.3	294	7.2	2,745	5.4
50–54	20,355	6.3	350	8.6	3,311	6.5
55–59	21,163	6.5	442	10.9	3,678	7.2
60–64	20,592	6.3	379	9.3	3,469	6.8
65–69	17,356	5.4	303	7.4	2,594	5.1
70–74	14,131	4.4	207	5.1	1,724	3.4
75–79	9,357	2.9	172	4.2	1,136	2.2
80+	11,943	3.7	252	6.2	1,127	2.2
Unknown .....	.....	.....	17	0.4	2,103	4.1
Total .....	.....	.....	4,069	100	50,831	100

K. AEB Target Population

AEB technology is not expected to prevent all rear-end crashes or pedestrian fatalities. In order to determine the portion of the rear-end and pedestrian fatality population that could be affected by AEB, NHTSA used the FARS and CRSS databases to derive a target population.

Fatality data were derived from FARS and data on property damage vehicle crashes and injuries were derived from CRSS. The agency computed annualized averages for years 2016 to 2019 from fatalities and injuries.

For lead vehicle AEB, NHTSA first applied filters to ensure the target population included only rear-end crashes, excluding crashes other than those resulting from a motor vehicle in transport and only including crashes where the striking vehicle had frontal damage and the struck vehicle had rear-end damage. NHTSA conservatively excluded crashes with more than two vehicles because two-vehicle crashes most closely mirror the test track testing which includes a single lead vehicle. NHTSA only included crashes where a light vehicle struck another light vehicle. The striking vehicle was limited to light vehicles because this

proposal would only apply to light vehicles. The struck vehicle was limited to light vehicles because the specifications for the lead vehicle in testing were derived exclusively from light vehicles. The crash population was further limited to cases where the subject vehicle was traveling in a straight line and either braked or did not brake to avoid the crash (excluding instances where the vehicle attempted to avoid the crash in some other manner). These exclusions were applied because AEB systems may suppress automatic braking when the driver attempts to avoid a collision by some other action, such as turning. Finally, the crash scenarios were limited to those where the lead vehicle was either stopped, moving, or decelerating along the same path as the subject vehicle. Other maneuvers, such as crashes in which the vehicle turned prior to the crash, were excluded because current sensor systems have a narrow field of view that does not provide sufficient information to the perception system regarding objects in the vehicle's turning path.

For PAEB, the target population was also identified based on reported fatalities (in FARS data) and injuries (in

GES and CRSS data). Each of the estimated target population values were based on a six-year average (2014 through 2019). NHTSA applied filters such that only crashes involving a single light vehicle and pedestrians where the first harmful event was contact with the pedestrian are considered in the analysis. Further, the impact area was restricted to the front of the vehicle because the performance proposed in this rule is limited to forward vehicle movement. Additionally, the vehicle's pre-event movement (*i.e.*, the vehicle's activity prior to the driver's realization of the impending crash) was traveling in a straight line and the pedestrian movement was determined to be either crossing the vehicle's path or along the vehicle's path to match the track testing being proposed.

After applying these filters, NHTSA has tentatively concluded that AEB technology could potentially address up to 3,036 fatalities (394 lead vehicle and 2,642 pedestrian), 160,309 injuries (142,611 lead vehicle and 17,698 pedestrian), and 1,119,470 property damage only crashes (only lead vehicle). These crashes represent 15 percent and 14 percent of fatalities and injuries resulting from rear end crashes,

³⁶ Generated from FARS and CRSS databases (<https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/FARS/2019/National/>, <https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/CRSS/2019/>, accessed October 17, 2022).

www.nhtsa.gov/file-downloads?p=nhtsa/downloads/CRSS/2019/, accessed October 17, 2022).

³⁷ <https://www.census.gov/data/tables/2019/demo/age-and-sex/2019-age-sex-composition.html>, Table 12.

respectively and 43 percent and 28 percent of fatalities and injuries from pedestrian crashes. These crashes also represent 8.4 percent of total roadway fatalities, 5.9 percent of total roadway injuries, and 23 percent of property damage only crashes.

NHTSA has restricted the target population to two-vehicle crashes although FCW and AEB would likely provide safety benefits in multi-vehicle crashes even when the first impact would be completely avoided with FCW and AEB.³⁸ NHTSA also limited the target population to light vehicle to light vehicle crashes because NHTSA does not have data on how AEB systems would respond to other vehicle types such as heavy vehicles or motorcycles. NHTSA is currently researching light vehicle AEB performance in these situations.

III. Data on Effectiveness of AEB in Mitigating Harm

Forward collision warning systems were among the first generation of advanced driver assistance system technologies designed to help drivers avoid an impending crash.³⁹ In 2008, when NHTSA decided to include ADAS technologies in the NCAP program, FCW was selected because the agency believed (1) this technology addressed a major crash problem; (2) system designs existed that could mitigate this safety problem; (3) safety benefit projections were assessed; and (4) performance tests and procedures were available to ensure an acceptable performance level. At the time, the agency estimated that FCW systems were 15 percent effective in preventing rear-end crashes. More recently, in a 2017 study, the Insurance Institute for Highway Safety (IIHS) found that FCW systems may be more effective than NHTSA's initial estimates indicated.⁴⁰ IIHS found that FCW

systems reduced rear-end crashes by 27 percent.

When FCW is coupled with AEB, the system becomes more effective at reducing rear-end crashes. A limitation of FCW systems is that they are designed only to warn the driver, but they do not provide automatic braking of the vehicle. From a functional perspective, research suggests that active braking systems, such as AEB, provide greater safety benefits than corresponding warning systems, such as FCW. In a recent study sponsored by General Motors (GM) to evaluate the real-world effectiveness of ADAS technologies (including FCW and AEB) on 3.8 million model year 2013–2017 GM vehicles, the University of Michigan's Transportation Research Institute (UMTRI) found that, for frontal collisions, camera-based FCW systems produced an estimated 21 percent reduction in rear-end striking crashes, while the AEB systems studied (which included a combination of camera-only, radar-only, and fused camera-radar systems) produced an estimated 46 percent reduction in the same crash type.⁴¹ Similarly, in a 2017 study, IIHS found that vehicles equipped with FCW and AEB showed a 50 percent reduction for the same crash type.⁴²

NHTSA has found that current AEB systems often integrate the functionalities of FCW and AEB into one frontal crash prevention system to deliver improved real-world safety performance. Consequently, NHTSA believes that FCW should now be considered a component of lead vehicle AEB and PAEB, and has, in fact, developed a test in NCAP that assesses FCW in the same test that evaluates a vehicle's AEB and PAEB performance.⁴³

Not only are AEB systems proving effective, data indicate there is high consumer acceptance of the current systems. In a 2019 subscriber survey by Consumer Reports, 81 percent of vehicle owners reported that they were satisfied with AEB technology, 54 percent said that it had helped them avoid a crash,

and 61 percent stated that they trusted the system to work every time.⁴⁴

However, NHTSA is aware of data and other information indicating potential opportunities for AEB improvement. The data indicate the potential of AEB to reduce fatal crashes, especially if AEB systems performed at higher speeds. While AEB systems on currently available vehicles are highly effective at lower speed testing, some such systems do not perform well in tests done at higher speeds.

IV. NHTSA's Earlier Efforts Related to AEB

NHTSA sought to provide the public with valuable vehicle safety information by actively supporting development and implementation of AEB technologies through research and development and through NHTSA's NCAP. NHTSA also sought to incentivize installation of AEB and PAEB on vehicles by encouraging the voluntary installation of AEB systems by automakers through a voluntary industry commitment, resulting in participating automakers committing to installing an AEB system that met certain performance thresholds on most light duty cars and trucks by September 1, 2022, and on nearly all light vehicles by September 1, 2025.

A. NHTSA's Foundational AEB Research

NHTSA conducted extensive research on AEB systems to support development of the technology and eventual deployment in vehicles. There were three main components to this work. The agency conducted early research on FCW systems that warn drivers of potential rear-end crashes with other vehicles. This was followed by research into AEB systems designed to prevent or mitigate rear-end collisions through automatic braking. Later, NHTSA evaluated AEB systems designed to prevent or mitigate collisions with pedestrians in a vehicle's forward path.

1. Forward Collision Warning Research

NHTSA's earliest research on FCW systems began in the 1990s, at a time when the systems were under development and evaluation had been conducted primarily by suppliers and vehicle manufacturers. NHTSA collaborated with industry stakeholders to identify the specific crash types that an FCW system could be designed to address, the resulting minimum functional requirements, and potential

³⁸ As discussed in the PRIA for this NPRM, NHTSA decided not to include multi-vehicle crashes in the target population because it would be difficult to estimate safety benefits for occupants in the second and or third vehicles due to limited data.

³⁹ ADAS technologies use advanced technologies to assist drivers in avoiding a crash. NCAP currently recommends four kinds of ADAS technologies to prospective vehicle purchasers—forward collision warning, lane departure warning, crash imminent braking, and dynamic brake support (the latter two are considered AEB). <https://www.nhtsa.gov/equipment/driver-assistance-technologies>. In a March 2, 2022 request for comments notice, *infra*, NHTSA proposed to add four more ADAS technologies to NCAP.

⁴⁰ Cicchino, J.B. (2017, February), Effectiveness of forward collision warning and autonomous emergency braking systems in reducing front-to-rear crash rates, *Accident Analysis and Prevention*, 2017 Feb;99(Pt A):142–152. <https://doi.org/10.1016/j.aap.2016.11.009>.

⁴¹ The Agency notes that the FCW effectiveness rate (21%) observed by UMTRI is similar to that observed by IIHS in its 2019 study (27%). Differences in data samples and vehicle selection may contribute to the specific numerical differences. Regardless, the AEB effectiveness rate observed by UMTRI (46%) was significantly higher than the corresponding FCW effectiveness rate observed in either the IIHS or UMTRI study.

⁴² Cicchino, J.B. (2017, February), Effectiveness of forward collision warning and autonomous emergency braking systems in reducing front-to-rear crash rates, *Accident Analysis and Prevention*, 2017 Feb;99(Pt A):142–152, <https://doi.org/10.1016/j.aap.2016.11.009>.

⁴³ 87 FR 13486 March 9, 2022, proposed update to NCAP's FCW testing.

⁴⁴ Consumer Reports, (2019, August 5), *Guide to automatic emergency braking: How AEB can put the brakes on car collisions*, <https://www.consumerreports.org/car-safety/automatic-emergency-braking-guide/>.

objective test procedures for evaluation.⁴⁵ In the late 1990s, NHTSA worked with industry to conduct a field study, the Automotive Collision Avoidance System Program. NHTSA later contracted with the Volpe National Transportation Systems Center (Volpe) to conduct analyses of data recorded during that field study.⁴⁶ From this work, NHTSA learned about the detection and alert timing and information about warning signal modality (auditory, visual, etc.) of FCW systems, and predominant vehicle crash avoidance scenarios where FCW systems could most effectively play a role in alerting a driver to brake and avoid a crash. In 2009, NHTSA synthesized this research in the development and conduct of controlled track test assessments on three vehicles equipped with FCW.⁴⁷

Because FCW systems are designed only to warn the driver and not to provide automatic braking for meaningful speed reduction of the vehicle, NHTSA continued to research AEB systems.⁴⁸

2. AEB Research To Prevent Rear-End Impacts With a Lead Vehicle

NHTSA's research and test track performance evaluations of AEB began around 2010. The agency began a thorough examination of the state of forward-looking advanced braking technologies, analyzing their performance and identifying areas of

concern or uncertainty, to better understand their safety potential. NHTSA issued a report⁴⁹ and a request for comments notice seeking feedback on its CIB and DBS research in July 2012.⁵⁰ Specifically, NHTSA wanted to enhance its knowledge further and help guide its continued efforts pertaining to AEB effectiveness, test operation (including how to ensure repeatability using a target or surrogate vehicle), refinement of performance criteria, and exploring the need for an approach and criteria for "false positive" tests to minimize the unintended negative consequences of automatic braking in non-critical driving situations.

NHTSA considered feedback it received on the RFC and conducted additional testing to support further development of the test procedures. The agency documented its work in two additional reports, "Automatic Emergency Braking System Research Report" (August 2014)⁵¹ and "NHTSA's 2014 Automatic Emergency Braking (AEB) Test Track Evaluations" (May 2015),⁵² and in accompanying draft CIB and DBS test procedures.⁵³

In the follow-on tests, NHTSA found that CIB and DBS systems commercially available on several different production vehicles could be tested successfully to the agency's defined performance measures. NHTSA developed performance measures to define the performance CIB and DBS systems should attain to help drivers avoid or at least mitigate injury risk in rear-end crashes. The agency found that systems meeting the performance measures have the potential to reduce the number of rear-end crashes as well as deaths and injuries that result from these crashes. NHTSA used the research findings to develop NCAP's procedures for assessing the performance of vehicles with AEB and other crash-avoidance technologies⁵⁴ and for testing vehicles

at higher speeds. The findings also provided the foundation to upgrade NCAP's current AEB tests, as discussed in NHTSA's March 9, 2022, request for comments notice,⁵⁵ and the development of this NPRM.

3. AEB Research To Prevent Vehicle Impacts With Pedestrians

NHTSA began research on PAEB systems in 2011.⁵⁶ The agency worked on a project with Volpe and the Crash Avoidance Metrics Partnership (CAMP)⁵⁷ to develop preliminary PAEB test methods. The goal of the project was to develop and validate minimum performance requirements and objective test procedures for forward-looking PAEB systems intended to address in-traffic, pedestrian crash scenarios.

As part of this work, Volpe conducted an analysis of available crash data and found four common pedestrian pre-crash scenarios. These are when the vehicle is: 1. Heading in a straight line and a pedestrian is crossing the road; 2. turning right and a pedestrian is crossing the road; 3. turning left and a pedestrian is crossing the road; and 4. heading in a straight line and a pedestrian is walking along or against traffic. Understanding the pre-crash factors associated with pedestrian crashes led to the development of the draft research test methods, a set of test equipment requirements, a preliminary evaluation plan, and development of a 50th percentile adult male mannequin made from closed-cell foam. The culmination of this work was documented in a research report, "Objective Tests for Forward Looking Pedestrian Crash Avoidance/Mitigation Systems: Final Report" (June 2014).⁵⁸

and dynamic brake support (AEB) to prospective vehicle purchasers and identifies vehicles that meet NCAP performance test criteria for these technologies.

⁵⁵ 87 FR 13452, March 2, 2022.

⁵⁶ At that time, the agency used the term "pedestrian crash avoidance and mitigation (PCAM)" research.

⁵⁷ The participating companies that worked on this project included representatives from Continental, Delphi Corporation, Ford Motor Company, General Motors, and Mercedes-Benz.

⁵⁸ Carpenter, M.G., Moury, M.T., Skvarce, J.R., Struck, M. Zwicky, T.D., & Kiger, S.M. (2014, June), Objective Tests for Forward Looking Pedestrian Crash Avoidance/Mitigation Systems: Final report (Report No. DOT HS 812 040), Washington, DC: National Highway Traffic Safety Administration.

⁴⁵ This research was documented in a report, "Development and Validation of Functional Definitions and Evaluation Procedures for Collision Warning/Avoidance Systems," Kiefer, R., et al., DOT HS 808 964, August 1999. Additional NHTSA FCW research is described in Zador, Pub. L., et al., "Final Report—Automotive Collision Avoidance System (ACAS) Program," DOT HS 809 080, August 2000; and Ference, J.J., et al., "Objective Test Scenarios for Integrated Vehicle-Based Safety Systems," Paper No. 07-0183, Proceedings of the 20th International Conference for the Enhanced Safety of Vehicles, 2007.

⁴⁶ Najm, W.G., Stearns, M.D., Howarth, H., Koopmann, J., and Hitz, J., "Evaluation of an Automotive Rear-End Collision Avoidance System," DOT HS 810 569, April 2006 and Najm, W.G., Stearns, M.D., and Yanagisawa, M., "Pre-Crash Scenario Typology for Crash Avoidance Research," DOT HS 810 767, April 2007.

⁴⁷ Forkenbrock, G., O'Hara, B., "A Forward Collision Warning (FCW) Program Evaluation, Paper No. 09-0561, Proceedings of the 21st International Technical Conference for the Enhanced Safety of Vehicles, 2009.

⁴⁸ Some FCW systems use haptic brake pulses to alert the driver of a crash-imminent driving situation, but the pulses are not intended to slow the vehicle.

⁴⁹ The agency's initial research and analysis of CIB and DBS systems were documented in a report, "Forward-Looking Advanced Braking Technologies: An analysis of current system performance, effectiveness, and test protocols" (June 2012). <https://www.regulations.gov>, NHTSA 2012-0057-0001.

⁵⁰ 77 FR 39561.

⁵¹ <https://www.regulations.gov>, NHTSA 2012-0057-0037.

⁵² DOT HS 812 166.

⁵³ <https://www.regulations.gov>, NHTSA 2012-0057-0038.

⁵⁴ NCAP recommends forward collision warning, lane departure warning, crash imminent braking

NHTSA continued to refine the CAMP test procedures in pursuit of objective and repeatable test procedures using production vehicles equipped with PAEB systems. In doing so, NHTSA evaluated adult, child, non-articulating and articulating mannequins, walking and running speed capabilities, mannequin radar cross section characteristics, and mannequin position accuracy and control.⁵⁹ The evaluated mannequins and their characteristics represented the largest portion of the crash problem. NHTSA also updated its real-world pedestrian crash data analysis in 2017.⁶⁰

In November 2019, NHTSA published a draft research test procedure that provided the methods and specifications for collecting performance data on PAEB systems for light vehicles.⁶¹ The test procedures were developed to evaluate the PAEB performance in the two most frequent pre-crash scenarios involving pedestrians: where the pedestrian crosses the road in front of the vehicle and where the pedestrian walks alongside the road in the path of the vehicle. NHTSA focused its 2019 draft research test procedures on these two scenarios because a 2017 crash data study suggested they collectively represented 90 percent of pedestrian fatalities (64 percent and 28 percent, respectively). In contrast, the study found that the turning right and turning left scenarios were found to only account for 1 percent and 4 percent of pedestrian fatalities, respectively. NHTSA further focused the 2019 test procedures on PAEB-addressable crashes. PAEB systems offered at the time were not offering a wider field of view necessary for detection and braking in the turning scenarios. These two scenarios present different challenges due to the relative angles and distances between subject vehicle and pedestrian and could require additional hardware resulting in added cost. NHTSA's consideration of including the turning scenarios is further discussed in the PRIA accompanying this NPRM. The draft test procedures described in this document rely on the use of pedestrian mannequins for testing purposes.

⁵⁹ Albrecht, H., "Objective Test Procedures for Pedestrian Automatic Emergency Braking Systems," SAE Government/Industry Meeting, January 25–27, 2017.

⁶⁰ Yanagisawa, M., Swanson, E., Azeredo, P., Najm, W., "Estimation of Potential Safety Benefits for Pedestrian Crash Avoidance/Mitigation Systems," DOT HS 812 400, April 2017.

⁶¹ <https://regulations.dot.gov>, Docket No. NHTSA–2019–0102.

4. Bicycle and Motorcycle AEB

NHTSA is actively conducting research to characterize the performance of AEB systems in response to bicycle and motorcycles in the same scenarios as NHTSA's lead vehicle AEB testing, in both daylight and darkness conditions. NHTSA tested five vehicles with bicycle and motorcycle AEB and also tested with a vehicle surrogate as a control for AEB system performance. In addition to characterizing the performance of the five vehicles, this testing also allows NHTSA to refine its test procedures to determine whether any changes would be needed to test bicycle or motorcycle AEB.

Preliminary results suggest that the lane position of the test device, the lighting conditions, the positioning of a lead vehicle, and speed all have a significant effect on the performance of AEB systems relative to bicycles and motorcycles. However, there is no discernable pattern across vehicles tested, suggesting that performance is dependent upon specific test scenario definition. Further, preliminary testing has raised issues with the design of the bicycle and motorcycle surrogates and their impact on the vehicles under test. This report is expected to be completed by the end of 2023. The results from this research, and other future research, may lead to efforts to define test procedures, refine the bicycle and motorcycle surrogate devices, and characterize AEB system performance in response to additional test devices (scooters, mopeds, wheelchairs, or other assisted walking devices).

B. NHTSA's New Car Assessment Program

1. FCW Tests

In 2007, based on the research discussed above, NHTSA issued a notice requesting public comment on including rear-end crash warning/avoidance systems in NCAP.⁶² The technology under consideration at the time included forward vehicle sensing with warning or braking. In 2008, based upon feedback and further agency analysis, NHTSA published a final decision notice announcing its intent to include FCW in NCAP as a recommended technology and identify for consumers which vehicles have the technology.

To ensure that NCAP identified only vehicles that had FCW systems that satisfied a minimum level of performance, NHTSA adopted specific

⁶² 72 FR 3473 (January 25, 2007). NHTSA published a report in conjunction with this notice titled, "The New Car Assessment Program (NCAP): Suggested Approaches for Future Enhancements."

performance tests and thresholds and time-to-collision-based alert criteria that a system had to satisfy to be distinguished in NCAP as a vehicle equipped with the recommended technology. NCAP informs consumers that a particular vehicle has a recommended technology when NHTSA has data verifying that the vehicle's system meets the minimum performance threshold set by NHTSA for acceptable performance. If a vehicle's system meets the performance threshold using the test method NHTSA specifies, NHTSA uses a checkmark to indicate on the NCAP website that the vehicle is equipped with the technology.⁶³

The performance tests chosen for NCAP consisted of three scenarios that simulated the most frequent types of light vehicle rear-end crashes: crashes where a vehicle ahead is either stopped, suddenly starts braking, or is traveling at a much lower speed in the subject vehicle travel lane. The scenarios were named "lead vehicle stopped," "lead vehicle decelerating," and "lead vehicle moving," respectively.⁶⁴ In each scenario, the time needed for a driver to perceive an impending rear-end crash, decide the corrective action, and respond with the appropriate mitigating action is prescribed. If the FCW system fails to provide an alert within the required time during testing, the professional test driver applies the brakes or steers away to avoid a collision.

2. Lead Vehicle AEB Tests

NHTSA incorporated AEB technologies (CIB and DBS) in NCAP as recommended crash avoidance technologies in 2015,⁶⁵ starting with model year 2018 vehicles. NHTSA adopted performance tests and thresholds that a system must meet for the vehicle to be distinguished in NCAP as a vehicle with the recommended technology. The AEB performance tests consisted of test scenarios and test speeds that were derived from crash statistics, field operational tests, and NHTSA testing experience, including

⁶³ The March 2022 request for comments notice discusses, among other things, NHTSA's plan to develop a future rating system for new vehicles based on the availability and performance of all of the NCAP-recommended crash avoidance technologies. That is, instead of a simple checkmark showing the vehicle has a technology (and it meets the applicable performance test criteria), vehicles would receive a rating for each technology based on the systems' performance test criteria in NHTSA's tests. 87 FR 13452 (March 9, 2022).

⁶⁴ 73 FR 40016 (July 11, 2008). <https://regulations.gov>. Docket No. NHTSA–2006–26555–0118.

⁶⁵ 80 FR 68604.

experience gained from development of the FCW performance tests already in NCAP.⁶⁶ In the NCAP recommended crash avoidance technologies program, vehicles receive credit for meeting the agency's performance tests for CIB and DBS separately.

For AEB assessment, NCAP uses four test scenarios: lead vehicle stopped, lead vehicle decelerating, lead vehicle moving, and the steel trench plate test.⁶⁷ Each test scenario is evaluated separately for CIB and DBS. The only difference is that, in the DBS tests, manual braking is applied to the subject vehicle. For the first three test scenarios, the subject vehicle must demonstrate a specific speed reduction attributable to AEB intervention. The fourth scenario, the steel trench plate test, is a false positive test, used to evaluate the propensity of a vehicle's AEB system to activate inappropriately in a scenario that would not present a safety risk to the vehicle's occupants. For each of the scenarios, to receive NHTSA's technology recommendation through NCAP, the vehicle must meet the minimum specified performance in at least five out of seven valid test trials.

Lead Vehicle Stopped Tests

In the NCAP lead vehicle stopped test scenario, the subject vehicle encounters a stopped lead vehicle on a straight road. The subject vehicle travels in a straight line, at a constant speed of 40 km/h (25 mph), approaching a stopped lead vehicle in its path. The subject vehicle's throttle is released within 500 milliseconds (ms) after the subject vehicle issues an FCW. In the DBS test, the subject vehicle's brakes are manually applied at a time-to-collision of 1.1 seconds (at a nominal headway of 12.2 m (40 ft)). To receive credit for CIB, the subject vehicle speed reduction attributable to CIB intervention must be ≥ 15.8 km/h (9.8 mph) before the end of the test. To receive credit for DBS, the subject vehicle must not contact the lead vehicle.

Lead Vehicle Decelerating Tests

In the lead vehicle decelerating test scenario, the subject vehicle encounters a lead vehicle slowing with constant deceleration directly in front of it on a straight road. For this test scenario, the subject vehicle and lead vehicle are initially both driven at 56.3 km/h (35 mph) with an initial headway of 13.8 m (45.3 ft). The lead vehicle then decelerates, braking at a constant

deceleration of 0.3g in front of the subject vehicle, after which the subject vehicle throttle is released within 500 ms after the subject vehicle issues an FCW. In the DBS testing, the subject vehicle's brakes are applied at a time-to-collision of 1.4 seconds (at a nominal headway of 9.6 m or 31.5 ft). To receive credit for passing this test scenario for CIB, the subject vehicle speed reduction attributable to CIB intervention must be ≥ 16.9 km/h (10.5 mph) before the end of the test. To receive credit for passing this test for DBS, the subject vehicle must not contact the lead vehicle.

Lead Vehicle Moving Tests

In the lead vehicle moving test scenario, the subject vehicle encounters a slower-moving lead vehicle directly in front of it on a straight road. For this test scenario, two test conditions are assessed. For the first test condition, the subject vehicle and lead vehicle are driven at a constant speed of 40 km/h (25 mph) and 16 km/h (10 mph), respectively. For the second test condition, the subject and lead vehicle are driven at a constant speed of 72.4 km/h (45 mph) and 32.2 km/h (20 mph), respectively. In both tests, the subject vehicle throttle is released within 500 ms after the subject vehicle issues an FCW. In the DBS tests, the subject vehicle's brakes are applied at a time-to-collision of 1 second (at a nominal headway of 6.7 meters (22 ft)). To receive credit for passing the first CIB test, the subject vehicle must not contact the lead vehicle during the test. To receive credit for passing the second CIB test, the subject vehicle speed reduction attributable to crash imminent braking intervention must be ≥ 15.8 km/h (9.8 mph) by the end of the test. To receive credit for either DBS test, the subject vehicle must not contact the lead vehicle.

Steel Trench Plate Tests

In the steel trench plate test scenario, the subject vehicle is driven towards a steel trench plate (2.4 m $\times$ 3.7 m $\times$ 25.3 mm or 7.9 ft $\times$ 12.1 ft $\times$ 1 in) on a straight road at two different speeds: 40 km/h (25 mph) in one test and 72.4 km/h (45 mph) in the other. The subject vehicle throttle is released within 500 ms of the warning. For CIB tests, if no FCW is issued, the throttle is not released until the test is completed. For DBS tests, the throttle is released such that it is completely released within 500 ms of 2.1 seconds time-to-collision (at a nominal distance of 12.3 m (40.4 ft) or 22.3 m (73.2 ft) from the trench plate, depending on the test speed). The brake pedal is then applied at 1.1 s time-to-collision. To pass these tests for CIB, the

subject vehicle must not achieve a peak deceleration equal to or greater than 0.5 g at any time during its approach to the steel trench plate. To pass the DBS test, the subject vehicle must not experience a peak deceleration that exceeds 150 percent of the braking experienced through manual braking alone for the baseline condition at the same speed.

3. PAEB Test Proposal

NHTSA conducted research and published several NCAP RFC notices on the inclusion of PAEB systems. In the 2013 NCAP request for comments notice, NHTSA noted that PAEB systems capable of addressing both low-speed front and rear pedestrian impact prevention were already in production for some vehicle models.⁶⁸ The agency acknowledged that different technologies were being implemented at the time and different test procedures were being developed worldwide, although some test procedure complexities still existed. An additional complexity was the need for a crash avoidance test dummy that would provide a radar and/or camera recognition signature that would approximate that of a human and would be durable enough to withstand any testing impacts. NHTSA requested comments on methods of addressing and resolving these complexities.

In 2015, the agency announced its plan for several major NCAP program enhancements, including NHTSA's intention to implement a new 5-star rating system to convey vehicle safety information in three major areas—crashworthiness, crash avoidance, and pedestrian protection.⁶⁹ The agency proposed that PAEB be included in the pedestrian protection rating, along with rear automatic braking and pedestrian crashworthiness. At the time, NHTSA noted that the agency was still refining the pedestrian test scenarios for PAEB systems. Specifically, three different types of apparatus concepts were identified for transporting a test mannequin in a test run. These included two overhead gantry-style designs and one moving sled arrangement.

In November 2019, NHTSA published a **Federal Register** notice that sought comment on draft confirmation test procedures for PAEB, among other technologies (84 FR 64405).⁷⁰ It included the two most fatal scenario types: Pedestrian crossing path and

⁶⁸ 78 FR 20597 at 20600.

⁶⁹ 80 FR 78522 at 78526.

⁷⁰ National Highway Traffic Safety Administration (2019, April), *Pedestrian automatic emergency brake system confirmation test (working draft)*. Available at: <https://www.regulations.gov/document/NHTSA-2019-0102-0005>.

⁶⁶ Id. at 68608.

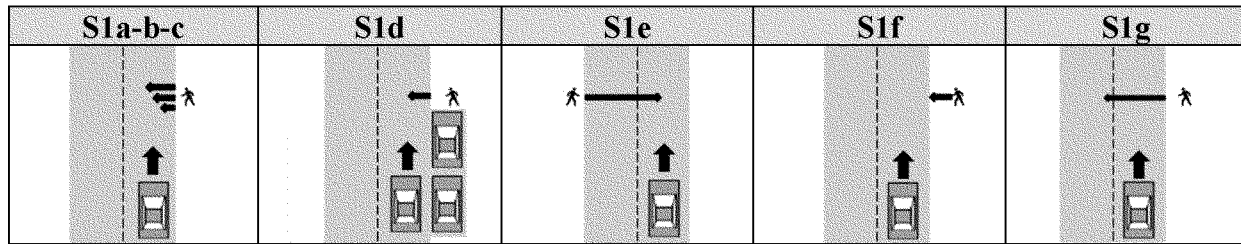
⁶⁷ NHTSA. (2015, October). Crash imminent brake system performance evaluation for the New Car Assessment Program. <https://www.regulations.gov>. Docket No. NHTSA-2015-0006-0025.

pedestrian along or standing in path.
For the crossing path scenario (S1), the

draft included seven specific test
procedures (Table 17). The maximum

subject vehicle traveling speed specified
was 40 km/h (25 mph) in all cases.

Table 17. PAEB Crossing Path Scenarios



In the first three scenarios (S1a–b–c), a subject vehicle approaches an adult test mannequin starting on the right-hand side of the lane of travel and moving toward the left-hand side. The point on the vehicle at which the subject vehicle will strike the test mannequin without automatic braking, or overlap, is 25, 50, and 75 percent from the passenger side of the subject vehicle, respectively. In the fourth scenario (S1d), the subject vehicle approaches a crossing child test mannequin running from behind parked vehicles from the right-hand side of the travel lane toward the left-hand side

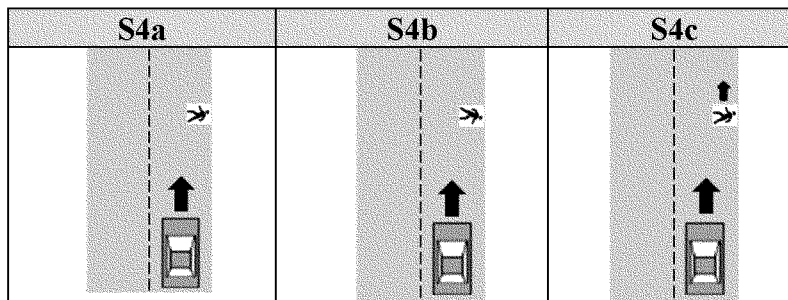
with the point of impact at a 50 percent overlap. In the fifth scenario (S1e), the subject vehicle approaches an adult test mannequin running from the left side of the travel lane toward the right with a 50 percent overlap point of impact.

The sixth and seventh crossing path scenarios (S1f and S1g) are false positive tests. In the sixth scenario, the subject vehicle approaches an adult test mannequin, which begins moving from the right-hand side of the roadway but safely stops short of entering the subject vehicle's lane of travel. In the seventh scenario, the adult test mannequin also crosses from the right-hand side of the

road toward the left-hand side, but safely crosses the lane of travel completely. The false positive scenarios are used to evaluate the propensity of a PAEB system to inappropriately activate in a non-critical driving scenario that does not present a safety risk to the subject vehicle occupants or pedestrian.

NHTSA's research test procedures also consisted of three along path (S4) test scenarios in which a test mannequin is either standing or traveling along the vehicle's lane of travel (Table 18). The maximum subject vehicle traveling speed specified was 40 km/h (25 mph) for all procedures.

Table 18. NHTSA 2019 Draft Test Procedures - PAEB Along Path Scenarios



In the first scenario the stationary test mannequin is facing away from the vehicle (S4a) and in the second, it is facing toward the vehicle (S4b). In third scenario, a subject vehicle encounters an adult test mannequin walking in front of the vehicle on the nearside of the road away from the vehicle (S4c). In all three procedures, the stationary test mannequin is positioned with a 25 percent overlap from the passenger side of the vehicle.

NHTSA used the test procedures to conduct performance evaluations of model year 2019 and 2020 vehicles, which were used to support a March 9, 2022, request for comments notice proposing to include PAEB tests in

NCAP.⁷¹ In addition to PAEB, the RFC notice proposed including blind spot detection, blind spot intervention, and lane keeping support performance tests in NCAP. It further proposed strengthening the existing performance tests for FCW, AEB (CIB and DBS), and lane departure warning. It also proposed new rating criteria and provided a roadmap for future upgrades to the program.

C. 2016 Voluntary Commitment

On March 17, 2016, NHTSA and the Insurance Institute for Highway Safety (IIHS) announced a commitment by 20 automakers representing more than 99

percent of the U.S. light vehicle market to make lower speed AEB a standard feature on virtually all new light duty cars and trucks with a gross vehicle weight rating (GVWR) of 3,855 kg (8,500 lbs.) or less no later than September 1, 2022.⁷² Participating manufacturers needed to ensure their vehicles had an FCW system that met NHTSA's FCW NCAP requirements for both the lead vehicle moving and lead vehicle decelerating performance tests. The

⁷² Audi, BMW, FCA US LLC, Ford, General Motors, Honda, Hyundai, Jaguar Land Rover, Kia, Maserati, Mazda, Mercedes-Benz, Mitsubishi Motors, Nissan, Porsche, Subaru, Tesla Motors Inc., Toyota, Volkswagen, and Volvo Car USA—representing more than 99 percent of the U.S. new light vehicle market.

⁷¹ 87 FR 13452.

voluntary commitment does not include meeting NHTSA's FCW NCAP requirements for the stopped lead vehicle scenario. The voluntary commitment includes automatic braking system performance (CIB only) able to achieve a specified average speed reduction over five repeated trials when assessed in a stationary lead vehicle test conducted at either 19 or 40 km/h (12 or 25 mph). To satisfy the performance specifications in the voluntary commitment, the vehicle would need to achieve a speed reduction of at least 16 km/h (10 mph) in either lead vehicle stopped test, or a speed reduction of 8 km/h (5 mph) in both tests. Participating automakers also committed to making the technology standard on virtually all trucks with a GVWR between 3,856 kg (8,501 lbs.) and 4,536 kg (10,000 lbs.) no later than September 1, 2025.

D. Response To Petition for Rulemaking

In 2017, NHTSA denied a petition for rulemaking from Consumer Watchdog, Center for Automotive Safety, and Public Citizen which requested that NHTSA initiate a rulemaking to require FCW, CIB, and DBS on all light vehicles.⁷³ NHTSA denied the petition after deciding that NCAP, the voluntary commitment, and the consumer information programs of various organizations would produce benefits substantially similar to those that would eventually result from the petitioner's requested rulemaking. Accordingly, the agency did not find evidence of a market failure warranting initiation of the requested rulemaking.⁷⁴ NHTSA further stated that the non-regulatory activities being undertaken at the time would make AEB standard on new light vehicles faster than could be achieved through a regulatory process and would thus make AEB standard equipment earlier, with its associated safety benefits. NHTSA stated that it would monitor vehicle performance in NCAP and the industry's voluntary commitment, and initiate rulemaking if the need arose.

V. NHTSA's Decision To Require AEB

A. This Proposed Rule Is Needed To Address Urgent Safety Problems

NHTSA announced its intention to propose an FMVSS for AEB light vehicles in the Spring 2021 Unified Regulatory Agenda.⁷⁵ In making the

decision to initiate this rulemaking, NHTSA recognized that the non-regulatory measures leading up to this NPRM had been key to an increased and more rapid fleet penetration of AEB technology but decided that rulemaking would best address the rise in motor vehicle fatalities. In addition, NHTSA found that AEB could perform effectively at higher speeds than the systems included in the voluntary agreement and NCAP and that PAEB in darkness has become technologically possible.

NHTSA initiated this rulemaking to reduce the frequency of rear-end crashes, which is the most prevalent vehicle crash type, and to target one of the most concerning and urgent traffic safety problems facing the U.S. today—the rapidly increasing numbers of pedestrian fatalities and injuries. Rear-end crashes are very common, although most are not deadly. Nevertheless, approximately 2,000 people die in rear-end crashes each year, making up 5 to 7 percent of total crash fatalities. Pedestrian crashes are deadly and have been increasing in recent years. They tend to happen at night and at higher speeds. About half of fatal pedestrian crashes happen on roads with a speed limit of 40 mph or lower and half on roads with a speed limit of 45 mph and higher.

The non-regulatory approaches of the past were instrumental in developing AEB and encouraging manufacturers to include and consumers to purchase AEB in most passenger vehicles sold today. With AEB sensors and other hardware installed in the fleet as a result of NCAP and the voluntary commitment, regulatory costs to equip new vehicles are reduced. However, an FMVSS is needed to compel technological improvement of AEB systems, and to ensure that every vehicle will be equipped with a proven countermeasure that can drastically reduce the frequency and severity of rear-end crashes and the safety risks posed to pedestrians. NHTSA is aware of data and other information indicating potential opportunities for AEB improvement. A recent IIHS study of 2009–2016 crash data from 23 States suggested that the increasing effectiveness of AEB technology in certain crash situations is changing rear-end crash scenarios.⁷⁶ IIHS's study identified rear-end crashes in which striking vehicles equipped with AEB

were over-represented compared to those without AEB. For instance, IIHS found that striking vehicles involved in the following rear-end crashes were more likely to have AEB: (1) where the striking vehicle was turning relative to when it was moving straight; (2) when the struck vehicle was turning or changing lanes relative to when it was slowing or stopped; (3) when the struck vehicle was not a passenger vehicle or was a special use vehicle relative to a passenger car; (4) on snowy or icy roads; or (5) on roads with speed limits of 70 mph relative to those with 64 to 72.4 km/h (40 to 45 mph) speed limits. Overall, the study found that 25.3 percent of crashes where the striking vehicle was equipped with AEB had at least one of these over-represented characteristics, compared with 15.9 percent of impacts by vehicles that were not equipped with AEB. IIHS found that in 2016, nearly 300,000 (15 percent) of the police reported two-vehicle rear-end crashes involved one of the rear-end crashes mentioned above.

These results suggest that the metrics used to evaluate the performance of AEB systems by NHTSA's NCAP, the voluntary industry commitment, and other consumer information programs have facilitated the development of AEB systems that reduce the crashes they were designed to address. However, the results also indicate that AEB systems have not yet provided their full crash reduction potential. While they are effective at addressing some of the lower speed rear-end crashes, they are less effective at fully addressing the safety need.

These data also indicate the potential of AEB to reduce fatal crashes, especially if test speeds were increased. Accordingly, NHTSA has issued this NPRM to drive AEB performance to maximize safety benefits, assess practicability limits, and ensure that AEB technology is incorporated in all vehicles to the extent possible. This NPRM is issued to reach farther than NCAP to expand the availability of AEB technologies to all vehicles—not just to those whose manufacturers were incentivized to add such systems or whose purchasers were interested in purchasing them. By ensuring the universal implementation of AEB, this NPRM would best achieve equity in the safety provided across vehicles and the safety provided to the communities on whose roads they operate.

This NPRM would improve the capability of AEB systems beyond that of the low-speed AEB systems contemplated by the voluntary commitment, increasing safety benefits. The NPRM also would require PAEB,

⁷³ 82 FR 8391 (January 25, 2017).

⁷⁴ Section 1(b) of E.O. 12866 requires agencies to assess the failures of private markets to address the problem identified by the agency.

⁷⁵ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2127-AM37>.

⁷⁶ Cicchino, J.B. & Zuby, D.S. (2019, August), Characteristics of rear-end crashes involving passenger vehicles with automatic emergency braking, *Traffic Injury Prevention*, 2019, VOL. 20, NO. S1, S112–S118 <https://doi.org/10.1080/15389588.2019.1576172>.

while the voluntary commitment does not address PAEB. Requiring AEB systems under an FMVSS would ensure that manufacturers design and produce vehicles that provide at least the minimum level of safety mandated by the standard or face consequences for not doing so, including recalling the vehicle and remedying the noncompliance free of charge. These positive outcomes could not be achieved by a voluntary commitment alone.

Further, this NPRM responds to Congress's directive that AEB be required on all passenger vehicles. On November 15, 2021, President Biden signed the Bipartisan Infrastructure Law, codified as the Infrastructure Investment and Jobs Act.⁷⁷ Section 24208(a) of BIL added 49 U.S.C. 30129, directing the Secretary of Transportation to promulgate a rule to establish minimum performance standards with respect to crash avoidance technology and to require that all passenger motor vehicles for sale in the United States be equipped with a forward collision warning system and an automatic emergency braking system.⁷⁸ The FCW and AEB system is required to alert the driver if the vehicle is closing its distance too quickly to a vehicle ahead or to an object in the path of travel ahead and a collision is imminent, and to automatically apply the brakes if the driver fails to do so.

BIL requires that "all passenger motor vehicles" be equipped with AEB and FCW. This NPRM would require AEB and FCW on all passenger cars and multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 lbs. or less. NHTSA believes that the scope of this NPRM includes all vehicles required be equipped with AEB by section 24208 of the IIJA.

BIL further requires that an FCW system alert the driver if there is a "vehicle ahead or an object in the path of travel" if a collision is imminent. Accordingly, NHTSA has defined an AEB system as one that detects an imminent collision with a vehicle or with an object. NHTSA does not read this provision as mandating a particular level of performance regarding the detection of vehicles and objects. More specifically, NHTSA does not interpret this provision to require passenger vehicles to detect and respond to imminent collisions with all vehicles or all objects in all scenarios. Such a

requirement would be unreasonable given the wide array of harmless objects that drivers could encounter on the roadway that do not present safety risks. NHTSA also does not interpret section 24208 to mandate AEB performance to avoid any specific objects or to mandate PAEB.

Instead, NHTSA interprets section 24208 as broadly requiring AEB capable of detecting and responding to vehicles and objects while leaving to NHTSA the discretion to promulgate specific performance requirements. Following this interpretation, NHTSA's proposal, if implemented, would require light vehicles to be equipped with FCW and automatic emergency braking, and the proposal defines AEB as a system that detects an imminent collision with vehicles, objects, and road users in or near the path of a vehicle and automatically controls the vehicle's service brakes to avoid or mitigate the collision.

NHTSA has authority and discretion to promulgate requirements that go beyond those contemplated under Section 24208. Pursuant to its authority at 49 U.S.C. 30111, NHTSA is proposing that all light passenger vehicles be required to have PAEB.

B. Stakeholder Interest in AEB

1. National Transportation Safety Board Recommendations

This NPRM is responsive to several National Transportation Safety Board (NTSB) recommendations. In May 2015, the NTSB issued a special investigation report, "The Use of Forward Collision Avoidance Systems to Prevent and Mitigate Rear-End Crashes."⁷⁹ The report detailed nine crash investigations involving passenger or commercial vehicles striking the rear of another vehicle, and concluded that collision warning systems, particularly when paired with active braking, could significantly reduce the frequency and severity of rear-end crashes. As a result, the NTSB issued several safety recommendations to NHTSA, including the following:

- H-15-04: Develop and apply testing protocols to assess the performance of forward collision avoidance systems in passenger vehicles at various velocities, including high speed and high velocity-differential.

In September 2018, the NTSB issued another special investigation report, "Pedestrian Safety."⁸⁰ This report examined the past 10 years of

pedestrian crash data, described NTSB pedestrian safety investigations, and summarized issues raised in a public forum. As a result, the NTSB issued several safety recommendations to NHTSA, including the following:

- H-18-41: Develop performance test criteria for vehicle designs that reduce injuries to pedestrians.
- H-18-42: Develop performance test criteria for manufacturers to use in evaluating the extent to which automated pedestrian safety systems in light vehicles will prevent or mitigate pedestrian injury.

2. Consumer Information Programs in the United States

In the United States, in addition to NHTSA's NCAP, the Insurance Institute for Highway Safety also tests AEB systems in vehicles for the purpose of informing consumers about their performance. Both programs test AEB systems in response to a stationary lead vehicle test device, but IIHS only performs tests to assess crash imminent braking system performance, while NCAP AEB evaluations also test DBS responses and assess system performance for both slower-moving and decelerating lead vehicle scenarios. NCAP also tests for false positive AEB activation by having subject vehicles drive over a steel trench plate. NCAP provides pass/fail results based on speed reduction and crash avoidance in DBS tests attributed to AEB, while IIHS awards points based only on speed reduction.⁸¹ Both programs are considering upgrades to their AEB performance tests. On March 9, 2022, NHTSA issued a request for comments notice proposing increased test speeds in its DBS and CIB test protocols. On May 5, 2022, IIHS announced its intention to test six vehicles equipped with AEB at higher speeds, up to 72.4 km/h (45 mph), to better align with reported crashes.⁸²

IIHS further conducts PAEB tests in two scenarios like those proposed in the NPRM. In the first scenario, an articulated test mannequin crosses the subject vehicle's path; this condition is tested with both the articulated child surrogate (Perpendicular Child) and the articulated adult surrogate (Perpendicular Adult). In the second scenario, an adult test mannequin without articulation is standing in a

⁸¹ The March 9, 2022, request for comments notice also asks for public comment on NHTSA's plan to develop a future rating system for new vehicles based on the availability and performance of all the NCAP-recommended crash avoidance technologies. 87 FR 13452.

⁸² <https://www.iihs.org/news/detail/iihs-eyes-higher-speed-test-for-automatic-emergency-braking>.

⁷⁷ Public Law 117-58, 24208 (Nov. 15, 2021).

⁷⁸ Section 24208 also directs DOT to require a lane departure warning and lane-keeping assist system that warns the driver to maintain the lane of travel; and corrects the course of travel if the driver fails to do so.

⁷⁹ <https://www.nts.gov/safety/safety-studies/Documents/SIR1501.pdf>.

⁸⁰ <https://www.nts.gov/safety/safety-studies/Documents/SIR1803.pdf>.

vehicle's path, offset 25 percent from center (Parallel Adult). Both test scenarios are conducted during daylight conditions. Points are awarded in the IIHS test based on vehicle speed reduction.

Other consumer information groups have also invested effort into supplying customers with information regarding AEB. Since 2016, Consumer Reports has been awarding "bonus" points to its overall score for vehicles that come equipped with AEB and FCW as standard features across all trim levels of a model.⁸³

3. Petition for Rulemaking on PAEB Performance in Dark Conditions

On March 22, 2022, IIHS and the Highway Loss Data Institute petitioned NHTSA to require, through rulemaking, that passenger vehicles be equipped with AEB that responds to pedestrians in all light conditions. The petitioners stated that research from IIHS estimates that PAEB systems reduce pedestrian crash risk by an estimated 32 to 33 percent in daylight or dark conditions with street lighting but does not reduce pedestrian crash risk in the dark without street lighting. The petitioners stated that over a third of pedestrian deaths occur in dark, unlit conditions, and that requiring PAEB systems that function in those conditions will lead to a greater reduction in fatalities than only requiring those systems that function in daylight.

When NHTSA received the petition from IIHS, the agency had already announced in the Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions⁸⁴ that it had initiated rulemaking on PAEB. The agency announced that it would issue a proposal to require and/or standardize performance for light vehicle AEB, including PAEB. NHTSA's Agenda entry further announced that this rulemaking would set performance requirements for AEB systems and would specify a test procedure under which compliance with those requirements would be measured. Given this context, NHTSA denied the petition as moot because NHTSA had already commenced rulemaking on the requested action and was, and remains, deeply immersed in developing the rule. Although NHTSA has denied the petition, NHTSA has considered its points as suggestions for this

rulemaking. A copy of the petition has been placed in the docket for this rulemaking.

C. Key Findings Underlying This Proposal

1. Impact Speed Is Key To Improving AEB's Mitigation of Fatalities and Injuries

As described in the section II of this NPRM, 79 percent of property-damage-only crashes, 73 percent of injuries, and 60 percent of fatalities in rear-end crashes involving light vehicles occur on roads where the posted speed limit is 60 mph (97 km/h) or less. However, the majority of those crashes are skewed towards the higher end of that range. Only 3 percent of fatalities, 9 percent of injuries, and 12 percent of property-damage-only crashes occur at posted speeds below 30 mph (48 km/h). NHTSA believes that most of the safety need exists at speeds greater than 30 mph (48 km/h). In light of these data, this NPRM seeks to address a safety need at a speed well above that found in the voluntary commitment, which has a maximum test speed of 40 km/h (25 mph). The data show that speeds higher than those proposed in the 2022 NCAP request for comments notice⁸⁵ (with a maximum testing speed of 80 km/h (50 mph)) are also required to address the safety need.⁸⁶ In fact, the data demonstrate the safety need for AEB systems to activate at as high a speed as can practicably be achieved.

2. Darkness Performance of PAEB Is Highly Important

Out of the 4,069 pedestrian fatalities in 2019 resulting from being struck by the front of a light vehicle, about 77 percent occurred in dark conditions and about 50 percent of all pedestrian fatalities occurred at posted speeds of 40 mph (64 km/h) or less. Forty percent of all pedestrian injuries, regardless of how a pedestrian is struck, occur in dark conditions and 57 percent of them occur at posted speeds of 40 mph (64 km/h) or less. Based on these data, the agency tentatively concludes that performance testing under various lighting conditions and at higher speeds is necessary.

During 2020 agency research testing using model year 2019 and 2020 vehicles, observed AEB performance was not consistent for some of the proposed lighting conditions and speeds. During PAEB testing, 5 out of 11

vehicles avoided collision in at least one test at speeds up to 60 km/h (37.3 mph) in daylight when an adult pedestrian test mannequin crossed the path of the vehicle from the right; absent PAEB intervention, the front middle section of the vehicle would have hit the test mannequin. For the same scenario, 5 vehicles out of 11 avoided impact with the test mannequin in at least one test at speeds up to 40 km/h (25 mph) when testing using the vehicle's lower beam headlamps in dark conditions. Only 1 of 11 vehicles could consistently avoid impact in every test trial in each of the daylight and dark lower beam headlamp conditions at these speeds.

For tests involving a stationary pedestrian test mannequin situated toward the right side of the road, but within the path of the vehicle, 3 vehicles out of 11 consistently avoided impact at speeds up to 50 km/h (31.1 mph) in daylight conditions, and one avoided impact in five out of six tests at 60 km/h (37 mph). In dark conditions, using only the lower beam headlamps, one vehicle avoided collision at all speeds up to 50 km/h (31.1 mph) and in four out of five tests at 55 km/h (34.2 mph). However, other tested vehicles contacted the test mannequin at all speeds above 16 km/h (10 mph) in the same darkness condition.

NHTSA has tentatively concluded that the performance achieved by the better performing vehicles in dark lighting conditions can be achieved by all vehicles given an adequate phase-in period. This is consistent with recent testing performed by IIHS, which found that existing systems can perform in darkness conditions regardless of their IIHS headlamp ratings.⁸⁷ The agency tentatively concludes that AEB system performance is improving, and the latest AEB systems are already able to perform much better than previous systems. Concurrent with the development of this proposed rule, NHTSA performed PAEB testing on model year 2021 and 2022 vehicles using the proposed performance requirements and test procedures. The results of this testing are detailed in the PAEB report docketed with this proposed rule.

3. NHTSA's 2020 Research on Lead Vehicle AEB and PAEB Performance Show the Practicability of Higher Speed Tests

In 2020, NHTSA conducted lead vehicle AEB and PAEB performance tests on 11 model year 2019 and 2020 vehicles from 10 vehicle manufacturers.

⁸³ <https://www.consumerreports.org/car-safety/where-automakers-stand-on-automatic-emergency-braking-pledge/>.

⁸⁴ <https://www.reginfo.gov/public/do/eAgendaMain>; See RIN 2127-AM37, titled, "Light Vehicle Automatic Emergency Braking (AEB) with Pedestrian AEB."

⁸⁵ 87 FR 13452.

⁸⁶ In 2019, 67 percent of fatalities within the target population occur where the posted speeds are above 50 mph, and 29 percent of the fatalities occur at posted speeds of 55 mph and 60 mph.

⁸⁷ IIHS dark light press release: <https://www.iihs.org/news/detail/pedestrian-crash-avoidance-systems-cut-crashes-but-not-in-the-dark>.

This work was done to support the agency's March 9, 2022 request for comments notice proposing to upgrade NCAP, as well as to assist in the development of this NPRM.

a. Lead Vehicle AEB Performance Tests

To evaluate lead vehicle AEB performance at higher speeds, the agency performed CIB tests in accordance with NCAP's CIB test procedures,⁸⁸ but repeated the lead vehicle stopped and lead vehicle decelerating test scenarios using an expanded set of input conditions to assess how specific test procedures changes, such as increasing speed or deceleration magnitude, would affect the vehicle's CIB performance. NHTSA placed test reports detailing the results in the docket of the March 9, 2022, NCAP request for comments notice on the proposed updates.⁸⁹

For the NCAP CIB lead vehicle stopped test scenario, NHTSA conducted tests at incremental vehicle speeds from 40 to 72.4 km/h (25 to 45 mph). The results showed that the tested vehicle CIB systems exceeded the performance established in consumer programs, such as model year 2022 NCAP and IIHS. Three vehicles were able to demonstrate no contact with the lead vehicle at speeds up to 72.4 km/h (45 mph), and the remaining eight vehicles had an average speed reduction of 37.7 km/h (23.4 mph) when tested at this speed.⁹⁰ One vehicle avoided contact in all tests and at speeds up to 72.4 km/h (45 mph), for a total of 27 out of 27 tests without contact.

NHTSA also conducted CIB lead vehicle decelerating tests as a part of NHTSA's 2020 research study. When

the test conditions were modified such that the lead vehicle decelerated at 0.5g, rather than 0.3g as specified in NHTSA's CIB NCAP test procedure, eight vehicles demonstrated the ability to avoid contact with the lead vehicle in at least one test and three vehicles avoided contact in all tests despite having less time to avoid the crash. Similarly, when the speed of the subject vehicle and lead vehicle was increased to 72.4 km/h (45 mph), nine vehicles demonstrated the ability to avoid contact with the lead vehicle in at least one test while four vehicles avoided contact in all tests. One vehicle was able to avoid contact in all lead vehicle decelerating tests, including both increased speeds and increased lead vehicle deceleration.

Although NHTSA did not perform higher speed evaluations for the slower-moving lead vehicle test scenario as part of its CIB study, NHTSA believes that it is reasonable and appropriate for this NPRM to propose raising the subject vehicle speed above that specified currently in NCAP's test to ensure improved AEB performance. NHTSA also did not conduct DBS testing in its characterization study to evaluate AEB system performance capabilities. However, the CIB and DBS test procedures proposed in this NPRM use the same test scenarios. Differences exist only with respect to the use of subject vehicle manual brake application and maximum test speeds. NHTSA constructed its 2020 research program using CIB to demonstrate the practicability of testing at higher speeds with a no-contact requirement. In past testing, DBS performance has typically been as good as if not better than CIB.

Concurrent with the development of this proposed rule, NHTSA performed lead vehicle AEB testing on model year 2021 and 2022 vehicles using the proposed performance requirements and test procedures. The results of that testing provide additional support to the tentative conclusion that the test conditions, parameters, and procedures are practical to conduct and that the proposed requirements are practical for manufacturers to achieve. The results of this testing are detailed in the lead vehicle AEB report docketed with this proposed rule. The 12 model year 2021 and 2022 vehicles were selected to provide a balance of anticipated market penetration (using 2021 sales data) and a mix of vehicle types, including internal combustion engine vehicles and electric vehicles. Tests enabled the agency to refine the test procedures and validate test execution within the proposed tolerances.

b. PAEB Daytime Performance Tests

NHTSA selected the same 11 model year 2019 and 2020 vehicles used in the CIB testing to assess the performance of current PAEB systems. NHTSA issued test reports detailing the results in support of the March 9, 2022, NCAP request for comments notice.⁹¹

As shown in Table 19, NHTSA used its 2019 draft PAEB research test procedures, but increased the subject vehicle speed for specific test conditions.⁹² Additionally, NHTSA used articulating test mannequins, as used in Euro NCAP, instead of the posable mannequins specified in the draft test procedure.⁹³

TABLE 19—MATRIX OF THE DAYTIME PAEB NHTSA 2020 RESEARCH TESTS

	Crossing path					Along path		
	Adult	Child	Adult	Adult	Adult	Adult		
Test Mann	Walking	Running		Walking		Fixed		Walking
Motion	Right	Right, Obstructed	Left	Right	Right	Facing Away	Facing Vehicle	Away from Vehicle
Direction	5 km/h	5 km/h	8 km/h	5 km/h	5 km/h	0 km/h	0 km/h	5 km/h
Test Mann. Speed								

⁸⁸ www.regulations.gov. NHTSA Docket No. NHTSA–2015–0006–0025.

⁸⁹ www.regulations.gov. NHTSA Docket No. NHTSA–2021–0002–0002. “Final MY2019/MY2020 Research Reports for Pedestrian Automatic Emergency Braking, High-Speed Crash Imminent Braking, Blind Spot Warning, and Blind Spot Intervention Testing.” There are 11 test reports w/ the following title for each vehicle name: “Crash Imminent Braking System Research Test.”

⁹⁰ Two vehicles were able to avoid contact in five out of five tests conducted at 72.4 km/h (45 mph). The third vehicle avoided contact in one out of five tests conducted at 72.4 km/h (45 mph).

⁹¹ See Docket No. NHTSA–2021–0002–0002. There are embedded reports titled, “PEDESTRIAN AUTOMATIC EMERGENCY BRAKING SYSTEM RESEARCH TEST” for each of the 11 vehicle make/models.

⁹² 84 FR 64405 (Nov. 21, 2019). www.regulations.gov. NHTSA Docket No. NHTSA–2019–0102–0005. Note, in this document, the PAEB test procedures were called “Pedestrian Automatic Emergency Brake System Confirmation Tests.” NHTSA increased test speeds for the S1b, S1d, S1e, S4a, and S4c from NHTSA's draft test procedure.

⁹³ <https://cdn.euroncap.com/media/41769/euro-ncap-pedestrian-testing-protocol-v85.201811091256001913.pdf>.

TABLE 19—MATRIX OF THE DAYTIME PAEB NHTSA 2020 RESEARCH TESTS—CONTINUED

	Crossing path							Along path		
	25%	50%	75%	50%	50%	Stops Before Vehicle Path	Crosses/ Clears Vehicle Path	25%	25%	25%
Scenario	S1a	S1b	S1c	S1d	S1e	S1f	S1g	S4a	S4b	S4c
Subject Vehicle Speed (km/h)	16	16	16	16	40	40	40	16	16	16
	40	20	40	20	50	.....	.....	40	40	40
	.....	30	.....	30	60	.....	.....	50	.....	50
	.....	40	.....	40	.....	.....	.....	60	.....	60
	.....	50	.....	50	.....	.....	.....	70	.....	70
	.....	60	.....	60	.....	.....	.....	80	.....	80

The maximum test speeds for the crossing path and along path scenarios were 60 km/h (37.5 mph) and 80 km/h (50 mph), respectively. These maximum speeds were consistent with Euro NCAP's AEB Vulnerable Road User Protection protocol published at the time of testing.⁹⁴

The results demonstrated that several vehicles avoided contact with the test mannequin in nearly all tests conducted, including at speeds up to 60 km/h (37.5 mph) in the 50 percent overlap test (S1b). The most challenging crossing path test condition was the running child from behind parked vehicle condition (S1d); however, one vehicle was able to detect and avoid contact with the test mannequin at all subject vehicle speeds up to 60 km/h (37.5 mph). Similarly, in the crossing adult pedestrian running from the left side test condition (S1e), the testing

demonstrated that at least one vehicle did not collide with the test mannequin in all tests conducted at speeds up to 60 km/h (37.5 mph).⁹⁵ The walking test mannequin stopping prior to entering the travel lane test condition (S1f) was the most challenging for vehicles to predict and not unnecessarily activate PAEB. The other false positive test, where a crossing adult test mannequin walks from the nearside and clears the vehicle's path (S1g), resulted in fewer instances of automatic braking.

In the test with the stationary pedestrian facing away from the subject vehicle (S4a), NHTSA's research testing showed that several vehicles were able to repeatedly avoid impacting the test mannequin at speeds of 50 km/h (31 mph) and 60 km/h (37.5 mph). However, vehicles were not able to avoid impact at the highest test speed of 80 km/h (50 mph). In the scenario

where the subject vehicle encounters an adult pedestrian walking away from the vehicle (S4c), two vehicles were able to avoid contact with the test mannequin in tests at speeds up to 65 km/h (40.3 mph) during each test performed at that speed.

c. PAEB Darkness Performance Tests

NHTSA conducted additional PAEB tests under dark lighting conditions using vehicle lower and upper beam headlamps. The tests used the same test scenarios and conditions as NHTSA's 2019 draft research test procedures and the same 11 vehicles tested for CIB and daylight PAEB performance. Tests were conducted first with the test mannequin illuminated only by the vehicle's lower beam headlamps and then by the upper beam headlamps. The area where the test mannequin was located was not provided any additional light source.

TABLE 20—MATRIX OF THE DARK LIGHTING PAEB NHTSA 2020 RESEARCH TESTS *

	Crossing path			Along path	
	Adult	Child	Adult	Adult	Adult
Test Mann	Adult	Child	Adult	Adult	Adult
Motion	Walking	Running		Fixed	Walking
Direction	Right	Right, Obstructed	Left	Facing Away	Away from Vehicle
Test Mann. Speed	5 km/h	5 km/h	8 km/h	0 km/h	5 km/h
Overlap	50%	50%	50%	25%	25%
Scenario	S1b	S1d	S1e	S4a	S4c
Subject Vehicle Speed (km/h)	16	16	40	16	16
	20	20	50	40	40
	30	30	60	50	50
	40	40	.....	60	60
	50	50	.....	70	70
	60	60	.....	80	80

* Tests were separately conducted with the vehicle lower and upper beam headlamps activated.

⁹⁴ European New Car Assessment Programme (Euro NCAP). (2019, July). TEST PROTOCOL—AEB VRU systems 3.0.2.

⁹⁵ At the 60 km/h (37.5 mph) test speed, the vehicle achieved no contact in four out of five tests conducted.

NHTSA's testing showed that tests conducted with upper beam headlamps generally resulted in greater braking and less contact with the test mannequin than identical tests conducted with lower beam headlamps in the S1b test condition. The maximum speed at which at least one vehicle avoided contact in all trials with the test mannequin was 60 km/h (37.3 mph) for the upper beam condition, compared to 50 km/h (31.1 mph) for the lower beam condition.

NHTSA observed that many of the model year 2019 and 2020 vehicles experienced difficulties or inconsistent performance in the crossing child pedestrian running from behind parked vehicles scenario (S1d). Many vehicle contacts with the test mannequin did not include any AEB system activation. Additionally, many of the tests in the crossing adult pedestrian running from the left side test condition (S1e) were not conducted due to the lack of PAEB activation at lower speeds. For example, in the lower beam tests at 40 km/h (25 mph), 8 of the 11 vehicles could not avoid test mannequin contact. Vehicle performance in the upper beam headlamp tests were only marginally better for this test condition.

In the along path research tests (S4a), one vehicle was able to avoid test mannequin contact for all vehicle test speeds up to 60 km/h (37.5 mph) using the upper beam headlamps and at speeds up to 55 km/h (34.2 mph) using the lower beam headlamps. However, many other vehicles were not tested above 40 km/h (25 mph) due to contact with the test mannequin.

Likewise, in the scenario in which the subject vehicle encounters an adult pedestrian standing facing away from the vehicle (S4c), many vehicles were not tested above 40 km/h (25 mph) due to repeated contact with the test mannequin. In the lower beam headlamp tests, two vehicles were able to avoid contact with the test mannequin in tests at speeds up to 60 km/h (37.5 mph), and one was able to do so during each test performed. In the upper beam headlamp tests, one vehicle was able to avoid contact with the test mannequin during each test performed at all tested speeds up to 50 km/h (31.1 mph).

d. PAEB Darkness Performance Tests With Overhead Lighting

To study potential performance differences attributable to the use of overhead lights during dark conditions, NHTSA performed several of the PAEB test scenarios at two test speeds, 16 km/h (10 mph) and 40 km/h (25 mph), using

two model year 2020 vehicles.⁹⁶ This study was performed using the vehicles' lower beams under dark conditions with overhead lights. In this testing, the agency observed only slightly better PAEB performance in dark lighting conditions with overhead lights than in dark lighting conditions without overhead lights.

4. This Proposed Standard Complements Other NHTSA Actions

This NPRM is part of NHTSA's multi-pronged approach to enhance vehicle performance against pedestrian injury and counter the rising numbers of pedestrian fatalities and injuries. This proposal would require the installation of PAEB technologies that warn about and respond to an imminent collision with a pedestrian at higher speeds than PAEB systems on the market today.

This proposal would complement a rulemaking proposal under development that would require that passenger vehicle hoods mitigate the risk of serious or fatal child and adult head injury in pedestrian crashes.⁹⁷ When new vehicles are equipped with PAEB, fewer pedestrians will be struck. For impacts that cannot be avoided due to high closing speed of the vehicle, the automatic braking provided by PAEB will lower the vehicle's speed at impact. Lowering the speed of pedestrian impact and strengthening pedestrian protection provided by vehicle hoods would be complementary actions, resulting in complementary benefits of the two proposed rules. Furthermore, NHTSA has announced plans to propose a crashworthiness pedestrian protection testing program in NCAP. This pedestrian protection program would incorporate three crashworthiness tests (*i.e.*, head-to-hood, upper leg-to-hood leading edge, and lower leg-to-bumper).⁹⁸

On February 22, 2022, NHTSA published a final rule amending NHTSA's lighting standard to allow adaptive driving beam headlamps.⁹⁹ These headlighting systems incorporate an advanced type of headlamp beam switching that can provide a variable upper beam sculpted so that it provides more light on the roadway ahead without creating glare for the drivers of oncoming or preceding vehicles. Adaptive driving beam headlighting

systems also have the potential to provide safety benefits in preventing collisions with pedestrians.

VI. Proposal To Require Automatic Emergency Braking

This NPRM proposes a new FMVSS to require AEB systems on light vehicles that are capable of reducing the frequency and severity both rear-end and pedestrian crashes. Having considered the actions of industry, including those in response to nonregulatory incentives, NHTSA has concluded that this rulemaking is necessary to require that all new light vehicles are equipped with AEB systems and to set specific performance requirements for AEB systems. NHTSA incorporated FCW into NCAP beginning in model year 2011 and AEB into NCAP beginning in model year 2018. This has achieved success, with approximately 65 percent of new vehicles meeting the lead vehicle test procedures included in NCAP.¹⁰⁰ Similarly, the voluntary commitment resulted in approximately 90 percent of new light vehicles having an AEB system.¹⁰¹

However, NHTSA has tentatively concluded that these actions have insufficiently addressed the safety problem associated with rear-end and pedestrian crashes for three primary reasons. First, the test speeds and performance specifications in NCAP and the voluntary commitment would not ensure that the systems perform in a way that will prevent or mitigate crashes resulting in serious injuries and fatalities. The vast majority of fatalities, injuries, and property damage crashes occur at speeds above 40 km/h (25 mph), which are above those covered by the voluntary commitment.

Second, NCAP and, even more so, other voluntary measures are intended to supplement rather than substitute for the FMVSS, which remain NHTSA's core way of ensuring that all motor vehicles are able to achieve an adequate level of safety performance. Thus, though the NCAP program provides valuable safety-related information to consumers in a simple to understand way, the agency believes that gaps in market penetration will continue to exist for the most highly effective AEB systems. Moreover, as pedestrian safety addresses the safety of someone other than the vehicle occupant, it is not clear if past experiences with NCAP are necessarily indicative of how quickly PAEB systems would reach the levels of

⁹⁶ Specifically, NHTSA performed overhead lighting tests using scenarios S1b, S1d, and S1e and S4a and S4c.

⁹⁷ Unified Agenda of Regulatory and Deregulatory Actions, Regulation Identifier Number (RIN) 2127-AK98, "Pedestrian Safety Global Technical Regulation."

⁹⁸ 87 FR 13452, March 9, 2022.

⁹⁹ RIN 2127-AL83.

¹⁰⁰ Percentage based on the vehicle manufacturer's model year 2022 projected sales volume reported through the New Car Assessment Program's annual vehicle information request.

¹⁰¹ *Id.*

lead vehicle AEB, if pedestrian functionality that would meet NCAP performance levels was offered as a separate cost to consumers. NHTSA believes that there can be a significant safety benefit in NCAP providing consumers with information about new safety technologies before it is prepared to mandate them, but this is not a requirement.

A final factor weighing in favor of requiring AEB is that the technology is a significantly more mature level than what it was at the time of the voluntary commitment or when it was introduced into NCAP. NHTSA's most recent testing has shown that higher performance levels than those in the voluntary commitment or the existing NCAP requirements are now practicable. Many model year 2019 and 2020 vehicles were able to repeatedly avoid impacting the lead vehicle in CIB tests and the pedestrian test mannequin in PAEB tests, even at higher test speeds than those prescribed currently in the agency's CIB and draft PAEB test procedures.

This proposed rule includes three basic lead vehicle AEB test scenarios—stopped, slower-moving, and decelerating lead vehicle. Each lead vehicle AEB scenario has performance requirements at specific speeds or ranges of speeds. Each scenario also includes performance requirements with and without manual braking. NHTSA's general approach in developing performance requirements was to consider the state of AEB technology and its ability to address crashes. Key parameters were identified that are important in differentiating between AEB systems that are effective at preventing crashes, and AEB systems that only engage in narrow and very controlled conditions, with the latter being potentially less effective at reducing fatalities and injuries. For example, a system that only automatically applies the brakes where the posted speed limit is 25 mph or less would be effective at preventing property damage rear-end crashes, but would prevent very few fatalities and injuries. Likewise, PAEB systems that are unable to prevent crashes in low-light ambient conditions would fail to reduce a large portion of pedestrian fatalities. Considering the ability of current AEB technology to safely prevent crashes, and using information from vehicle testing, NHTSA is proposing requirements, including test scenarios and parameters, that are either within the capability of at least one recent production vehicle or for which there is a practical engineering basis for

the prescribed capability in current AEB systems.

The proposal requires a vehicle to provide a FCW and have an emergency braking system that automatically applies the brakes when a collision with the rear of another vehicle or a pedestrian is imminent at speeds above 10 km/h (6.2 mph). Furthermore, proposed AEB performance requirements will ensure that an AEB system is able to completely avoid collision with the rear of another vehicle or a pedestrian. Specifically, the proposal includes a set of performance requirements for vehicle-level track testing that will realistically evaluate vehicles at normal driving speeds and introduce test devices for which vehicles must automatically brake in a way that avoids any impact with the objects. The requirements include lead vehicle AEB test scenarios, where the test object that must be avoided is the lead vehicle test device, and PAEB test scenarios, where the object that must be avoided is a pedestrian test mannequin. In all tests that include a test device, the observable and objective criterion for passing is avoiding contact with the object. The agency is proposing additional system requirements for false activation and provisions for indicating AEB malfunction to the vehicle operator.

A. Lead Vehicle AEB System Requirement

The agency is proposing that vehicles be required to have a forward collision warning system and an automatic emergency braking system that are able to function continuously to apply the service brakes automatically when a collision with a vehicle or object is imminent. The system must operate when the vehicle is traveling at any forward speed greater than 10 km/h (6.2 mph). This is a general system equipment requirement with no associated performance test. No specific speed reduction or crash avoidance would be required. However, this requirement is included to ensure that AEB systems are able to function at all times, including at speeds above those NHTSA is proposing as part of the performance test requirements.

This requirement complements the performance requirements in several ways. While the track testing described below provides a representation of real-world crash events, no amount of track testing can fully duplicate the real world. This requirement ensures that the AEB's perception system identifies and automatically detects a vehicle, warns the driver, and applies braking when a collision is imminent. This

requirement also ensures that AEB systems continue to function in environments that are not as controlled as the test track environment. For example, unlike during track testing, other vehicles, pedestrians, bicyclists, and buildings may be present within the view of the sensors. Finally, track test equipment limitations and safety considerations limit the ability to test at high speeds. However, crashes still occur at higher travel speeds. The automatic braking requirement ensures that AEB systems continue to provide safety benefits at speeds above those for which a track-testing requirement is currently not practicable, either because of performance capabilities or track test limitations. Where a performance standard is not practical or does not sufficiently meet the need for safety, NHTSA may specify an equipment requirement as part of an FMVSS.¹⁰²

Enforcement of such a performance requirement can be based on evidence obtained by engineering investigation that might include a post-crash investigation and/or system design investigation. For instance, if a crash occurs in which the vehicle under examination has collided with a lead vehicle, NHTSA could investigate the details surrounding the crash to determine if a warning was provided and the automatic emergency braking system applied the service brakes automatically. In appropriate cases in the context of an enforcement proceeding, NHTSA could also use its information-gathering authority to obtain information from a manufacturer describing the basis on which it certified that its FCW and AEB systems meet this proposed requirement.

B. Forward Collision Warning Requirement

NHTSA is proposing that AEB-equipped vehicles must have forward collision warning functionality that provides a warning to the vehicle operator if a forward collision with a lead vehicle is imminent. The proposal defines FCW as an auditory and visual warning provided to the vehicle operator that is designed to elicit an immediate crash avoidance response by the vehicle operator. The system must operate when the vehicle is traveling at any forward speed greater than 10 km/h (6.2 mph).

¹⁰² See 72 FR 17235, 17299 (Apr. 6, 2007) (discussing the understeer requirement in FMVSS No. 126); *Chrysler Corp. v. DOT*, 515 F.2d 1053 (6th Cir. 1975) (holding that NHTSA's specification of dimensional requirements for rectangular headlamps constitutes an objective performance standard under the Safety Act).

While some vehicles are equipped with alerts that precede the FCW and research has examined their use, NHTSA's proposal is not specifying an advisory or preliminary alert that would precede the FCW. Lerner, Kotwal, Lyons, and Gardner-Bonneau (1996) differentiated between an imminent alert, which "requires an immediate corrective action," and a cautionary alert, which "alerts the operator to a situation which requires immediate attention and may require a corrective action."¹⁰³ A 2004 NHTSA report titled "Safety Vehicles using adaptive Interface Technology (Task 9): A Literature Review of Safety Warning Countermeasures," examined the question of whether to include a cautionary alert level in an FCW system. Although the two FCW algorithms in the Automotive Collision Avoidance System Field Operational Test algorithms included a cautionary phase, the Collision Avoidance Metrics Partnership (1999) program recommended that only single (imminent) stage warnings be used.

Unlike the FCW required as part of the track testing, NHTSA is not specifically requiring that FCW presentation occur prior to the onset of braking in instances that are not tested on the track. This is to provide manufacturers with the flexibility to design systems that are most appropriate for the complexities of various crash situations, some of which may provide very little time for a driver to take action to avoid a crash. A requirement that FCW occur prior to automatic braking could suppress the automatic braking function in some actual driving scenarios, such as a lead vehicle cutting immediately in front of an AEB-equipped vehicle, where immediate automatic braking should not wait for a driver warning.

1. FCW Modalities

Since approximately 1994, NHTSA has completed research and published related reports for more than 35 research efforts related to crash avoidance warnings or forward collision warnings. These research efforts, along with other published research and existing ISO standards (15623 and 22839) and SAE International (SAE) documents (J3029 and J2400), provide a basis for the proposed requirements.¹⁰⁴

¹⁰³ Lerner, Kotwal, Lyons, and Gardner-Bonneau (1996). Preliminary Human Factors Guidelines for Crash Avoidance Warning Devices. DOT HS 808 342. National Highway Traffic Safety Administration.

¹⁰⁴ ISO 15623—Forward vehicle collision warning systems—Performance requirements and test procedures; ISO 22839—Forward vehicle

NHTSA NCAP and Euro NCAP information relating to FCW was also considered. Since model year 2011, the agency has included FCW as a recommended technology in NCAP and identifies to consumers which light vehicles have FCW systems that meet NCAP's performance tests. NHTSA's March 2022 request for comments notice on proposed changes to NCAP sought comment on which FCW modalities or modality combinations should be necessary to receive NHTSA's NCAP recommendation.¹⁰⁵ Commenters generally supported the use of a multimodal FCW strategy. The Alliance for Automotive Innovation and Intel both advocated allowing credit for any effective FCW signal type. Multiple commenters supported allowing NCAP credit for FCW having either auditory or haptic signals. BMW, Stellantis, and General Motors supported use of FCW auditory or haptic signals in addition to a visual signal. NTSB and Advocates for Highway and Auto Safety recommended that NHTSA conduct research examining the human-machine interface and examine the effectiveness of haptic warning signals presented in different locations (e.g., seat belt, seat pan, brake pulse). Dynamic Research, Inc. advocated allowing NCAP credit for implementation of a FCW haptic brake pulse, while ZF supported use of a haptic signal presented via the seat belt. Bosch warned that use of a haptic signal presented via the steering wheel for lane keeping or blind spot warning and FCW should be avoided as it may confuse the driver. The Alliance for Automotive Innovation raised the potential benefits of standardizing the warning characteristics to improve effectiveness as individuals move from vehicle to vehicle.

All current U.S. vehicle models appear to provide auditory and visual FCW signals, while only a few manufacturers also provide a haptic signal (e.g., seat pan vibration or a brake pulse). Visual FCW signals in current models consist of either a symbol or word (e.g., "BRAKE!"), presented on the instrument panel or head-up display, and most are red.

For this NPRM, NHTSA proposes that the FCW be presented to the vehicle operator via at least two sensory

collision mitigation systems—Operation, performance, and verification requirements (applies to light and heavy vehicles); SAE J3029: Forward Collision Warning and Mitigation Vehicle Test Procedure and Minimum Performance Requirements—Truck and Bus (2015–10; WIP currently); SAE J2400 2003–08 (Information report). Human Factors in Forward Collision Warning Systems: Operating Characteristics and User Interface Requirements.

¹⁰⁵ 87 FR 13452 (Mar. 9, 2022).

modalities, auditory and visual. Use of a multimodal warning ensures that most drivers will perceive the warning as soon as its presented, allowing the most time for the driver to take evasive action to avoid a crash. As a vehicle operator who is not looking toward the location of a visual warning at the time it is presented may not see it, NHTSA's proposal views the auditory warning signal as the primary modality and the visual signal as a secondary, confirmatory indication that explains to the driver what the warning was intended to communicate (i.e., a forward crash-imminent situation). However, because hearing-impaired drivers may not perceive an FCW auditory signal, a visual signal would be important for presenting the FCW to hearing-impaired individuals.

A multimodal FCW strategy is consistent with the recommendations of multiple U.S. and international organizations including ISO, SAE International, and Euro NCAP. ISO recommends a multimodal approach in both ISO 15623, "Forward vehicle collision warning systems—Performance requirements and test procedures," and ISO 22839, "Forward vehicle collision mitigation systems—Operation, performance, and verification requirements" (which applies to light and heavy vehicles). SAE addresses the topic of a multimodal FCW strategy in both information report J2400 2003–08, "Human Factors in Forward Collision Warning Systems: Operating Characteristics and User Interface Requirements," and J3029, "Forward Collision Warning and Mitigation Vehicle Test Procedure and Minimum Performance Requirements—Truck and Bus (2015–10; Work in Progress currently)." Most of these recommendations specify an FCW consisting of auditory and visual signals, while ISO 15623 specifies that an FCW include a visual warning as well as an auditory or haptic signal.

2. FCW Auditory Signal Characteristics

The proposed FCW auditory signal would be the primary means used to direct the vehicle operator's attention to the forward roadway and should be designed to be conspicuous to quickly capture the driver's attention, convey a high level of urgency, and be discriminable from other auditory signals presented within the vehicle.¹⁰⁶ Some specifications from NHTSA's "Human Factors Design Guidance For Driver-Vehicle Interfaces" are proposed

¹⁰⁶ DOT HS 810 697, Crash Warning System Interfaces: Human Factors Insights and Lessons Learned—Final Report

as forward collision warning specifications to meet these criteria.¹⁰⁷ As the FCW auditory signal would be the primary warning mode, this signal would not be permitted to be disabled.

To be conspicuous and quickly capture the driver's attention, the FCW auditory signal must ensure that the driver will readily detect the warning under typical driving conditions (e.g., ambient noise). The auditory signal must be clearly perceptible and quickly focus the driver's attention on the forward roadway. To ensure that the FCW auditory signal is conspicuous to the vehicle operator, any in-vehicle system or device that produces sound that may conflict with the FCW presentation would be required to be muted, or substantially reduced in volume, during the presentation of the FCW.¹⁰⁸ In order for the warning to be detectable, a minimum intensity of 15–30 dB above the masked threshold (MT) should be used.^{109 110 111 112} Because sound levels inside a vehicle can vary based on any number of different factors, such as vehicle speed and pavement condition, NHTSA is not proposing a specific sound level at this time, but requests comments on suitable and reasonable approaches for ensuring that the FCW auditory signal can be detected by drivers under typical driving conditions.

For communicating urgency and ensuring comprehension of auditory

messages, fundamental frequency, the lowest frequency in a periodic signal, is a key design parameter.¹¹³ Research has shown that auditory warning signals with a high fundamental frequency of at least 800 Hz more effectively communicate urgency.^{114 115} Greater perceived urgency of a warning is associated with faster reaction times, which would mean a quicker crash avoidance response by the driver.^{116 117 118} Therefore, NHTSA proposes that the FCW auditory signal's fundamental frequency must be at least 800 Hz.¹¹⁹ Additional proposed FCW auditory signal requirements that support communication of the urgency of the situation include a duty cycle,¹²⁰ or percentage of time sound is present, of 0.25–0.95, and faster auditory signals with a tempo in the range of 6–12 pulses per second to be perceived as urgent and elicit rapid driver response.¹²¹

The FCW auditory signal needs to be easily discriminable from other auditory signals in the vehicle. Therefore, vehicles equipped with more than one crash warning type should use FCW auditory signals that are distinguishable from other warnings.¹²² This proposed requirement is consistent with ISO 15623.¹²³ Standardization of FCW auditory signals would likely be beneficial in ensuring driver comprehension of the warning condition across vehicle makes and

models. NHTSA invites comments on the feasibility of specifying a common FCW auditory signal. While this proposal contains no specific requirements ensuring that the FCW auditory signal is distinguishable from other auditory warnings in the vehicles, NHTSA believes that industry is likely to consider this in their vehicle designs as part of their due diligence and safety assurance.

3. FCW Visual Signal Characteristics

Current FCWs in the U.S. vehicle fleet use a mix of symbols and words as a visual forward collision warning. Use of a common FCW symbol across makes and models would help to improve consumer understanding of the meaning of FCWs and encourage more appropriate driver responses in forward crash-imminent situations.

ISO 7000, “Graphical symbols for use on equipment—Registered symbols,”¹²⁴ and the SAE J2400 (2003–08)¹²⁵ information report, “Human Factors in Forward Collision Warning Systems: Operating Characteristics and User Interface Requirements,” contain recommended FCW symbols shown in Figure 1. These symbols are similar as they both communicate a forward impact, while the ISO symbol portrays the forward impact as being specifically with another vehicle.

¹⁰⁷ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration.

¹⁰⁸ DOT HS 810 697, Crash Warning System Interfaces: Human Factors Insights and Lessons Learned—Final Report.

¹⁰⁹ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration. “The amplitude of auditory signals is in the range of 10–30 dB above the masked threshold (MT), with a recommended minimum level of 15 dB above the MT (e.g., [1, 2, 3]). Alternatively, the signal is at least 15 dB above the ambient noise [3].”

¹¹⁰ Campbell, J.L., Richman, J.B., Carney, C., and Lee, J.D. (2002). In-vehicle display icons and other information elements. Task F: Final in-vehicle symbol guidelines (FHWA-RD-03-065). Washington, DC: Federal Highway Administration.

¹¹¹ International Organization for Standardization (ISO). (2005). Road vehicles—Ergonomic aspects of in-vehicle presentation for transport information and control systems—Warning systems (ISO/TR 16532). Geneva, Switzerland: International Organization of Standards.

¹¹² MIL-STD-1472F. (1998). Human engineering. Washington, DC: Department of Defense.

¹¹³ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration.

¹¹⁴ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration.

¹¹⁵ Guillaume, A., Drake, C., Rivenez, M., Pellieux, L., & Chastres, V. (2002). Perception of urgency and alarm design. Proceedings of the 8th International Conference on Auditory Display.

¹¹⁶ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration.

¹¹⁷ Campbell, J.L., Richman, J.B., Carney, C., & Lee, J.D. (2004). In-vehicle display icons and other information elements, Volume I: Guidelines (Report No. FHWA-RD-03-065). Washington, DC: Federal Highway Administration. Available at www.fhwa.dot.gov/publications/research/safety/03065/index.cfm.

¹¹⁸ Suied, C., Susini, P., & McAdams, S. (2008). Evaluating warning sound urgency with reaction times. *Journal of Experimental Psychology: Applied*, 14(3), 201–212.

¹¹⁹ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration.

¹²⁰ Duty cycle, or percentage of time sound is present, is equal to the total pulse duration divided by the sum of the total pulse duration and the sum of the inter-pulse intervals.

¹²¹ Gonzalez, C., Lewis, B.A., Roberts, D.M., Pratt, S.M., & Baldwin, C.L. (2012). Perceived urgency and annoyance of auditory alerts in a driving context. Proceedings of the Human Factors and Ergonomics Society Annual Meeting, 56(1), 1684–1687.

¹²² DOT HS 810 697, Crash Warning System Interfaces: Human Factors Insights and Lessons Learned—Final Report

¹²³ ISO 15623—Forward vehicle collision warning systems—Performance requirements and test procedures.

¹²⁴ ISO 7000—Graphical symbols for use on equipment—Registered symbols.

¹²⁵ SAE J2400 (info. report, not RP or standard), 2003–08. Human Factors in Forward Collision Warning Systems: Operating Characteristics and User Interface Requirements.

Figure 1: Industry Standard Visual Warning Symbols

Organization	Symbol
ISO 7000 – 2681: “Forward collision warning system (FCWS)”	
SAE J2400 (2003-08)	

Because the symbol in SAE J2400 relates the idea of a frontal crash without depicting a particular forward object, this symbol could visually represent and apply to both the lead vehicle and pedestrian scenarios. Therefore, NHTSA finds the SAE J2400 symbol to be most applicable to the FCW requirements in this proposal. NHTSA proposes that FCW visual signals using a symbol must use the SAE J2400 (2003–08) symbol.

Some other vehicle models employ a word-based visual warning, such as “STOP!” or “BRAKE!” SAE J2400 also includes a word-based visual warning recommendation consisting of the word, “WARNING.” A well-designed warning should instruct people about what to do or what not to do to avoid a hazard. The potential benefit of a word-based warning for FCW is that it can communicate to the driver an instruction about what to do to avoid or mitigate the crash, thereby expediting the driver’s initiation of an appropriate crash avoidance response. However, Consumer Reports noted in its online “Guide to forward collision warning” that for some models, visual warning word use was found to be confusing to some drivers surveyed.¹²⁶ Respondents reported a common complaint that “their vehicle would issue a visual “BRAKE” alert on the dash, but it wouldn’t bring the car to a stop” This confusion as to whether the word is meant to communicate what the driver should do or what the vehicle is doing may stem from drivers assuming that any information presented within the instrument panel area is communicating something relating to the vehicle’s condition or state, as symbols presented in that location generally do. Presenting a word-based warning in a higher location away from the instrument panel, as recommended

¹²⁶ “Guide to forward collision warning: How FCW helps drivers avoid accidents.” Consumer Reports. <https://www.consumerreports.org/car-safety/forward-collision-warning-guide/>. Accessed April 2022.

by SAE J2400, may be interpreted more accurately by drivers as well as increase the likelihood of FCW visual warning perception by drivers.¹²⁷ NHTSA requests comments on this issue and any available objective research data that relates to the effectiveness of word-based FCW visual signals in instrument panel versus head-up display locations. NHTSA also requests comments regarding whether permitting word-based warnings that are customizable in terms of language settings is necessary to ensure warning comprehension by all drivers.

One plausible benefit of a word-based visual warning is that some word choices that instruct the driver to initiate a particular action, such as “STOP!,” would be fully applicable to both lead vehicle and pedestrian scenarios, whereas a symbol containing an image of a lead vehicle would not be directly applicable to a forward pedestrian imminent crash scenario. As the response desired from the driver, to apply the brakes, is the same for both lead vehicle and forward pedestrian scenarios, the content of the visual warning need not be specific to the type of forward obstacle, but needs simply to communicate the idea of an impending forward crash. NHTSA requests comments and any available research data regarding the use and effectiveness of obstacle-specific symbols and word-based visual warnings and the relative effectiveness of word-based visual warnings compared to symbols.

While many current vehicle models present a visual FCW signal within the instrument panel, drawing a driver’s eyes downward away from the roadway to the instrument panel during a forward crash-imminent situation is likely to have a negative impact on the effectiveness of the driver’s response to the FCW. Research indicates that a

¹²⁷ SAE J2400 2003–08 (Information report). Human Factors in Forward Collision Warning Systems: Operating Characteristics and User Interface Requirements.

visual FCW signal presented in the instrument panel can slow driver response.¹²⁸ The research findings support the SAE J2400 recommendation advising against the use of instrument panel based visual FCWs.¹²⁹ SAE J2400 (2003–08) states:

Visual warnings shall be located within a 10-degree cone of the driver’s line of sight. Qualitatively, this generally implies a top-of-dashboard or head-up display location. A conventional dashboard location shall not be used for the visual warning. The rationale for this is based on the possibility that an instrument panel-based visual warning may distract the driver from the hazard ahead.

This FCW visual signal location guidance is also consistent with ISO 15623, which states that the FCW visual signal shall be presented in the “main glance direction.” Current vehicles equipped with head-up displays have the ability to present a FCW visual signal within the driver’s forward field of view. Furthermore, some GM vehicles not equipped with head up displays currently have the ability to present a FCW visual signal reflected onto the windshield in the driver’s forward line-of-sight. Despite the FCW visual signal being considered secondary to the auditory signal, NHTSA agrees that the effectiveness of a FCW visual signal would be maximized for both hearing and hearing-impaired drivers if the signal is presented at a location within the driver’s forward field of view above the instrument panel. To ensure maximum conspicuity of the FCW visual signal (be it word-based or a symbol), NHTSA proposes that it be presented within a 10-degree cone of the driver’s line of sight. The line of sight

¹²⁸ “Evaluation of Forward Collision Warning System Visual Alert Candidates and SAE J2400,” SAE Paper No. 2009–01–0547, <https://trid.trb.org/view/1430473>.

¹²⁹ SAE J2400 2003–08 (Information report). Human Factors in Forward Collision Warning Systems: Operating Characteristics and User Interface Requirements.

would be based on the forward-looking eye midpoint (M_f) as described in FMVSS No. 111, "Rear visibility," S14.1.5.

The FCW visual signal would be required to be red, as is generally used to communicate a dangerous condition and as recommended by ISO 15623 and SAE J2400 (2003–08). Because the FCW visual signal is intended to be confirmatory for the majority of drivers, the symbol would be required to be steady burning.

4. FCW Haptic Signal

The agency considered also specifying a complementary haptic FCW signal as part of the proposed FCW specifications. Currently, only a portion of U.S. vehicles equipped with forward collision warning include a haptic warning component. For example, General Motors vehicles equipped with the haptic warning feature can present either a haptic seat pulse (vibration) or auditory warning based on a driver-selectable setting. Some other vehicle manufacturers, such as Stellantis and Audi, use a brake pulse, or brief deceleration of the vehicle, as part of the FCW. Some Hyundai/Kia models incorporate a haptic steering wheel vibration into the FCW. As haptic steering wheel signals are used by many lane keeping features of current vehicles to encourage drivers to steer the vehicle back toward the center of the lane, providing a haptic FCW signal via the steering wheel may result in driver confusion and be less effective in eliciting a timely and beneficial driver response.

ISO 15623 allows a haptic signal as an alternative to an auditory signal.¹³⁰ It permits a haptic brake pulse warning with a duration of less than 1 second when the driver is not already applying the brakes. ISO 15623 also allows actuation of a seat belt pretensioner as a haptic FCW signal.

Some research has shown that haptic FCW signals can improve crash avoidance response. NHTSA research on "Driver-Vehicle Interfaces for Advanced Crash Warning Systems" found that a haptic signal delivered via the seat belt pretensioner would be beneficial in eliciting an effective crash avoidance response from the vehicle operator. The research showed for FCWs issued at 2.1-s time-to-collision (TTC) that seat belt pretensioner-based FCW signals elicited the most effective crash avoidance performance.¹³¹ Haptic FCW

signals led to faster driver response times than did auditory tonal signals. FCW modality had a significant effect on participant reaction times and on the speed reductions resulting from participants' avoidance maneuvers (regardless of whether a collision ultimately occurred). Brake pulsing or seat belt tensioning were found to be effective for returning distracted drivers' attention to the forward roadway and eliciting desirable vehicle control responses; seat vibration similar to a virtual rumble strip (vibrating the front of the seat) was not found to return driver attention rapidly and reliably to the forward roadway within the Crash Warning Interface Metrics research. Similarly, research by Aust (2014) found that "combining sound with seat belt jerks or a brake pulse leads to significantly faster response times than combining the sound with a visual warning" and stated, "these results suggest that future FCWs should include a haptic modality to improve driver performance."¹³² Aust (2014) also found use of a haptic seat belt FCW signal to be slightly more effective (100 ms faster driver response) than a haptic brake pulse in one of two scenarios (response times were equal in a second scenario). Despite these promising research results associated with use of a seat belt based FCW haptic component, NHTSA was unable to identify any current U.S. vehicle models equipped with a haptic seat belt FCW component.

Other studies found FCW haptic brake pulses effective at getting a driver's attention and that drivers are more likely to detect a brake pulse if it produces a sensation of "jerk" or "self-motion."¹³³ Kolke reported reaction times shortened by one-third (approximately 0.3 s, non-significant) when a brake pulse was added to an audio-visual warning.¹³⁵ One usability

November). Driver-vehicle interfaces for advanced crash warning systems: Research on evaluation methods and warning signals. (Report No. DOT HS 812 208). Washington, DC: National Highway Traffic Safety Administration.

¹³² Aust, M. (2014) Effects of Haptic Versus Visual Modalities When Combined With Sound in Forward Collision Warnings. Driving Simulation Conference 2014, Paper number 36. Paris, France, September 4–5, 2014.

¹³³ Lee, J.D., McGehee, D.V., Brown, T.L., & Nakamoto, J. (2012). Driver sensitivity to brake pulse duration and magnitude. *Ergonomics*, 50(6), 828–836.

¹³⁴ Brown, S.B., Lee, S.E., Perez, M.A., Doerzaph, Z.R., Neale, V.L., & Dingus, T.A. (2005). Effects of haptic brake pulse warnings on driver behavior during an intersection approach. *Proceedings of the Human Factors and Ergonomics Society 49th Annual Meeting*, 1892–1896.

¹³⁵ Kolke, Gauss, and Silvestro (2012). Accident reduction through emergency braking systems in passenger cars. Presentation at the 8th ADAC/BAST-

drawback is that drivers tend to report that vehicle brake pulses are too disruptive, which can lead to unfavorable annoyance.¹³⁶

Presentation of a FCW haptic signal via the driver's seat pan has also been investigated. NHTSA's "Human factors design guidance for driver-vehicle interfaces" contains best practice information for implementation of haptic displays, including "Generating a Detectable Signal in a Vibrotactile Seat."¹³⁷ In a large-scale field test of FCW and LDW systems on model year 2013 Chevrolet and Cadillac vehicles, the University of Michigan Transportation Research Institute and GM found that GM's Safety Alert Seat, which provides haptic seat vibration pulses, increases driver acceptance of both FCW and LDW systems compared to auditory signals.¹³⁸

NHTSA's March 2022 request for comments notice on the NCAP sought comment on which FCW modalities or modality combinations should receive credit and asked specific questions regarding haptic signals and whether certain types should be excluded from consideration (*e.g.*, because they may be such a nuisance to drivers that they are more likely to disable the FCW or AEB system). A preliminary review of comments on that notice found multiple comments highlighting a need for more research relating to FCW signals. The National Transportation Safety Board highlighted the need for additional information regarding haptic signals presented in different locations, stating "[w]ithout examining the efficacy of different means of providing haptic alerts and defining appropriate, research-supported implementations, a prudent approach would give credit only for audible unimodal alerts or for bi-modal alerts that include audible alerts." Rivian stated "[t]he agency should award credit to systems that provide both audible and haptic alerts

Symposium "Driving Safely in Europe." October 5, 2012, Workshop B.

¹³⁶ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration.

¹³⁷ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration.

¹³⁸ Flannagan, C., LeBlanc, D., Bogard, S., Nobukawa, K., Narayanaswamy, P., Leslie, A., Kiefer, R., Marchione, M., Beck, C., and Lobes, K. (2016, February). Large-scale field test of forward collision alert and lane departure warning systems (Report No. DOT HS 812 247). Washington, DC: National Highway Traffic Safety Administration.

¹³⁰ ISO 15623—Forward vehicle collision warning systems—Performance requirements and test procedures.

¹³¹ Lerner, N., Singer, J., Huey, R., Brown, T., Marshall, D., Chrysler, S., . . . & Chiang, D.P. (2015,

and provide the option to turn either of them OFF based on driver preference. These audible or haptic alerts should be in sync with providing a visual alert of an impending collision. The agency should recommend the decibel level and the haptic feedback location and type as a baseline and based on research on reducing nuisance to the driver.” As the agency is actively reviewing comments, NHTSA is not proposing to require a complementary FCW haptic signal component at this time.

Given the lack of consensus within available research as to the best location for a FCW haptic signal (seat belt, seat pan, steering wheel, or brake pulse), NHTSA is not at this time proposing to require a haptic FCW component, but invites comment on whether requiring FCW to contain a haptic component presented via any location may increase FCW effectiveness or whether a FCW haptic signal presented in only one specific, standardized location should be allowed.

While the FCW auditory signal is envisioned as being the primary means of warning the driver, providing a haptic FCW signal that would complement or supplant the auditory warning signal would likely improve FCW perception for hearing-impaired drivers. Some drivers also may prefer an alternative modality to auditory warnings (e.g., due to annoyance caused by the auditory warning). However, the degree of additional benefit that may be accrued by requiring a haptic FCW signal in addition to a well-designed auditory and visual FCW that meets the specifications proposed is not known.

A haptic FCW signal, to be effective, would necessarily require the driver to

be in physical contact with the vehicle component through which the haptic signal is presented in order to perceive the warning. For example, if the driver is not wearing a seat belt, a haptic FCW signal presented via the seat belt would not be effectively received. A seat pan based haptic FCW signal would be unlikely to have such a non-contact issue. Providing a haptic FCW signal would increase the likelihood of FCW perception by hearing-impaired drivers and could also be used to provide an alternative modality to drivers who do not prefer auditory warnings. NHTSA is interested in research data documenting the comparison of a compliant auditory-visual FCW to that same FCW with an added haptic component. NHTSA also welcomes any objective data documenting the relative effectiveness of different haptic signal presentation locations for FCW use.

C. Lead Vehicle AEB—Performance Test Requirements

In addition to the requirement that vehicles must provide a forward crash warning and automatically control the brakes to reduce the vehicle’s speed, the agency is proposing performance test requirements that involve a no collision criterion under specific testing scenarios. NHTSA is proposing lead vehicle AEB performance tests requiring a vehicle to automatically brake or supplement insufficient manual braking as a means of avoiding contact with the lead vehicle under three specific test scenarios—stopped lead vehicle, slower-moving lead vehicle, and decelerating lead vehicle.

The scenarios are implemented using track tests and are based on those used

in NCAP and NHTSA’s research testing to evaluate AEB systems.¹³⁹ The proposed performance criterion for all AEB tests involving a lead vehicle is full collision avoidance, meaning the subject vehicle must not contact the lead vehicle. NHTSA chose the performance criterion of collision avoidance because it maximizes the safety benefits of the rule as compared to a metric that might permit a reduced speed collision. NHTSA has tentatively concluded that a no-contact criterion for the performance test requirements is practicable to achieve, consistent with the need for safety, and may be necessary to ensure test repeatability.¹⁴⁰

The lead vehicle AEB tests include parameters necessary to fully define the initial test conditions in each scenario. Key test parameters for the lead vehicle AEB tests include the travel speed of both the subject vehicle and lead vehicle, the initial headway between the subject vehicle and the lead vehicle, the deceleration of the lead vehicle, and any manual brake application made to the subject vehicle. Some of these key parameters are chosen from a range of values.¹⁴¹ The use of a range of potential values allows the agency to ensure that AEB system performance remains consistent, as test parameters vary within the bounds of the range. During testing, some AEB systems performed better at high speeds and did not perform well at lower speeds.¹⁴² The key proposed test parameters and the combinations in which they will be used are summarized in Table 21. The sections that follow provide more detail about the selection of these test parameters.

TABLE 21—LEAD VEHICLE AEB COLLISION AVOIDANCE—KEY TEST PARAMETERS

	Speed (km/h)		Headway ¹ (m)	Lead Vehicle Deceleration (g)	Manual brake application
	Subject vehicle	Lead vehicle			
Stopped Lead Vehicle	Any 10–80	0 .....	.....	.....	No.
	Any 70–100	0 .....	.....	.....	Yes.
Slower-Moving Lead Vehicle ...	Any 40–80	20 .....	.....	.....	No.
	Any 70–100	20 .....	.....	.....	Yes.
Decelerating Lead Vehicle	50	50	Any 12–40	Any 0.3–0.5	No.
	50	50	Any 12–40	Any 0.3–0.5	Yes.
	80	80	Any 12–40	Any 0.3–0.5	No.
	80	80	Any 12–40	Any 0.3–0.5	Yes.

¹ Where headway is not noted, headway is not a key parameter. The initial headway for these scenarios is based on the travel speeds and is defined within the detailed test conditions.

¹³⁹ 87 FR 13452 (Mar. 9, 2022).

¹⁴⁰ Requiring vehicles to avoid contact during testing addresses practical considerations as well. These practical considerations are discussed in section VI.G of this NPRM, in which NHTSA seeks comment on alternatives to the no-contact requirement.

¹⁴¹ In instances where an FMVSS includes a range of values for testing and/or performance requirements, 49 CFR 571.4 states, “The word any, used in connection with a range of values or set of items in the requirements, conditions, and procedures of the standards or regulations in this chapter, means generally the totality of the items or

values, any one of which may be selected by the Administration for testing, except where clearly specified otherwise.”

¹⁴² <https://www.regulations.gov/document/NHTSA-2021-0002-0002>.

The stopped lead vehicle scenario consists of the vehicle traveling straight ahead, at a constant speed, approaching a stopped lead vehicle in its path. The vehicle must be able to avoid contact with the stopped lead vehicle. The slower-moving lead vehicle scenario involves the subject vehicle traveling straight ahead at constant speed, approaching a lead vehicle traveling at a slower speed in the subject vehicle path. The decelerating lead vehicle scenario is meant to assess the AEB performance when the subject vehicle and lead vehicle initially are travelling at the same constant speed in a straight path and the lead vehicle begins to decelerate.

The agency proposes testing under two conditions. In one condition, NHTSA would test without any manual brake application. This would simulate a scenario where a driver does not intervene at all in response to the FCW or impending collision. In the other condition, NHTSA would test with manual brake application that would not be sufficient to avoid the crash. Not only does the second condition ensure that the AEB will supplement the manual braking when needed, it also provides a way by which to ensure that an application of insufficient manual braking does not suppress automatic braking in circumstances where it is initiated before the manual brake application is used.

The proposed speed ranges were selected based on the speeds at which rear-end crashes tend to happen, while considering two primary factors. The first factor is the practical ability of AEB technology to consistently operate and

avoid contact with a lead vehicle. NHTSA's 2020 research testing at 72.4 km/h suggested that the selected speed ranges for the various scenarios are within the capabilities of at least some MY 2020 AEB-equipped production vehicles. Where a speed range is proposed, it is meant to ensure AEB system robustness. As an example, during the agency's AEB research testing, two vehicles performed better at higher speeds (48 km/h or 30 mph) than at lower speeds (40 km/h or 25 mph) in the lead vehicle stopped tests, which suggests that the performance degradation at lower speeds was not due to the vehicles' brake capabilities.¹⁴³

The second factor is the practical limits of safely conducting track tests of AEB systems. Based on the available data, a majority of fatalities and injuries from rear-end crashes occur at posted speeds up to 60 mph (97 km/h). Due to the tendency of fatalities and injuries to increase as the vehicle travel speed increases, this proposal would allow for AEB system testing at the highest speeds at which NHTSA can safely and repeatably conduct tests. If the system does not intervene as required and the subject vehicle collides with the lead vehicle test device, it should do so in a manner that will not injure any vehicle occupants while also limiting damage to the subject vehicle and test equipment.

The proposed speed ranges were informed based on the results from the 2020 NHTSA research. When discussing the research as it relates to this notice, the tested vehicles were assigned an identifier as shown in Table 22.

¹⁴³ <https://www.regulations.gov/document/NHTSA-2021-0002-0002>.

Additional detail can be found in the Preliminary Regulatory Impact Assessment for this rulemaking.¹⁴⁴

TABLE 22—NHTSA R&D AEB TESTED VEHICLES AND ASSIGNED IDENTIFIER

Identifier	Vehicle
V1	2020 Nissan Altima.
V2	2020 Volvo S60 T6 AWD Momentum.
V3	2020 Honda Odyssey EX-L.
V4	2020 Toyota Corolla LE.
V5	2020 Ford F-150 4X4 SuperCrew.
V6	2020 Subaru Outback Premium/LDD.
V7	2020 Audi Q5 45 TFSI quattro.
V8	2020 Hyundai Palisade SEL FWD.
V9	2019 Audi A6 3.0 T quattro.
V10	2020 Land Rover Range Rover Sport HSE.
V11	2020 Mercedes-Benz GLC 300 4Matic SUV.

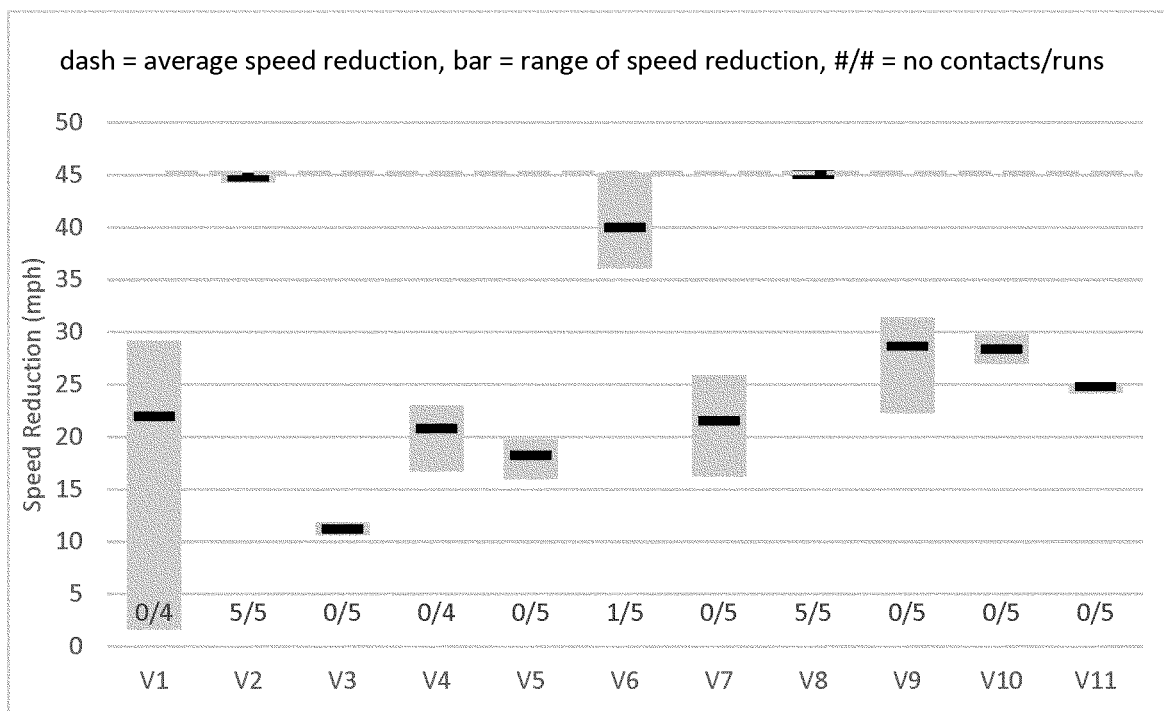
Agency CIB testing in the stopped lead vehicle scenario at 72.4 km/h (45 mph)—8 km/h (5 mph) lower than the proposed speeds—of 11 MY 2019/2020 vehicles found two vehicles avoided contact with a stopped lead vehicle in five consecutive tests (See Figure 2).¹⁴⁵ NHTSA's evaluation of model year 2021 and 2022 includes tests performed at the proposed speeds. The results of this testing are detailed in the lead vehicle AEB report docketed with this proposed rule.

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¹⁴⁴ The Preliminary Regulatory Impact Analysis can be found in the docket of this notice.

¹⁴⁵ National Highway Traffic Safety Administration (2022, March), "Final MY2019/MY2020 Research Reports for Pedestrian Automatic Emergency Braking, High-Speed Crash Imminent Braking, Blind Spot Warning, and Blind Spot Intervention Testing," <https://www.regulations.gov>, Docket No. NHTSA-2021-0002-0002.

Figure 2: NHTSA R&D AEB speed reduction by vehicle – subject vehicle speed 45 mph vs. stopped lead vehicle



At this time, the agency has tentatively concluded that the maximum practicable test speed is 100 km/h (62 mph) and the maximum speed differential between the subject vehicle and the lead vehicle is 80 km/h (50 mph). The proposed test speed ranges reflect this conclusion.

1. Stopped Lead Vehicle Scenario Test Speeds

The two different speed ranges proposed for the AEB stopped lead vehicle tests are dependent on whether the brakes were applied manually in the subject vehicle during the test. For tests with no manual brake application, the test speed is chosen from any speed between 10 km/h (6 mph) and 80 km/h (50 mph). For tests with manual brake application, the test speed is chosen from any speed between 70 km/h (44 mph) and 100 km/h (62 mph).

For the stopped lead vehicle scenario, the proposed lower bound of the speed range is 70 km/h (44 mph) when testing with manual brake application and the lower bound of the speed range for the condition of no manual brake application is specified is 10 km/h (6 mph). This presents an overlap in test speeds where manual braking and automatic braking might occur. The overlap of the speed ranges is intended evaluate AEB system robustness by

ensuring that automatic braking still occurs if manual braking is insufficient to avoid the crash scenario. NHTSA believes that by testing at the higher end of the proposed speed range manufacturers will extend this functionality to the entire speed range and the testing burden can be reduced.

To assure that AEB system functionality with and without manual brake application exists, the speed ranges when testing with and without manual brake application overlap between 70 km/h (44 mph) and 80 km/h (50 mph). Because AEB systems must activate with or without manual brake application at all speeds above 10 km/h (6 mph), evaluating the subject vehicle braking performance with and without manual brake application from 70 km/h (44 mph) to 80 km/h (50 mph) provides a basis for comparison and a way to ensure that performance of the AEB system with manual brake application does not affect the ability of the subject vehicle to avoid colliding with the lead vehicle. These are the same criteria as proposed for AEB system performance without manual brake application.

The upper bound when testing with no manual brake application is 80 km/h (50 mph) since this is the highest

practicable test speed differential.¹⁴⁶ Similarly, the 100 km/h (62 mph) upper bound for the manual brake application scenario is the highest practicable test speed and testing speed differential.¹⁴⁷ Testing with the subject vehicle speed of 80 km/h (50 mph) is consistent with NHTSA's NCAP request for comments notice and Euro NCAP test speeds.¹⁴⁸

2. Slower-Moving Lead Vehicle Scenario Test Speeds

In the slower-moving lead vehicle scenario, the proposed subject vehicle test speed is any speed between 40 km/h (24.9 mph) and 80 km/h (50.0 mph). Given that the lead vehicle speed is always 20 km/h (12.4 mph) during the proposed lead vehicle moving test, this translates to a relative speed range of 20 km/h (12.4 mph) to 60 km/h (37.3 mph). Because the stopped lead vehicle test is almost always more stringent than the slower-moving lead vehicle test (both in

¹⁴⁶ See Travel Speed introduction section for further details.

¹⁴⁷ Under the proposed scenario the subject vehicle traveling at 100 km/h (62 mph) under constant average deceleration of 0.4 g would impact the lead vehicle in similar manner to the vehicle traveling at 80 km/h (50 mph) with no manual brake application.

¹⁴⁸ See NHTSA's NCAP Request for Comments notice (87 FR 13452 (Mar. 9, 2022) at 13485, 13487) and Euro NCAP test speeds (Euro NCAP TEST PROTOCOL—AEB VRU systems 3.0.2, July 2019).

terms of the AEB sensing/recognition and braking timing) NHTSA tentatively concludes that AEB performance at relative speeds below 20 km/h (12.4 mph) is adequately evaluated by the proposed stopped lead vehicle performance requirement, and it would be duplicative to test both scenarios at low speeds.

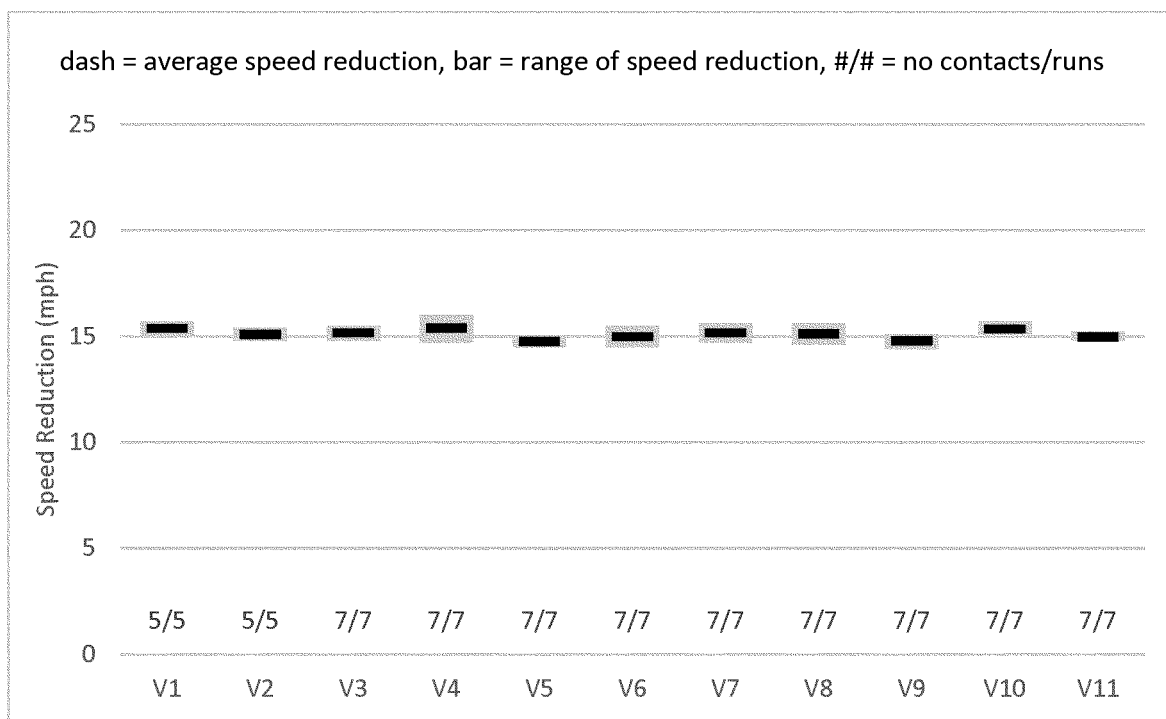
The second proposed subject vehicle speed range for tests performed with manual brake application is any speed between 70 km/h (43.5 mph) and 100 km/h (62.1 mph) (the same as for the

stopped lead vehicle scenario).¹⁴⁹ Given that the lead vehicle speed is always 20 km/h (12.4 mph) during the proposed lead vehicle moving test, this translates to a relative speed range of 50 km/h (31.1 mph) to 80 km/h (49.7 mph).

NHTSA's 2020 CIB research testing showed that all 11 tested vehicles did not collide with the lead vehicle when the vehicle speed was 40 km/h (24.9 mph), and lead vehicle speed was 16 km/h (9.9 mph). Furthermore, 10 of the 11 tested vehicles did not collide with the lead vehicle when the subject

vehicle speed was 72.4 km/h (45.0 mph) and the lead vehicle speed was 32.2 km/h (20.0 mph) on all test runs (See Figures 3 and 4).¹⁵⁰ Based on these data, NHTSA proposes one consistent 20 km/h (12.4 mph) speed for the slower-moving lead vehicle in this test scenario. These speed combinations also align with those specified in the March 9, 2022, NCAP RFC for the lead vehicle moving scenario, which have been shown to be practicable.¹⁵¹

Figure 3: NHTSA R&D AEB speed reduction by vehicle – subject vehicle speed 25 mph vs. slower lead vehicle speed 10 mph



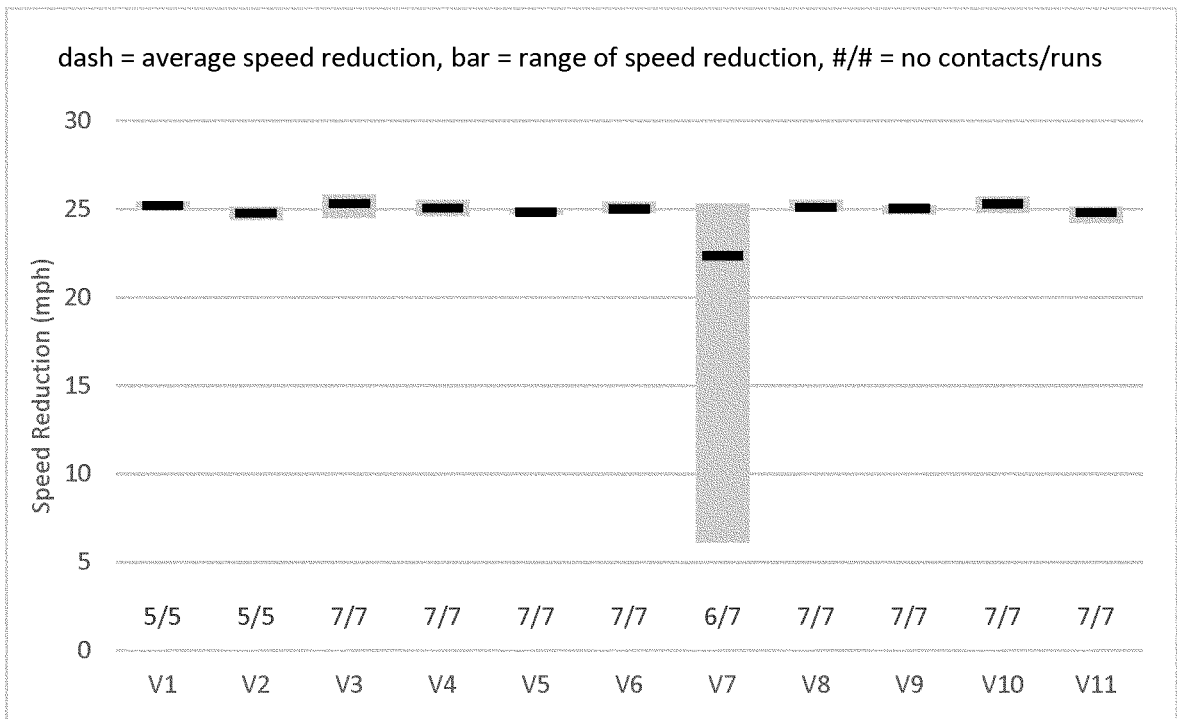
¹⁴⁹ See previous sections from *Travel Speed* for speed range reasoning not mentioned here.

¹⁵⁰ 87 FR 13452 (Mar. 9, 2022) and National Highway Traffic Safety Administration (2022, March), Final MY2019/MY2020 Research Reports

for Pedestrian Automatic Emergency Braking, High-Speed Crash Imminent Braking, Blind Spot Warning, and Blind Spot Intervention Testing, <https://www.regulations.gov>, Docket No. NHTSA-2021-0002-0002.

¹⁵¹ 87 FR 13452 (Mar. 9, 2022).

Figure 4: NHTSA R&D AEB speed reduction by vehicle – subject vehicle speed 45 mph vs. slower lead vehicle speed 20 mph



3. Decelerating Lead Vehicle Scenario Test Speeds

The initial speed conditions for the decelerating lead vehicle scenario are not as critical to the outcome of the test as other parameters. Because the subject and lead vehicle speeds are initially the same, the main parameters for a successful test outcome are the headway and lead vehicle deceleration. Thus, NHTSA proposes to use two discrete test speeds rather than a speed chosen from a range for both the subject and lead vehicles in the decelerating lead

vehicle test scenario, and to use ranges for the headway and deceleration parameters. This NPRM proposes that both the subject vehicle and lead vehicle travel at the same speed of either 50 km/h (31.1 mph) or 80 km/h (49.7 mph) in tests both with and without manual brake application.¹⁵² NHTSA’s 2020 CIB research testing was performed with the subject vehicle and lead vehicle traveling at 56.3 km/h (35.0 mph) with a lead vehicle deceleration of 0.3g and 0.5g and a headway of 13.8 m (45.0 ft) (See Figure 5) as well as with the subject vehicle

and lead vehicle traveling at 72.4 km/h (45.0 mph) and a deceleration of 0.3g. When testing at 56.3 km/h (35.0 mph) with 0.3 g deceleration of the lead vehicle, 7 out of 11 vehicles avoided contact with the lead vehicle in all tests. Using the same test speeds but 0.5 g deceleration of the lead vehicle, 3 out of 11 vehicles avoided contact in all test runs. For the testing performed with the vehicle and lead vehicle travelling at 72.4 km/h (45.0 mph) and a deceleration of 0.3 g with the same headway of 13.8 m (45.0 ft), 4 out of 11 vehicles avoided contact with the lead vehicle.

¹⁵² The agency is proposing two discrete speeds, instead of one, for the Decelerating Lead Vehicles scenarios to ensure system robustness.

Figure 5: NHTSA R&D AEB speed reduction by vehicle – subject vehicle speed 35 mph, decelerating lead vehicle initial speed 35 mph, lead vehicle deceleration of 0.3g vs. 0.5g

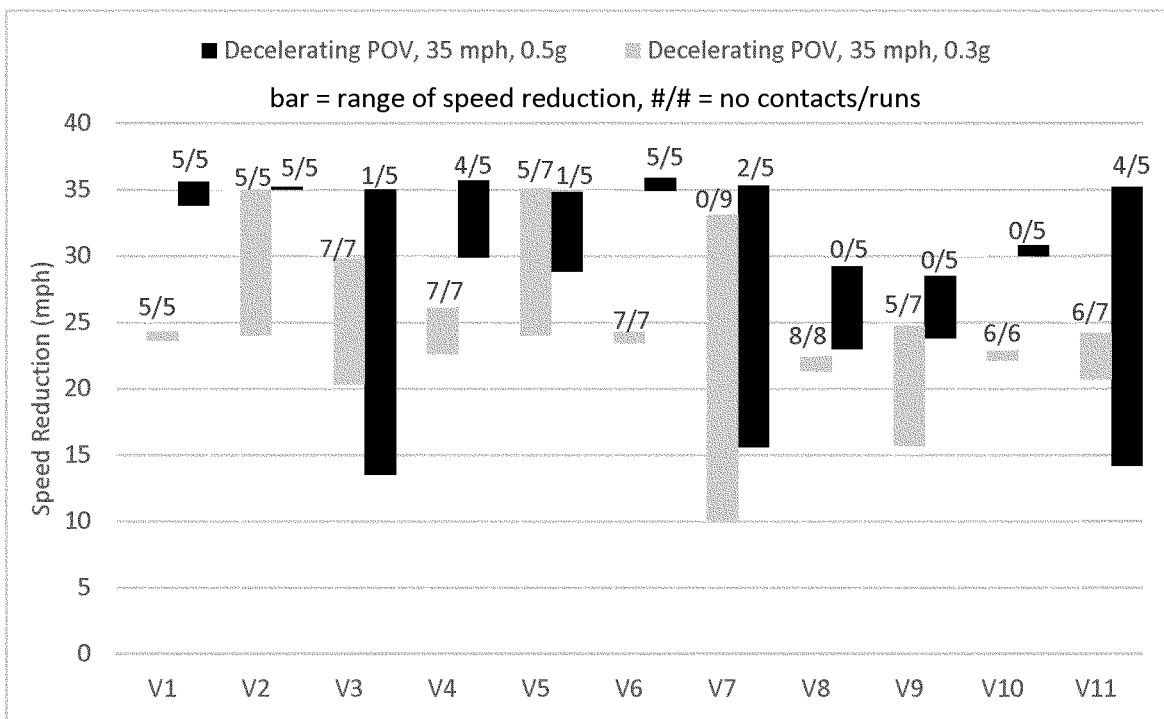
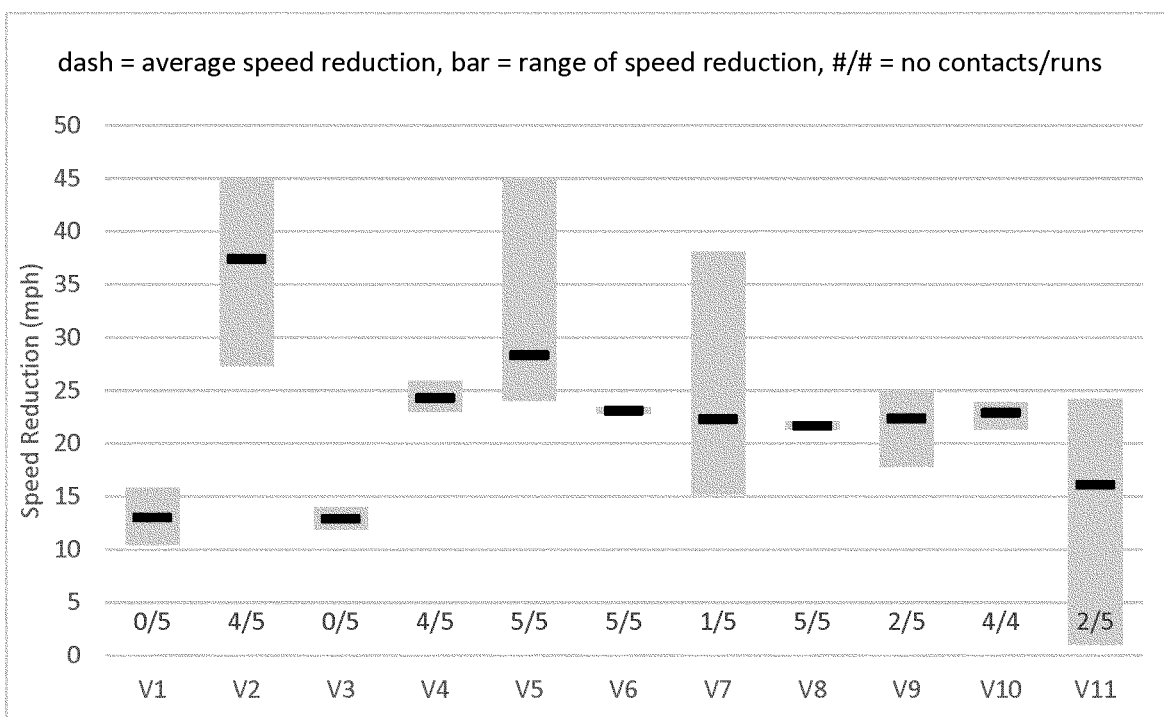


Figure 6: NHTSA R&D AEB speed reduction by vehicle – subject vehicle speed 45 mph, decelerating lead vehicle initial speed 45 mph, lead vehicle deceleration of 0.3g



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Headway and lead vehicle deceleration are the main parameters for the dynamics of the decelerating lead vehicle test because both subject and lead vehicles start the test at the same speed. At the start of the test, the proposed headway specifications include any distance between 12 m (39.4 ft) and 40 m (131.2 ft).¹⁵³ Based on the initial headway and lead vehicle deceleration, the most stringent headway and deceleration combination is the shortest headway (12 m (39.4 ft)) and the greatest deceleration (0.5g). Based on the 2020 research test results, which used a 13.8 m (45.3 ft.) headway for the decelerating lead vehicle test scenario, NHTSA has tentatively concluded based on the 2020 research test results that the proposed 12 m (39.4 ft) headway is practicable and is currently performing additional testing at this headway.¹⁵⁴

NHTSA proposes testing at any deceleration of the lead vehicle from 0.3g to 0.5g during the conduct of the decelerating lead vehicle tests. Based on previous agency research, when drivers need to apply the brakes in a non-emergency situation, they do so by decelerating up to approximately 0.306g, while drivers encountering an unexpected obstacle apply the brakes at 0.48g.¹⁵⁵ NHTSA's past research analysis of event data recorder data also showed that drivers applied the brakes at 0.383 g in rear-end crash scenarios.¹⁵⁶ Based upon this research, NHTSA has tentatively concluded that deceleration between 0.3g and 0.5g is representative of manual, on-the-road, service brake application.

From NHTSA's 2020 research testing, of the 11 vehicles tested with subject vehicle and lead vehicle speeds of 56.3 km/h (35.0 mph), a headway of 13.8 m (45 ft) and a lead vehicle deceleration of 0.5g, 3 vehicles avoided contact on every test run and 2 vehicles avoided contact on four out of five tests. When tested with a subject vehicle and lead vehicle speed of 56.3 km/h (35.0 mph) and a 0.3g lead vehicle deceleration, 7

out of 11 vehicles avoided contact with the lead vehicle in every test, and 3 of the other 4 vehicles avoided contact with the lead vehicle in five or six out of seven tests. The fourth vehicle could not avoid contact with the lead vehicle in the tests, but the AEB system provided an average speed reduction of 31 km/h (19.3 mph) over seven tests. When tested with a subject vehicle and lead vehicle speed of 72.4 km/h (45.0 mph) and a 0.3 g deceleration of the lead vehicle, 4 out of 11 vehicles avoided contact in every test and 2 other vehicles avoided contact in all but one test. Three of the remaining vehicles avoided contact in one or two tests, while the two others could not avoid contact but both demonstrated an average 21 km/h (13 mph) speed reduction.

From these results NHTSA has tentatively concluded that current AEB systems will be able to avoid a collision using a 12.0 m (39.3 ft) headway, 0.5g lead vehicle deceleration, and 50.0 km/h (31.1 mph) and 80.0 km/h (49.7 mph) subject vehicle speeds. Further, the agency believes that some of the other tested AEB systems have hardware capable of full crash avoidance, but the perception software is not tuned for the higher lead vehicle deceleration (0.5g).

4. Subject Vehicle Brake Application

The manual brake application tests two potential functions within the AEB system. The first function is directly linked to driver engagement. Normally, in a potential rear-end collision event, an FCW will be provided before the onset of automatic braking. In situations where it is practical for the vehicle to warn prior to automatic activation of the brakes, an inattentive driver may re-engage in the driving task and apply the brakes. However, in these circumstances, research suggests that a driver's brake application typically does not take advantage of the full capacity of the foundation braking system, and a crash may still occur. The AEB system, on the other hand, can use forward-looking sensor input, coupled with brake pressure information, to determine that additional braking is needed to avoid a crash. The proposed test conditions replicate this situation so that the AEB system must provide the additional braking needed to avoid contact with the lead vehicle.

The second function of the tests is to ensure that the brake application by the driver in a crash imminent situation does not suppress the vehicle's automatic brake application. In other words, the brake pedal cannot be used as a means of overriding the AEB system. NHTSA recognizes that in some

on-road scenarios, high-level emergency braking may not be the appropriate vehicle response. If deemed necessary to override an emergency braking event, a means to do so can be provided.

All lead vehicle scenarios include a test condition for which a manual brake application is used. This is functionally similar to NHTSA's NCAP DBS test. When manual brake application is part of the test parameters, the service brake on the subject vehicle is applied in such a manner that the subject vehicle decelerates with an average magnitude of 0.4g (absent automatic braking) starting at 1.0 second after onset of the FCW.

A deceleration of up to 0.5g is expected from a driver during an emergency crash imminent brake application. However, research has shown that female and older drivers tend not to apply the same force to the brake pedal as young male drivers, thus resulting in lower deceleration.¹⁵⁷ Based on this information, for the manual brake application tests, the brake pedal will be applied with a displacement, force, or some combination thereof, to sufficiently decelerate the subject vehicle an average of 0.4g. This is consistent with the manual brake applications defined in NHTSA's NCAP test procedures for DBS performance assessment and NHTSA's past research analysis of event data recorder data from rear-end crashes.^{158 159}

The brake will be applied 1.0 second after the vehicle has provided an FCW. This 1.0 second delay is based on the time it takes a driver to react when presented with an obstacle. Previous NHTSA research has shown that on average, it takes drivers 1.04 seconds to begin applying the brake when presented with an unexpected obstacle and 0.8 seconds when presented with an anticipated obstacle.¹⁶⁰

¹⁵⁷ Gregory M. Fitch, Myra Blanco, Justin F. Morgan, Jeanne C. Rice, Amy Wharton, Walter W. Wierwille, and Richard J. Hanowski (2010, April) *Human Performance Evaluation of Light Vehicle Brake Assist Systems: Final Report* (Report No. DOT HS 811 251) Washington, DC: National Highway Traffic Safety Administration, pp. 104–108.

¹⁵⁸ Automatic Emergency Braking System (AEB) Research Report, NHTSA, August 2014, pg. 47. <https://www.regulations.gov/document/NHTSA-2012-0057-0037>.

¹⁵⁹ National Highway Traffic Safety Administration (2014, August), *Dynamic Brake Support Performance Evaluation (working draft)*. Available at: <https://www.regulations.gov/document/NHTSA-2012-0057-0038>.

¹⁶⁰ Gregory M. Fitch, Myra Blanco, Justin F. Morgan, Jeanne C. Rice, Amy Wharton, Walter W. Wierwille, and Richard J. Hanowski (2010, April) *Human Performance Evaluation of Light Vehicle Brake Assist Systems: Final Report* (Report No. DOT HS 811 251) Washington, DC: National Highway Traffic Safety Administration, p. 101.

¹⁵³ The bounds of the headway range are consistent with the headways in the April 2021 European New Car Assessment Programme (Euro NCAP), Test Protocol—AEB Car-to-Car systems, Version 3.0.3 for the same scenario.

¹⁵⁴ 87 FR 13452 (Mar. 9, 2022).

¹⁵⁵ Gregory M. Fitch, Myra Blanco, Justin F. Morgan, Jeanne C. Rice, Amy Wharton, Walter W. Wierwille, and Richard J. Hanowski (2010, April) *Human Performance Evaluation of Light Vehicle Brake Assist Systems: Final Report* (Report No. DOT HS 811 251) Washington, DC: National Highway Traffic Safety Administration, p. 13 and p. 101.

¹⁵⁶ Automatic Emergency Braking System (AEB) Research Report, NHTSA, August 2014, pg. 47. <https://www.regulations.gov/document/NHTSA-2012-0057-0037>.

D. PAEB System Requirement

NHTSA is proposing that AEB systems also be able to provide a warning to the driver and automatically intervene to avoid or mitigate collisions with pedestrians in the vehicle's forward path. Similar to the lead vehicle AEB proposal, the performance requirements for PAEB are to provide an FCW and automatically apply the service brakes at all forward speeds attainable by the vehicle above 10 km/h (6 mph) in response to an imminent collision with a pedestrian.¹⁶¹ The proposal would require that the vehicle completely avoid a collision with a pedestrian test mannequin during specific test track scenarios. NHTSA is not proposing FCW and AEB systems to be active below 10 km/h (6 mph), because it has tentatively concluded that AEB systems do not offer consistent performance at such low speeds.¹⁶² A lower bound of 10 km/h (6 mph), which is 6 km/h (3.7 mph) less than that stipulated in NHTSA's 2019 draft PAEB research test procedure, is also consistent with the lower bound for testing under the Euro NCAP rating program and the proposed lower bound for PAEB testing under the agency's NCAP.¹⁶³ Not requiring PAEB to be active below 10 km/h (6 mph) should not be construed to preclude making the AEB system active, if possible, at speeds below 10 km/h (6 mph). In fact, the agency anticipates that manufacturers will make the system available at the lowest practicable speed (the manual for 6 of the 11 tested vehicles shows PAEB available at speeds below 10 km/h).

Automatic braking must be able to decelerate the vehicle when a collision with a pedestrian is imminent in the absence of any driver brake input. Unlike for lead vehicle AEB, the proposed requirements for PAEB do not require that the AEB system supplement the driver's brake input. The reason is that the agency has tentatively concluded that, due to the sudden succession of events in a potential collision between a vehicle and a pedestrian, particularly for the pedestrian crossing path scenarios, a driver is unlikely to have enough time to react to the crash imminent event, and the vehicle will brake automatically

without driver input. While this proposal would not specifically require PAEB to supplement driver brake input, it anticipates that AEB system designs will include this feature.

E. PAEB—FCW Requirement

NHTSA is proposing that the same FCW specifications outlined for the lead vehicle AEB condition be applied to the PAEB condition. The FCW system must operate at any forward speed greater than 10 km/h (6.2 mph). The proposed FCW modalities and related characteristics of auditory and visual components are the same for lead vehicle AEB and PAEB conditions. NHTSA is proposing that the auditory mode have a high fundamental frequency of at least 800 Hz, a duty cycle of 0.25–0.95, and tempo in the range of 6–12 pulses per second; the visual mode would be located according to SAE 2400 AUG2003 paragraph 4.1.14 and must include the crash icon in the bottom right of paragraph 4.1.16.¹⁶⁴ Line of sight as referenced in 4.1.14 would be determined based on the forward-looking eye midpoint (M_f) as described in FMVSS No. 111 S14.1.5.

Some current vehicle models display a pedestrian symbol during activation of the FCW for PAEB scenarios. However, NHTSA is now aware of research or data indicating that displaying a visual symbol that corresponds to the type of forward obstacle (*i.e.*, vehicle or pedestrian) affects the driver's response. Providing consistency across FCWs provided for lead vehicle AEB and PAEB imminent crash scenarios should maximize the likelihood that drivers will associate the FCW with a forward crash of any sort. As such, the agency is not proposing different symbols for the visual FCW modality based on the type of forward obstacle to which the AEB is responding.

When evaluating existing PAEB systems through NHTSA's 2020 research testing, the agency found that during certain test scenarios, FCW did not occur prior to the onset of automatic braking.¹⁶⁵ NHTSA tentatively

concludes that, due to the dynamics of some pedestrian crashes that result in a quick succession of events, it is impractical to require that the warning and automatic braking be sequential, as it could potentially hinder the reaction time of AEB systems. The agency anticipates that FCW may occur at any time during the automatic braking event. When it occurs after onset of automatic braking, the FCW would serve to inform the driver that automatic braking is ongoing, rather than solicit a driver response.

F. PAEB—Performance Test Requirements

NHTSA is proposing that AEB-equipped vehicles avoid a collision by applying the brakes automatically and alerting the vehicle operator when a collision with a pedestrian is imminent under specified test-track scenarios. Similar to the lead vehicle AEB performance test requirements, NHTSA has tentatively concluded that a no-contact requirement is necessary for PAEB testing in order to maximize safety. Even low-speed vehicle impacts with pedestrians can result in fatalities and serious injuries. NHTSA has tentatively concluded that a no-contact criterion for the performance test requirements is practicable to achieve, consistent with the need for safety, and may be necessary to ensure test repeatability.¹⁶⁶

The test scenarios proposed for PAEB evaluation involve track tests and are based on previous research completed by the agency to evaluate existing PAEB systems and on knowledge and experience from developing the related NCAP test procedures.¹⁶⁷ The proposed speed ranges and other key parameters detailed in the following sections are based on the observed capabilities of PAEB systems, limitations of the pedestrian test mannequins, and the safety problem.¹⁶⁸

Manual brake application by the driver is not a parameter of the proposed test scenarios for PAEB. However, NHTSA anticipates that, because AEB systems will be tested under the proposed requirements with manual brake activation for lead vehicle, that functionality will exist for

¹⁶¹ The FCW and brake application need not be sequential.

¹⁶² A review of 11 model year 2019/2020 vehicle owner's manuals found that PAEB activation ranged from 4.8 km/h (3 mph) to 11.3 km/h (7 mph) with the average being 7.7 km/h (4.8 mph).

¹⁶³ European New Car Assessment Program (Euro NCAP) (2019, July), Test Protocol—AEB Car-to-Car systems, Version 3.0.2; 87 FR 13452 (Mar. 9, 2022); and www.regulations.gov, NHTSA Docket No. NHTSA-2019-0102-0005.

¹⁶⁴ SAE 2400 AUG2003, Human Factors in Forward Collision Warning Systems: Operating Characteristics and User Interface Requirements.

¹⁶⁵ As an example, when testing the Obstructed Running Child, Crossing Path from the Right Scenario (see following paragraphs for scenario description) with a MY 2020 Subaru Outback traveling at 16 km/h the onset of the alert was 0.92s (FCW on time history plot) and service brake application was at 0.91 s (PAEB on time history plot) essentially at the same time. "Final Report of Pedestrian Automatic Emergency Braking System Research Testing of a 2020 Subaru Outback Premium/LDD," <https://www.regulations.gov/document/NHTSA-2021-0002-0002>, See: Figure D66. Time History for PAEB Run 180, S1d, Daytime, 16 km/h.

¹⁶⁶ Requiring vehicles to avoid contact during testing addresses practical considerations as well. These practical considerations are discussed in section VI.G of this NPRM, in which NHTSA seeks comment on alternatives to the no-contact requirement.

¹⁶⁷ See Research section of this notice, 87 FR 13452 (Mar. 9, 2022) at 13472 and 13473, and <https://www.regulations.gov/document/NHTSA-2021-0002-0002>.

¹⁶⁸ See Safety Problem section of this notice.

PAEB.¹⁶⁹ The absence of manual brake application in NHTSA's proposed test parameters should not be construed to mean that AEB systems should not function when a manually applied brake input is present.

The proposed series of on-track tests fall into three groups of scenarios based on the pedestrian test mannequin actions. The first group of scenarios involves the test mannequin crossing the path of the vehicle. In each of the first group of scenarios, the test

mannequin travels perpendicular to the vehicle's path. In the second group, the test mannequin is stationary within the path of the vehicle. In the third group, the test mannequin is moving along the travel path of the vehicle. In all scenarios, the test is set up such that the subject vehicle would collide with the test mannequin if it did not automatically brake. The key test parameters for the PAEB test scenarios include the type of test mannequin, the initial location of the test mannequin,

the direction of travel of the test mannequin, the point on the subject vehicle that would impact the test mannequin (the overlap), the vehicle speed, the speed of the test mannequin, the ambient light condition, and the headlamp beam used during darkness.

These key test parameters and the combinations in which they will be used are summarized in Table 23. The sections that follow provide more detail about how and why these key test parameters were selected.

TABLE 23—PAEB COLLISION AVOIDANCE KEY TEST PARAMETERS

	Pedestrian surrogate reference location	Overlap (%)	Speed (km/h)		Lighting condition
			Subject vehicle	Pedestrian	
Crossing Path	Right	25	Any 10–60	5	Daylight.
	Right	50	Any 10–60		Daylight.
	Right	50	Any 10–60 ¹		Lower Beams.
	Right	50	Any 10–60		Upper Beams.
	Right ²	50	Any 10–50	³ 5	Daylight.
	Left	50	Any 10–60	⁴ 8	Daylight.
Stationary Along Path	Right	25	Any 10–55	0	Daylight.
			Any 10–55 ¹		Lower Beams.
			Any 10–55		Upper Beams.
Moving Along Path	Right	25	Any 10–65	5	Daylight.
			Any 10–65 ¹		Lower Beams.
			Any 10–65 ¹		Upper Beams.

¹ Final speed range requirements after an additional one-year phase-in.

² Obstructed, running child.

³ Running child.

⁴ Running adult.

There are certain test conditions in Table 23 where the test speed would be implemented one additional year after the initial proposed phase-in. Based on the performance of existing PAEB systems during the agency's dark lower-beam and dark upper-beam pedestrian tests, NHTSA proposes a reduced speed range for the first three years after the proposed requirements are to take effect. As discussed further in this notice,

NHTSA has tentatively concluded that this approach would afford adequate lead time for vehicle manufacturers and suppliers to adjust their PAEB system designs for higher speed ranges in these scenarios. Table 24 summarizes the scenarios to which these changes apply. The agency proposes that four years after the date of publication of the final rule, the performance testing requirements follow all the key

parameters in Table 23. A more detailed discussion on the phase-in appears further below in this section.

Concurrent with the development of this proposal, NHTSA conducted testing of model year 2021 and model year 2022 vehicles using the proposed performance test requirements. The details of these tests and results are docketed with this proposed rule.

TABLE 24—PAEB COLLISION AVOIDANCE KEY TEST PARAMETERS, REDUCED SPEED RANGES

	Pedestrian surrogate reference location	Overlap (%)	Speed (km/h)		Lighting condition
			Vehicle	Test mannequin	
Crossing Path	Right	50	Any 10–40	5	Lower Beams.
Stationary Along Path	Right	25	Any 10–50	0	Lower Beams.
Moving Along Path	Right	25	Any 10–60	5	Lower Beams.
			Any 10–60		Upper Beams.

¹⁶⁹ Since supplementing brake application is a functionality that must already exist for the lead vehicle AEB based on this NPRM, NHTSA

anticipates the same capability will be provided when the subject vehicle encounters an emergency

braking situation involving a pedestrian and manual braking is applied.

In all PAEB collision avoidance scenarios (see Table 23 and Table 24) the vehicle must avoid a collision with the pedestrian through use of the vehicle's AEB system without manual brake input.

NHTSA evaluated various scenarios when developing the draft NCAP test procedures for PAEB.¹⁷⁰ During this evaluation, four scenarios were found to account for 98 percent of functional years lost (*i.e.*, the years of life lost due to fatal injury and the years of functional capacity lost due to nonfatal injury) and the direct economic cost of all vehicle-pedestrian crashes, but they only accounted for 46 percent of all national pedestrian cases from NHTSA's General Estimate Systems database.¹⁷¹

¹⁷⁰ Mikio Yanagisawa, Elizabeth Swanson, and Wassim G. Najm (2014, April) Target Crashes and Safety Benefits Estimation Methodology for Pedestrian Crash Avoidance/Mitigation Systems (Report No. DOT HS 811 998) Washington, DC: National Highway Traffic Safety Administration, p. xi.

¹⁷¹ T. Miller, J. Viner, S. Rossman, N. Pindus, W. Gellert, J. Douglass, A. Dillingham, and G.

These scenarios were subject vehicle traveling straight ahead and pedestrian crossing the road, subject vehicle traveling straight ahead and pedestrian walking along/against traffic, subject vehicle turning right and pedestrian crossing the road, and subject vehicle turning left and pedestrian crossing the road.

Further NHTSA research found that, on average, the subject vehicle traveling straight ahead and pedestrian crossing the road and subject vehicle traveling straight ahead and pedestrian walking along/against traffic accounted for approximately 52 percent of vehicle-pedestrian crashes and 90 percent of fatal vehicle-pedestrian crashes with a light vehicle striking a pedestrian as the first event.¹⁷² Based on this research,

Blomquist, "The Costs of Highway Crashes". FHWA-RD-91-055, October 1991.

¹⁷² Mikio Yanagisawa, Elizabeth D. Swanson, Philip Azeredo, and Wassim Najm (2017, April) *Estimation of potential safety benefits for pedestrian crash avoidance/mitigation systems* (Report No. DOT HS 812 400) Washington, DC:

the following scenarios are proposed because they would have the highest impact on the safety problem.

1. PAEB Scenario Descriptions

Pedestrian Crossing Path From the Right

The crossing path from the right scenarios consist of the subject vehicle traveling straight ahead at a constant speed towards the adult pedestrian test mannequin, which enters its travel path from the right side of the vehicle.¹⁷³ The subject vehicle must be able to avoid contact with the pedestrian test mannequin crossing its path.

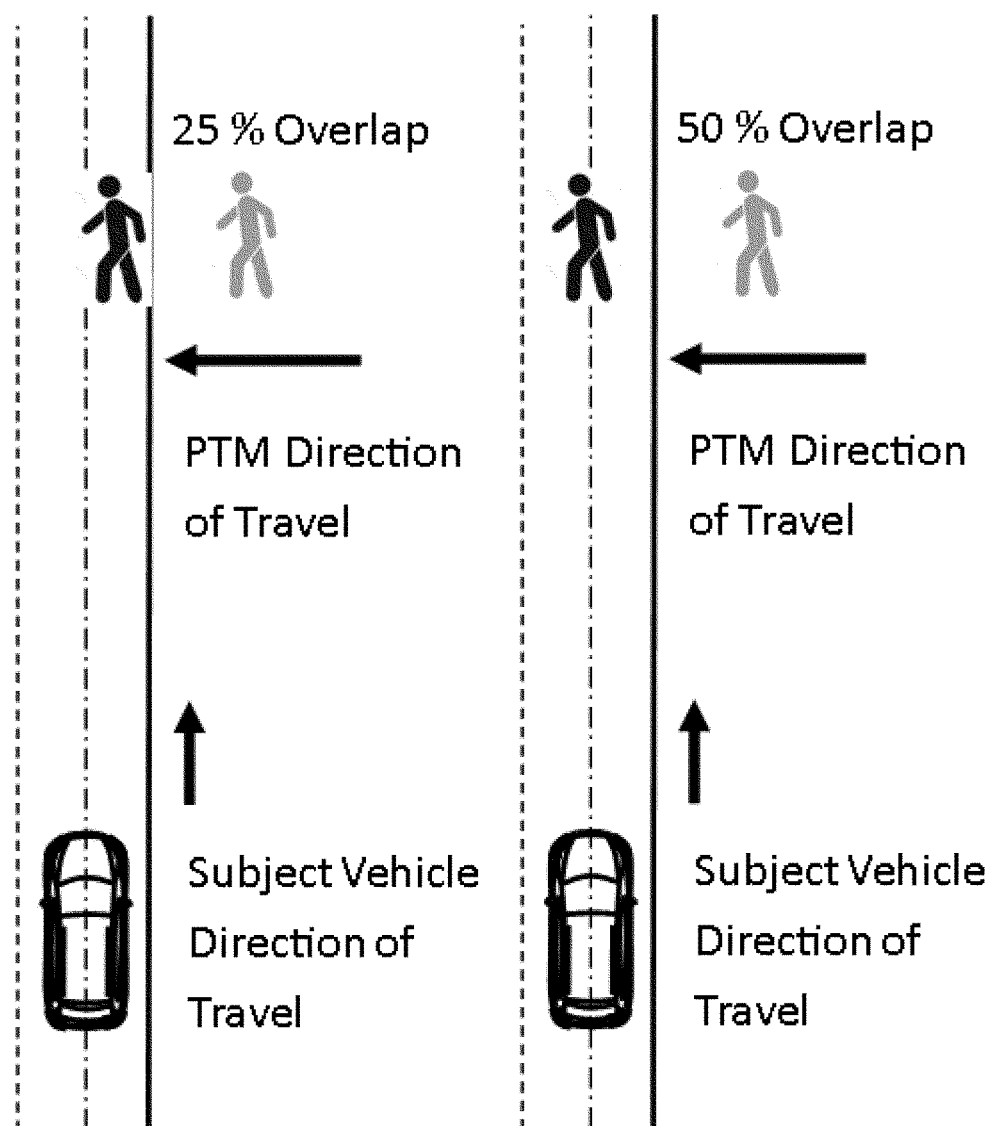
A basic setup for the pedestrian crossing the path of the vehicle from the right scenarios with 25 percent and 50 percent overlap is shown in Figure 7.

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National Highway Traffic Safety Administration, p. xiii.

¹⁷³ Travel Path is the path projected onto the road surface by a point located at the intersection of the subject vehicle's frontmost vertical plane and longitudinal vertical center plane as the subject vehicle travels.

Figure 7: Pedestrian Crossing Path from the Right 25 and 50 Percent Overlap Basic Setup



Pedestrian, Obstructed Running Child, Crossing Path from the Right

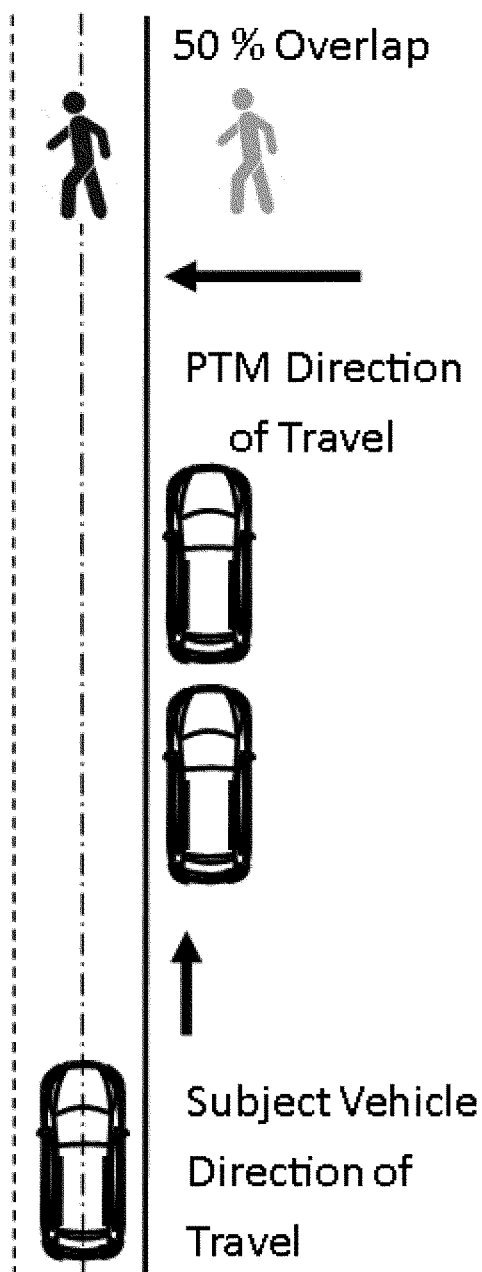
In this scenario, an obstructed child pedestrian moves in the vehicle's travel path. The child pedestrian is simulated by a child pedestrian surrogate that appears from the right of the travel path. The pedestrian surrogate crosses the subject vehicle's travel path from in

front of two stopped vehicle test devices. The VTDs are parked to the right of the subject vehicle's travel path, in the adjacent lane, at 1.0 m (3 ft) from the side of the subject vehicle. The VTDs are parked one after the other and are facing in the same direction as the

subject vehicle.¹⁷⁴ The basic setup for the obstructed running child pedestrian scenario is shown in Figure 8. The subject vehicle must avoid collision with the child pedestrian surrogate without manual brake input.

¹⁷⁴ See the Proposed Test Procedure section of this NPRM for further details.

Figure 8: Pedestrian Child Crossing Path from the Right Basic Setup



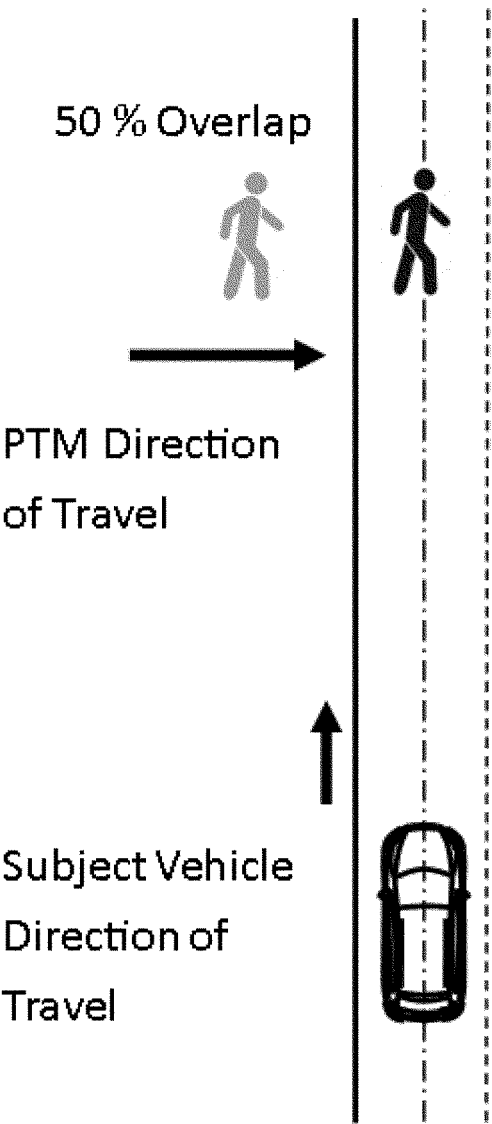
Pedestrian, Running, Crossing Path from the Left

In this scenario, a simulated running adult pedestrian (the pedestrian surrogate) crosses into the path of the vehicle traveling straight ahead at a constant speed. The pedestrian

surrogate enters the path from the left side of the vehicle. No contact between the subject vehicle and pedestrian surrogate is allowed. For testing, the subject vehicle travels at a constant

speed when it encounters the pedestrian surrogate crossing from the left side. Figure 9 shows the basic setup for this scenario.

Figure 9: Pedestrian Crossing Path from the Left Basic Setup



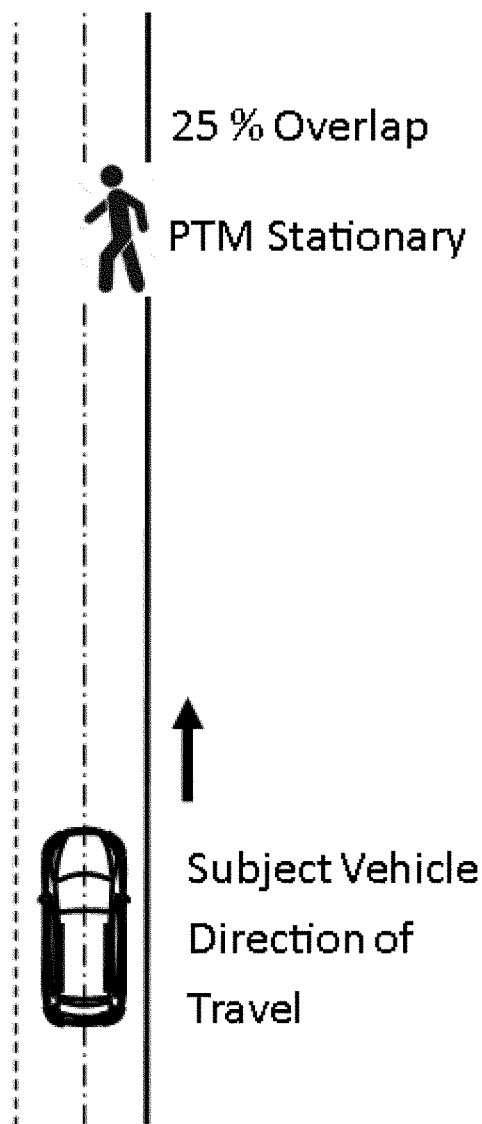
Pedestrian Along Path, Stationary

In this scenario the pedestrian surrogate, with its back to the subject vehicle, is stationary in the travel path of the subject vehicle at a 25 percent overlap. The subject vehicle travels at a

constant speed and encounters the stationary pedestrian surrogate positioned in the subject vehicle’s path. The subject vehicle must completely avoid a collision with the pedestrian

surrogate. Figure 10 shows the basic setup for the pedestrian stationary in the path of the subject vehicle.

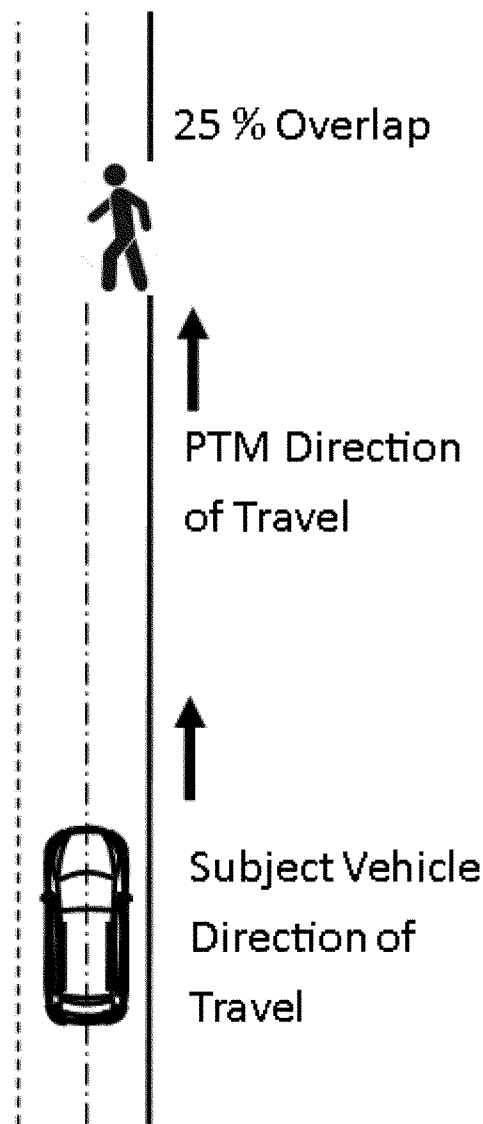
Figure 10: Pedestrian Along Path, Stationary Basic Setup



Pedestrian Along Path, Moving

In this scenario, a moving pedestrian is traveling along the vehicle's path. The vehicle must avoid collision with the pedestrian surrogate. Figure 11 shows the basic setup for this scenario.

Figure 11: Pedestrian Along Path, Moving Basic Setup



2. Overlap

The overlap is the location on the subject vehicle where the vehicle would collide with the pedestrian surrogate. Overlap is defined as the percent of the vehicle’s width that the pedestrian would traverse prior to impact if the vehicle’s speed and pedestrian’s speed

remain constant. Overlap is based on overall vehicle width, as shown in Figure 12, and is the intended point of impact with the pedestrian mannequin in the absence of vehicle braking. Two overlaps are proposed for testing, a 25 percent overlap and a 50 percent overlap. The minimum overlap is 25

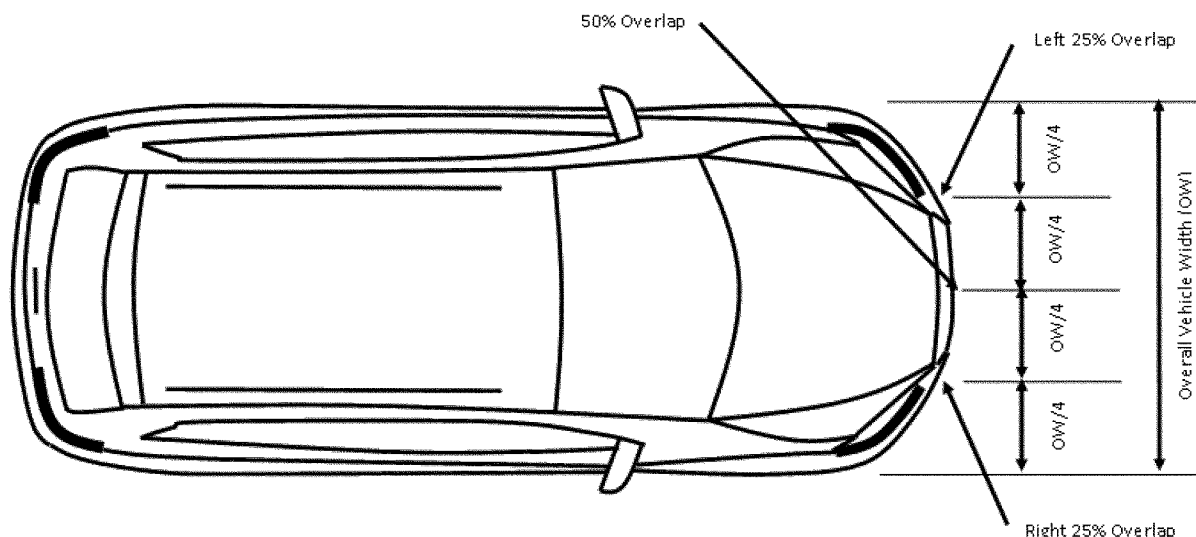
percent to allow for the test mannequin to be fully in the path of the vehicle. The overlap determines the available time for the AEB system to detect and react when a collision with the test mannequin is imminent—a 50 percent overlap allows for more time than a 25 percent overlap.¹⁷⁵

¹⁷⁵ As an example, for the timing, for a road width of 3 m (10 ft), a subject vehicle width of 2 m (7 ft) and the constant pedestrian speed of 5 km/h (3

mph), the time it takes the pedestrian to travel from the edge of the road to the 25% overlap is 0.72 s

and the time it takes the pedestrian to travel to the 50% overlap is 1.08 s.

Figure 12: Vehicle Overlap



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For the scenarios involving a pedestrian crossing from the right, two overlap conditions are proposed: A more challenging test condition of 25 percent overlap and a 50 percent overlap to ensure system robustness. The 25 percent overlap tests are performed only under daylight conditions, while the 50 percent overlap tests are performed in all lighting conditions. For the crossing path scenarios, as described in the testing section of this notice, the pedestrian surrogate continues to travel along its path either until collision occurs or it clears the subject vehicle's path. NHTSA also considered a 75 percent overlap, and this condition was included in the testing performed in 2020. As expected, due to the increase in time range afforded by a larger overlap, the AEB performance observed when testing at 75 percent overlap was substantially similar to the AEB performance achieved when testing at 50 percent overlap.¹⁷⁶ NHTSA believes that a 75 percent overlap need not be included in the proposed requirements because the minimum performance is sufficiently addressed by testing at the 25 percent and 50 percent overlap.

Based on the no contact criterion and braking performance observed during its 2020 research testing of 11 vehicles, NHTSA is proposing to test PAEB performance with the dark upper beam and dark lower beam conditions at 50

percent overlap only. NHTSA has tentatively concluded that, due to the reduced timing and AEB system reaction time observed during the 25 percent overlap tests, testing at 25 percent overlap for the dark upper beam and lower beam is not currently practicable. NHTSA is also proposing to use only 50 percent overlap in the obstructed child running from the right and the running adult from the left scenarios due to the same reduced reaction time.

NHTSA considered requiring testing at 25 percent overlap for all crossing path scenarios. However, this would have required reducing the subject vehicle speed to allow more reaction time for the AEB system to avoid the pedestrian surrogate at the proposed speeds. NHTSA lacks information as to practicable maximum test speed for this condition. The proposal to test only at 50 percent overlap for certain scenarios allows for testing at higher speeds, which is more representative of the safety problem, while effectively encompassing tests at 25 percent overlap and lower speeds.¹⁷⁷ Further, if an AEB system is able to avoid collision in daylight at 25 percent overlap, poor performance for other crossing path

scenarios would not be linked to the vehicle's braking performance, but rather would likely be linked to the detection and processing part of the AEB system.

The 25 percent overlap for the stationary and along path scenarios emulate a pedestrian standing stationary or walking on the roadway in the path of the subject vehicle. In along path scenarios in the real world, the pedestrian is positioned towards the edge of the roadway in the path of the subject vehicle. Positioning the pedestrian surrogate at 25 percent overlap assures that the surrogate test target is fully in the path of the vehicle. NHTSA has tentatively concluded that a 25 percent overlap for the along path scenarios also represents a more stringent condition than 50 percent overlap for the AEB system, as it ensures that the system has an adequate operational field of view and is able to identify pedestrians that are not at the center of the travel path.

3. Vehicle and Pedestrian Surrogate Travel Speeds

The proposed subject vehicle and pedestrian surrogate travel speed ranges for the PAEB test scenarios were informed by results from NHTSA's 2020 research study and results from a NHTSA research program examining four vehicles under dark lighting conditions for PAEB performance.^{178 179}

¹⁷⁶ For the 75% overlap condition the agency only performed daylight testing. In general, when testing in the daylight condition, AEB performance was similar, or better, when testing at the 75% overlap versus testing at 50% and 25% overlaps.

¹⁷⁷ For the pedestrian test mannequin to reach the 50 percent overlap, it must pass through the 25 percent overlap location. As an example, for a road width of 3 m (10 ft), a vehicle width of 2 m (7 ft), a pedestrian speed of 5 km/h (3 mph), a 0.7 g average deceleration and a AEB system which reacts when the pedestrian test mannequin reaches the edge of the road, testing with the subject vehicle speed of 27 km/h (17 mph) for the crossing path from the right scenario at 50 percent overlap is equivalent to testing at 18 km/h (11 mph) at 25 percent overlap.

¹⁷⁸ 87 FR 13452 (Mar. 9, 2022).

¹⁷⁹ See 87 FR 13452 (Mar. 9, 2022) Tables 4, 5 and 6 for the complete test matrix. The other 4 vehicles tested for PAEB functionality under dark lighting

Continued

As in the case for lead vehicle AEB, the proposed speed ranges for PAEB testing consider two primary factors—the ability of AEB systems to consistently operate and avoid contact with the surrogate pedestrian and the practical limits for testing safely.¹⁸⁰

All proposed speed ranges for the PAEB tests have a lower bound of 10 km/h (6 mph). The upper bound is set at the highest speed NHTSA has tentatively determined is practicable. The 10 km/h (6 mph) lower bound for the speed range was based on the agency's tentative conclusion that PAEB systems may not offer consistent

performance at speeds below 16 km/h (10 mph) and corroborated by NHTSA's 2020 testing. The lower bound of 10 km/h (6 mph) is 6 km/h (4 mph) less than that specified in the 2019 NHTSA draft PAEB research test procedure and is consistent with the lower bound established for testing under Euro NCAP's rating program and the lower bound proposed for NCAP testing.¹⁸¹ The agency has tentatively concluded that testing at speeds below 10 km/h is not practicable at this time and testing at speeds above 10 km/h sufficiently addresses performance of AEB systems

at low speeds. Concurrent with the development of this proposed rule, NHTSA performed PAEB testing on model year 2021 and 2022 vehicles using the proposed performance requirements and test procedures. The results of that testing provide additional support to the tentative conclusion that the test conditions, parameters, and procedures are practical to conduct and that the proposed requirements are practical for manufacturers to achieve. The results of this testing are detailed in the PAEB report docketed with the proposed rule.

TABLE 25—USER MANUAL PAEB RANGE OF FUNCTIONALITY BY TESTED VEHICLE

Vehicle	Speed			
	Low (km/h)	Low (mph)	High (km/h)	High (mph)
V1	9.6	6	59.2	37
V2	4.8	3	80	50
V3	4.8	3	99.2	62
V4	11.2	7	80	50
V5	4.8	3	120	75
V6	11.2	7	160	100
V7	9.6	6	80	50
V8	8	5	72	45
V9	9.6	6	80	50
V10	4.8	3	59.2	37
V11	6.4	4	68.8	43

About half of all pedestrian fatalities and injuries occur in areas where the posted speed limit is 40 mph or lower.¹⁸² In order to mitigate as much of the safety problem as possible, the agency is proposing the highest practicable speeds for the upper bound of the subject vehicle speed ranges. However, the testing speed may also be limited by the ability to test safely and repeatably. The pedestrian surrogates NHTSA plans to use for testing have a maximum impact speed of 60 km/h (37.5 mph). Therefore, similar to the lead vehicle, the highest subject vehicle test speed is determined by the speed differential, which is equivalent to the maximum impact speed. The maximum test speeds for crossing pedestrian and stationary adult scenarios are 60 km/h (37.5 mph), and 65 km/h (40.4 mph) for the pedestrian surrogate moving away from vehicle at 5 km/h (3.1 mph) scenario, which corresponds to a 60 km/h (37.5 mph) speed differential. The 65 km/h (37.5 mph) proposed subject

vehicle speed is consistent with NCAP's request for comments notice but is 5 km/h (3.1 mph) greater than the Euro NCAP test speed.¹⁸³

When testing at higher speeds and dark lower and dark upper beam lighting conditions, PAEB performance was not consistent across the tested fleet. The test results, however, showed that for the majority of test conditions, at least one of the AEB systems for the MY 2019 and 2020 test vehicles could perform at the proposed speed ranges. NHTSA believes that this aggregate performance of available production AEB systems is not indicative of shortcomings in the overall capability of AEB technology, but is due to differences in how manufacturers have developed perception and decision-making algorithms for specific scenarios absent an FMVSS. To afford time to manufacturers to adjust the performance of their AEB systems to the proposed requirements, we are proposing an

extended phase-in period for some test conditions.

NHTSA observed a similar trend with the deployment of AEB technology approximately four years ago, when performance was inconsistent in NHTSA's NCAP program for the lead vehicle AEB scenarios. AEB systems failed to meet all of the NCAP performance levels at that time, but AEB performance quickly improved as manufacturers updated and improved software.

The proposed walking and running speeds of the pedestrian surrogates are based on the action of the pedestrian in the test scenario. For walking adult scenarios and the running child scenario, the pedestrian surrogate speed is 5 km/h (3 mph), and for the running adult condition, the pedestrian surrogate speed is 8 km/h (5 mph). Research performed by Directorate-General for Research and Innovation and published in 2014 identified these speeds as most appropriate for PAEB

conditions were only tested at 16 km/h and 40 km/h.

¹⁸⁰ Where possible and practicable, the proposed speed ranges align with the latest NCAP proposed upgrade (87 FR 13452 (Mar. 9, 2022)). In instances where system performance for existing PAEB was

lower, or a safety need exists, the top speeds of the ranges were adjusted accordingly.

¹⁸¹ <https://www.euroncap.com/en/for-engineers/protocols/vulnerable-road-user-vru-protection/>, 87 FR 13452 (Mar. 9, 2022) and <https://www.regulations.gov/document/NHTSA-2019-0102-0005>.

¹⁸² See Safety Problem section of this notice.

¹⁸³ Euro NCAP test speeds, <https://www.euroncap.com/en/for-engineers/protocols/vulnerable-road-user-vru-protection/>, 87 FR 13470 (Mar. 9, 2022).

testing.¹⁸⁴ The proposed pedestrian surrogate speeds and the stationary pedestrian surrogate condition are also consistent with previous NHTSA research, 2019 draft NHTSA PAEB test procedures, and Euro NCAP.¹⁸⁵

4. Crossing Path Scenario Testing Speeds

Two speed ranges are proposed for the crossing path test conditions—a range of 10 km/h (6 mph) to 60 km/h (37 mph) for all adult pedestrian scenarios in the walking and running conditions

(pedestrian surrogate moving at 5 km/h (3 mph) and 8 km/h (5 mph), respectively), and a range of 10 km/h (6 mph) to 50 km/h (31 mph) for the running child (pedestrian surrogate moving at 5 km/h (3 mph)) obstructed view scenario.

The proposed speed ranges for PAEB are based on the results from the 2020 NHTSA research. When discussing the research as it relates to this notice, the tested vehicles were assigned an identifier as shown in Table 22. From the vehicles tested, V3 did not have

PAEB capabilities in most tests and is not further discussed. Testing performed for the 25 percent overlap daylight condition at 16 km/h (10 mph) and 40 km/h (25 mph) (pedestrian surrogate speed 5 km/h (3 mph)) showed that four of the tested vehicles avoided a collision with the pedestrian surrogate in all tests conducted and six vehicles avoided collision with the pedestrian surrogate in all tests when tested at 40 km/h (25 mph) (See Table 26).

Table 26: NHTSA R&D AEB ratio of no contact trials to total trials by vehicle and tested speed - adult pedestrian crossing path from the right scenario, 25 percent overlap, daylight¹⁸⁶

Subject Vehicle Speed (km/h)	V1	V2	V4	V5	V6	V7	V8	V9	V10	V11
11	--	--	--	--	--	--	--	--	--	6/6
16	5/5	5/5	5/5	0/3	3/6	6/6	5/5	5/5	4/5	0/4
35	--	--	--	--	--	--	--	--	4/5	--
40	5/5	5/5	5/5	5/5	5/5	3/5	3/5	6/6	2/5	0/4

Figure 13 shows the automatic speed reduction from the testing performed at the 25 percent overlap. As an example, if the subject vehicle traveling at 40 km/h (25 mph) would approach a stopped object, it would need to reduce its speed by 40 km/h (25 mph) to avoid collision with the object. However, since the pedestrian surrogate continues its movement even after reaching the

overlap, the subject vehicle does not need to come to a stop to avoid contact with the pedestrian surrogate (for an example, see V9 at 40 km/h (25 mph) in Figure 13). Different marker shapes are used based on the tested speed and shading of the markers to differentiate between the trials where the subject vehicle collided with the pedestrian surrogate and the successful trials with

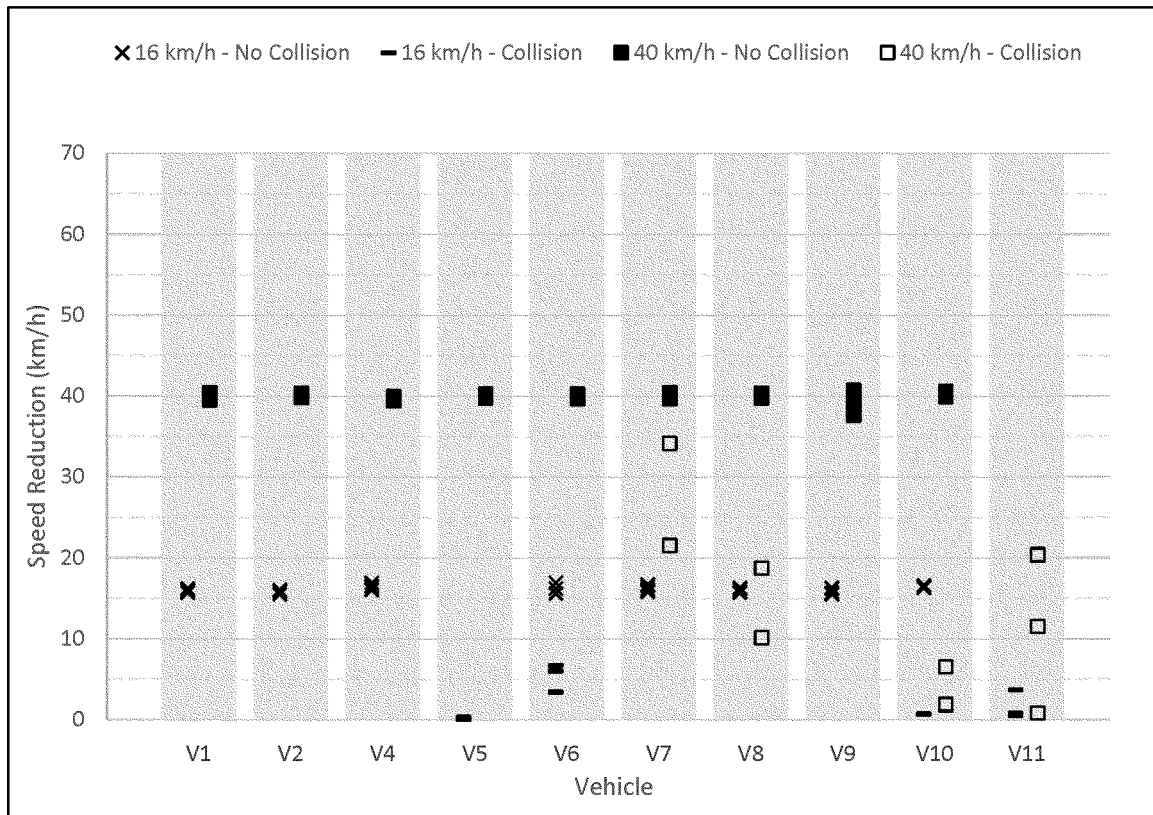
no contact. As shown in the figures, a successful no contact trial is represented by a shaded (filled) shape, while the trials with contact are shown as shapes with no shade (no fill). The only exception are the trials at 16 km/h (10 mph), where the “x” represents the no contact trials and the “-” represents the trials with contact.

¹⁸⁴ <https://cordis.europa.eu/docs/results/285/285106/final1-aspecss-publishable-final-report-2014-10-14-final.pdf> at pg. 19.

¹⁸⁵ 87 FR 13452 (Mar. 9, 2022), Euro NCAP test speeds, <https://www.euroncap.com/en/for-engineers/protocols/vulnerable-road-user-vru-protection/>.

¹⁸⁶ <https://www.regulations.gov/document/NHTSA-2021-0002-0002>.

Figure 13: NHTSA R&D AEB speed reduction by vehicle and tested speed - adult pedestrian crossing path from the right scenario, 25 percent overlap, daylight¹⁸⁷



Even though testing was not performed at 60 km/h (37 mph) for the crossing path from the right and 25 percent overlap condition, based on the safety need and the consistency of the results observed at 40 km/h (25 mph) for the 25 percent overlap, NHTSA has tentatively concluded that the proposed performance testing requirements are practicable. The agency is currently performing testing at the proposed speed ranges, including the 60 km/h (37 mph) speed, to corroborate this conclusion. NHTSA is proposing a

range for the tested speeds from a low 10 km/h (6 mph) starting point to ensure system performance at all speeds, as opposed to only testing at the highest practicable speeds. As an example, the owner's manual of V5 shows the PAEB system working from 5 km/h (3 mph) up to 120 km/h (75 mph), but when tested, V5 failed to avoid collision on all trials at 16 km/h (10 mph). These proposed subject vehicle speed ranges are also consistent with Euro NCAP vehicle speed ranges and the pedestrian surrogate speeds are consistent with

both NCAP's latest request for comments notice and Euro NCAP pedestrian testing speeds.¹⁸⁸

The crossing path from the right at 50 percent overlap test scenarios with an adult pedestrian surrogate in the daylight condition was performed at a range of speeds from 16 km/h (10 mph) up to 60 km/h (37 mph) in NHTSA's 2020 research study. From the 10 relevant vehicles, 3 avoided collision in all tests up to 50 km/h (31 mph) and one avoided collision in all but one test up to 60 km/h (37 mph) (See Table 27).

¹⁸⁷ *Id.*

¹⁸⁸ EuroNCAP test speeds, <https://www.euroncap.com/en/for-engineers/protocols/>

vulnerable-road-user-vru-protection/, 87 FR 13470 (Mar. 9, 2022).

Table 27: NHTSA R&D AEB ratio of no contact trials to total trials by vehicle and tested speed - adult pedestrian crossing path from the right scenario, 50 percent overlap, daylight

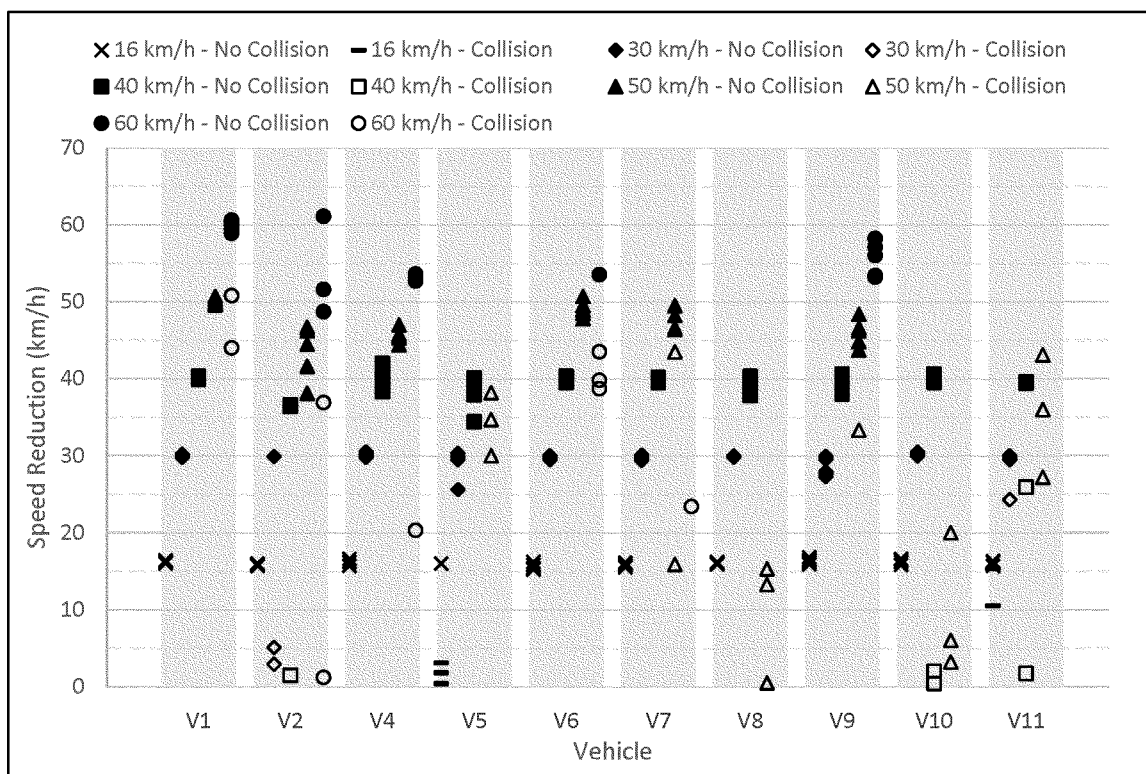
Subject Vehicle Speed (km/h)	V1	V2	V4	V5	V6	V7	V8	V9	V10	V11
16	6/6	5/5	5/5	1/4	5/5	5/5	5/5	6/6	5/5	3/5
20	7/7	5/5	5/5	6/6	6/6	5/5	5/5	5/5	3/5	5/5
30	5/5	3/5	5/5	5/5	5/5	5/5	5/5	5/5	5/5	4/5
40	5/5	3/5	5/5	5/5	5/5	5/5	5/5	5/5	2/4	3/5
45	--	--	--	0/3	--	--	1/4	--	0/4	3/5
50	5/5	5/5	5/5	0/3	5/5	4/6	0/3	5/6	0/3	0/4
55	--	--	--	--	5/5	0/3	--	1/1	--	--
60	5/7	3/5	4/5	--	1/4	0/1	--	5/5	--	--

Figure 14 shows the speed reduction at various tested speeds. For clarity, not all tested speeds are shown. The testing speeds shown represent the current PAEB research test procedures test speeds (16 km/h (10 mph) and 40 km/

h (25 mph)) and three other speeds relevant to the proposed testing requirements. The three vehicles that avoided impact on all tests up to 50 km/h (31 mph) were also able to significantly reduce their speeds when

tested at 60 km/h (37 mph). This suggests that a slight tuning of the AEB systems would allow those systems to avoid collision at 60 km/h (37 mph).

Figure 14: NHTSA R&D AEB speed reduction by vehicle and tested speed - adult pedestrian crossing path from the right scenario, 50 percent overlap, daylight



In the agency's crossing path from the right with 50 percent overlap during dark lighting condition using the vehicle's upper beam headlamps, one

vehicle avoided collision in all but one test when tested at speeds up to 60 km/h (37 mph), and another vehicle avoided collision on all tests at speeds above 20

km/h (12 mph) and on most tests at 16 km/h (10 mph). A total of four vehicles avoided collision either on all or some of the tests at 60 km/h (37 mph) and on

all tests at 50 km/h (31 mph). Table 28 shows a summary of the tests with no

contact versus the total number of tests conducted at each test speed.

Table 28: NHTSA R&D AEB ratio of no contact trials to total trials by vehicle and tested speed - adult pedestrian crossing path from the right scenario, 50 percent overlap, dark, upper beam

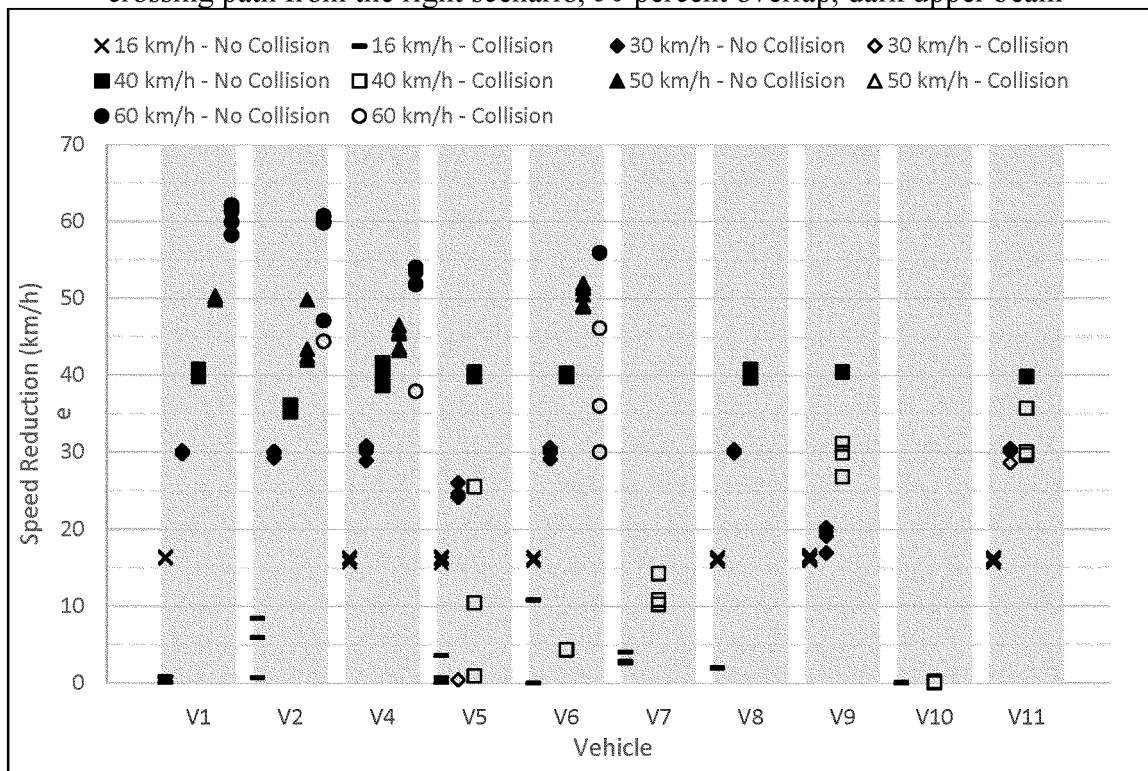
Subject Vehicle Speed (km/h)	V1	V2	V4	V5	V6	V7	V8	V9	V10	V11
11	--	2/5	--	0/3	--	0/3	--	--	0/3	--
16	3/5	0/3	5/5	5/8	3/5	0/3	4/5	7/7	0/3	5/5
20	4/4	3/4	5/5	5/5	3/5	--	5/5	4/5	--	5/5
25	--	--	--	--	--	--	--	2/5	--	--
30	4/4	5/5	5/5	4/5	5/5	--	5/5	0/4	--	4/5
35	--	--	--	--	--	--	--	--	--	5/5
40	5/5	5/5	5/5	5/8	4/5	0/3	5/5	1/4	0/2	1/4
45	--	--	--	--	--	--	0/3	--	--	--
50	3/3	4/4	5/5	--	6/6	--	--	--	--	--
55	--	--	--	--	4/5	--	--	--	--	--
60	6/6	4/5	5/5	--	1/4	--	--	--	--	--

The four vehicles that avoided contact with the test mannequin on all or some of the tests at 60 km/h (37 mph) also achieved a speed reduction of 30 km/h

(19 mph) or more before collision in the tests where contact was observed (See Figure 15), which suggests that the systems can be adjusted with minimal

hardware to the achieve consistent collision avoidance at 60 km/h (37 mph).

Figure 15: NHTSA R&D AEB speed reduction by vehicle and tested speed - adult pedestrian crossing path from the right scenario, 50 percent overlap, dark upper beam



When testing the crossing path scenario from the right with 50 percent overlap at night using the lower beam headlamps, performance was generally worse than when testing with the upper beam headlamps or during the daylight condition. Only two vehicles were

tested at 50 km/h (31 mph), one of which avoided contact in two out of four tests and the other made contact in every test.¹⁸⁹ V4 had no contact in four out of five tests at 40 km/h (25 mph) and V6 avoided collision in all tests at the same speed. From the 10 vehicles

tested, 5 had at least one test that resulted in collision avoidance at 40 km/h (25 mph). A summary of the no contact tests and the total number of tests per vehicle at each speed is presented in Table 29.

Table 29: NHTSA R&D AEB ratio of no contact trials to total trials by vehicle and tested speed - adult pedestrian crossing path from the right scenario, 50 percent overlap, dark, lower beam

Subject Vehicle Speed (km/h)	V1	V2	V4	V5	V6	V7	V8	V9	V10	V11
11	--	0/3	--	0/4	--	0/3	--	--	0/3	--
16	0/3	0/3	5/5	0/4	4/5	0/3	5/5	6/6	0/3	5/5
20	--	--	5/5	--	3/5	--	5/5	5/5	--	5/5
30	--	--	5/5	--	5/5	--	5/5	3/5	--	5/5
35	--	0/3	--	--	--	--	--	0/3	--	--
40	0/3	0/3	4/5	0/4	5/5	0/3	4/5	1/4	0/3	3/5
45	--	--	3/5	--	2/5	--	0/3	--	--	4/5
50	--	--	2/4	--	0/3	--	--	--	--	--

¹⁸⁹ In general, based on the testing matrix a vehicle was tested at a higher speed only after it

had a majority of no contact tests at the previous tested speed. Conversely, testing at a 5 km/h lower

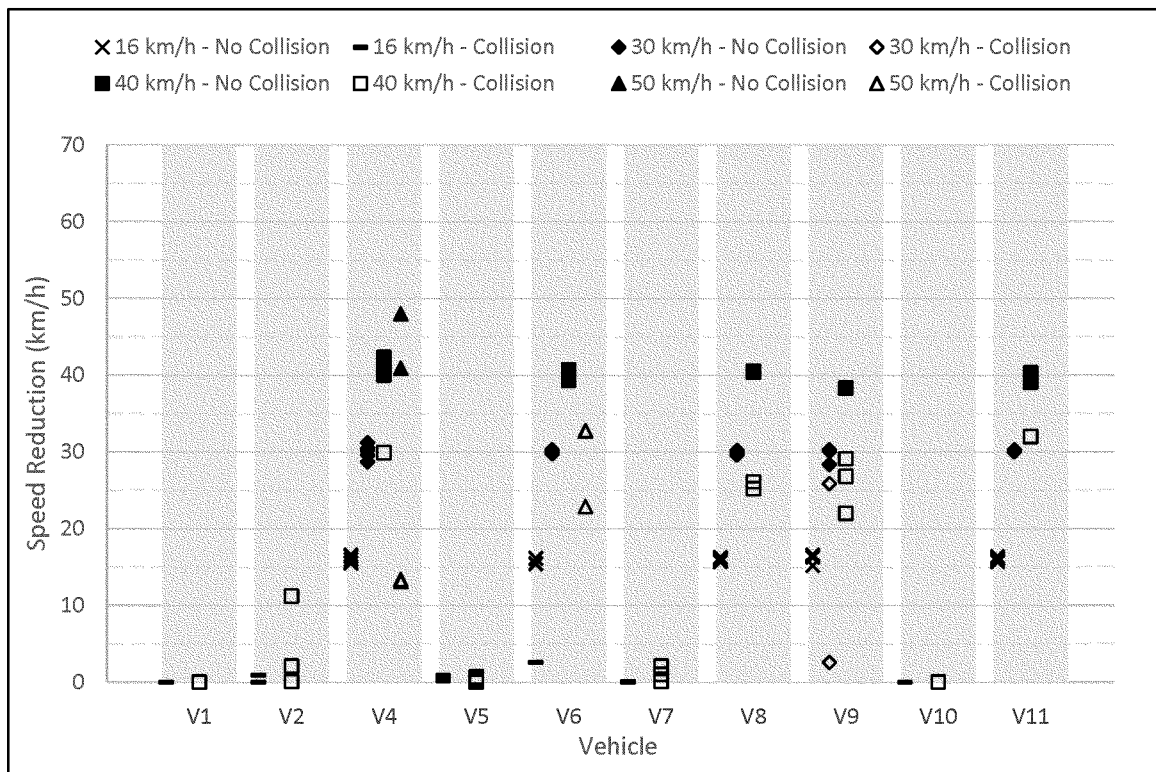
speed was performed only if the vehicle had at least one no contact test at the higher speed.

Of the two vehicles tested at 50 km/h (31 mph), V6 only had tests that resulted in contact but was able to achieve a speed reduction of 33 km/h (21 mph) in two tests and 23 km/h (14 mph) in the other. While V4 was able to avoid contact in two tests, it only showed a speed reduction of 13 km/h (8 mph) in the tests with contact. The five vehicles that had at least one no contact run at 40 km/h (25 mph) also achieved a speed reduction of 25 km/h (16 mph) or more (except for one test for V9) on the tests which resulted in contact with the test mannequin. Speed reduction by

vehicle and tested speed for this scenario is presented in Figure 16. The observed performance of AEB systems when tested under the dark lower beam condition led the agency to tentatively conclude that requiring PAEB at speeds up to 60 km/h (37 mph) is not practicable at this time, but achievable with an adequate phase-in. Therefore, for this scenario, as well as other dark testing scenarios (see Table 25), in order to afford manufacturers sufficient time to adjust the performance of the AEB systems to the proposed test requirements, the higher testing speeds

are proposed to be implemented four years (instead of three years) after the date of publication of the final rule. Based on the results of NHTSA's testing, a 10 to 40 km/h (6 to 25 mph) range is currently practicable (See Figure 16). Tests conducted on model year 2021 and 2022 vehicles (available in the docket of this proposed rule) and based on current data from NHTSA's 2020 research testing, NHTSA expects improved performance across all speeds.

Figure 16: NHTSA R&D AEB speed reduction by vehicle and tested speed - adult pedestrian crossing path from the right scenario, 50 percent overlap, dark lower beam



Testing for the obstructed running child (child pedestrian surrogate travelling at a speed of 5 km/h (3 mph)) scenario with a 50 percent overlap for the daylight condition found one

vehicle that avoided collision in all tests up to 50 km/h (31 mph) and in four out of five tests from 60 km/h (37 mph). Another vehicle avoided collision in all but one test up to 40 km/h (25 mph) and

had two tests without contact at 50 km/h (31 mph). Table 30 shows the ratio of no contact tests to total test by vehicle and tested speed.

Table 30: NHTSA R&D AEB ratio of no contact trials to total trials by vehicle and tested speed - running child obstructed from the right scenario, 50 percent overlap, daylight

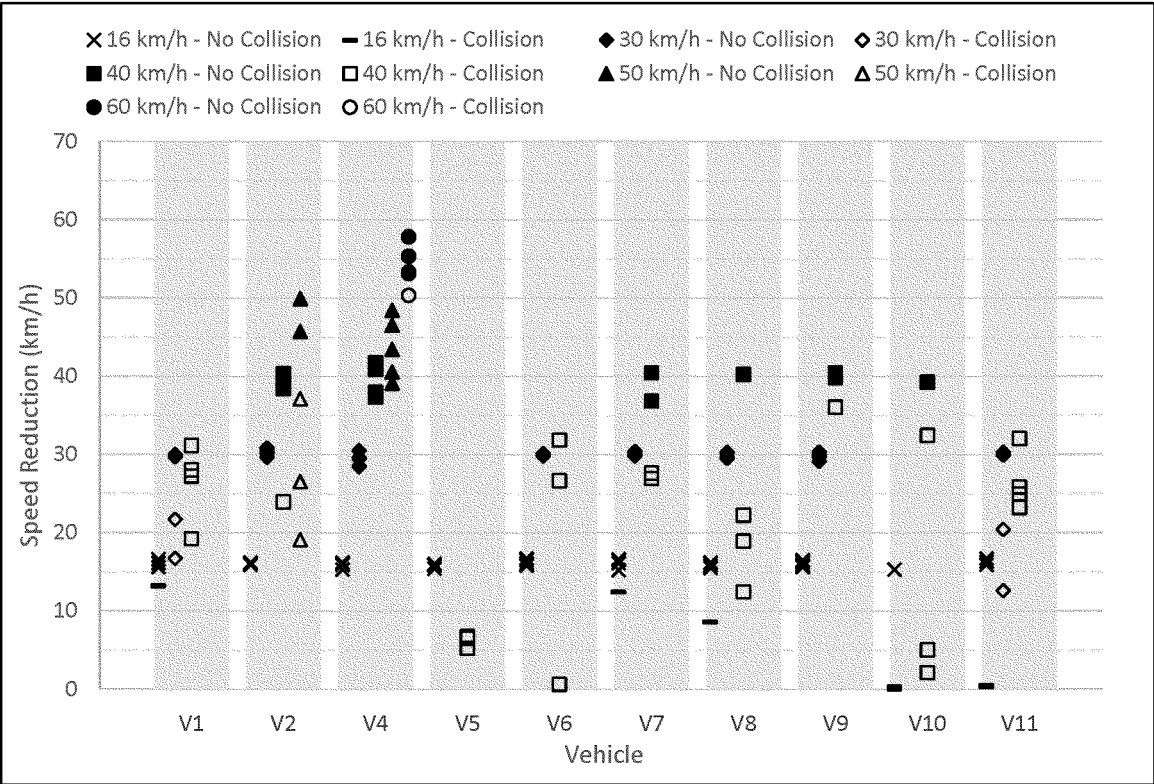
Subject Vehicle Speed (km/h)	V1	V2	V4	V5	V6	V7	V8	V9	V10	V11
11	--	--	--	--	--	--	--	--	0/3	--
16	4/5	5/5	5/5	5/5	5/5	4/5	4/5	7/7	1/4	4/7
20	4/4	5/5	5/5	3/5	6/6	5/5	5/5	5/5	--	3/5
25	--	--	--	1/4	--	--	--	--	--	--
30	3/5	5/5	5/5	--	5/5	5/5	5/5	5/5	--	3/5
35	3/5	--	--	--	4/5	5/5	5/5	5/5	--	3/5
40	0/4	4/5	5/5	0/3	0/3	2/5	1/4	4/5	1/4	0/4
45	--	4/5	--	--	--	--	--	0/5	--	--
50	--	2/5	5/5	--	--	--	--	--	--	--
60	--	--	4/5	--	--	--	--	--	--	--

Only V4 was tested at 60 km/h (37 mph), and V4 avoided contact with the child mannequin in four out of five tests and achieved a speed reduction of more than 50 km/h (31 mph) in the test with contact. Of the two vehicles tested at 50 km/h (31 mph), V4 avoided collision in all cases. V2 avoided collision in two tests and achieved more than a 25 km/h (15.5 mph) speed reduction in two tests and a 19 km/h (12 mph) speed reduction in a third. Figure 17 shows

the speed reduction at the test speed for all vehicles tested. Based on the observed performance during testing, the agency has tentatively concluded that requiring performance at speeds up to 50 km/h (31 mph) is practicable in daylight conditions with an adequate phase-in. Concurrent with the development of this proposed rule, NHTSA performed PAEB testing on model year 2021 and 2022 vehicles using the proposed performance

requirements and test procedures. The results of that testing provide additional support to the tentative conclusion that the test conditions, parameters, and procedures are practical to conduct and that the proposed requirements are practical for manufacturers to achieve. The results of this testing are detailed in the PAEB report docketed with this proposed rule.

Figure 17: NHTSA R&D AEB speed reduction by vehicle and tested speed - running child obstructed from the right scenario, 50 percent overlap, daylight



NHTSA’s testing of the running adult pedestrian scenario (pedestrian surrogate travelling at 8 km/h (5 mph)) from the left was performed at speeds from 40 km/h (25 mph) to 60 km/h (37 mph) with a 50 percent overlap during

daylight.¹⁹⁰ The results showed that five vehicles made no contact with the pedestrian surrogate in at least one test conducted at 60 km/h (37 mph) and all had no contact tests at 50 km/h (31 mph). One of the five vehicles, V2,

avoided contact with the test mannequin in all tests at 60 km/h (37 mph). A summary of the tests is shown in Table 31.

Table 31: NHTSA R&D AEB ratio of no contact trials to total trials by vehicle and tested speed - running adult pedestrian crossing path from the left scenario, 50 percent overlap, daylight

Subject Vehicle Speed (km/h)	V1	V2	V4	V5	V6	V7	V8	V9	V10	V11
35	--	--	--	0/3	--	--	--	--	--	5/5
40	5/5	5/5	5/5	0/3	6/6	5/5	4/5	3/6	4/5	2/6
45	--	--	--	--	--	--	5/5	1/4	0/5	--
50	5/5	7/7	5/5	--	5/5	5/5	2/5	--	0/3	--
55	--	--	5/5	--	--	5/7	--	--	--	--
60	5/6	5/5	1/3	--	4/5	4/6	--	--	--	--

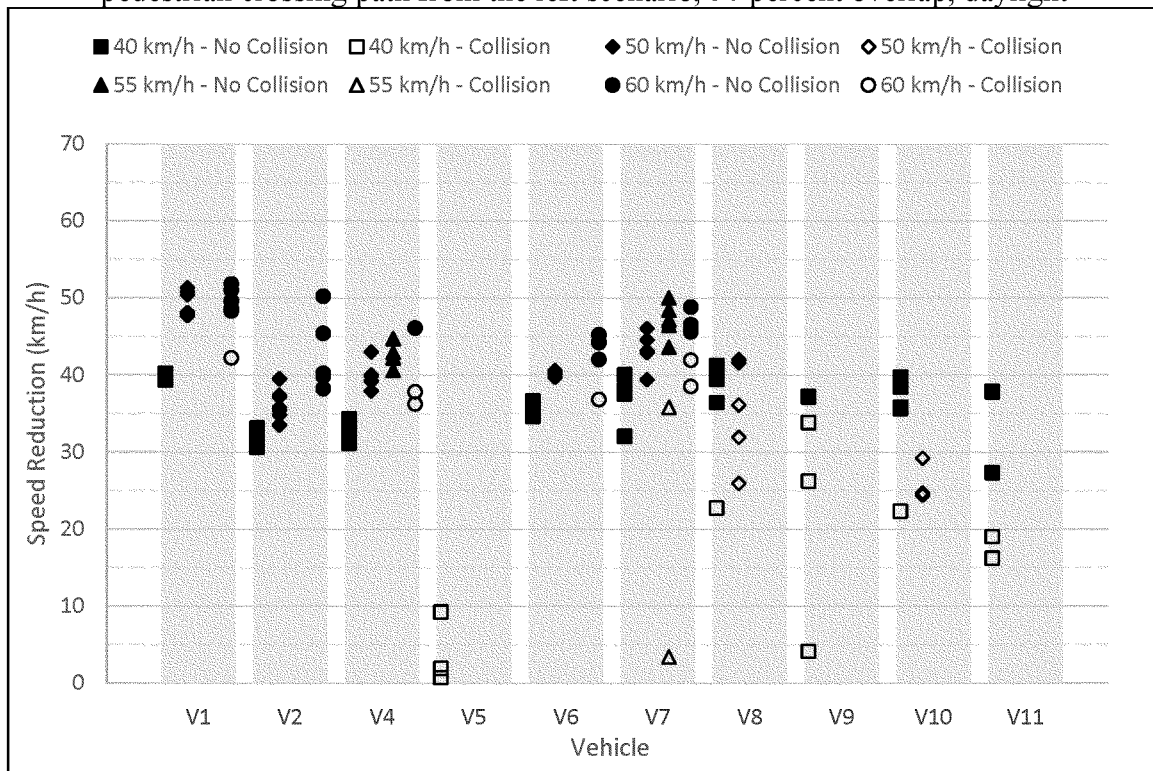
¹⁹⁰ Only V5 and V11 were tested at 35 km/h (22 mph) due to poor performance at 40 km/h per the test matrix.

For the 60 km/h (37 mph) tests, the vehicles that did not avoid contact still exhibited significant speed reduction. In the one instance where V1 collided with the test mannequin, it still achieved a speed reduction of 42 km/h (26 mph). V4, V6 and V7 all achieved a speed reduction of more than 35 km/h (22 mph) in all instances with contact when

tested at 60 km/h (37.5 mph). In general, except for V5 and two tests (V9 at 40 km/h (25 mph) and V7 at 55 km/h (34 mph)) all vehicles achieved significant speed reduction over all tested speeds. Figure 18 shows the speed reduction at the test speed for all vehicles tested. The observed performance of five vehicles avoiding contact with an adult surrogate

running from the left in tests conducted at 60 km/h (37 mph) leads the agency to tentatively conclude that requiring performance at speeds up to 60 km/h (37 mph) is practicable in daylight conditions three years after the publication of a final rule.

Figure 18: NHTSA R&D AEB speed reduction by vehicle and tested speed - running adult pedestrian crossing path from the left scenario, 50 percent overlap, daylight



5. Stationary Scenario Testing Speeds

NHTSA is proposing a range of subject vehicle travel speeds from 10 km/h (6 mph) to 55 km/h (34 mph) for the stationary pedestrian along path scenario.

NHTSA's 2020 research testing of this scenario during daylight conditions

found one vehicle, V1, that avoided collision with the test mannequin on all tests but one at 60 km/h (37.5 mph), and two other vehicles, V4 and V6, that avoided collision with the test mannequin when tested at speeds up to 55 km/h (34 mph). For all the tests up to 55 km/h (34 mph), V4 avoided

collision in all tests and V6 had only one collision at 55 km/h (34 mph). Four other vehicles had some no contact runs at 40 km/h (25 mph) and 9 of the 10 vehicles had no contact on all tests at 16 km/h (10 mph). Table 32 shows a brief overview of test results.

Table 32: NHTSA R&D AEB ratio of no contact trials to total trials by vehicle and tested speed - stationary adult pedestrian scenario, 25 percent overlap, daylight

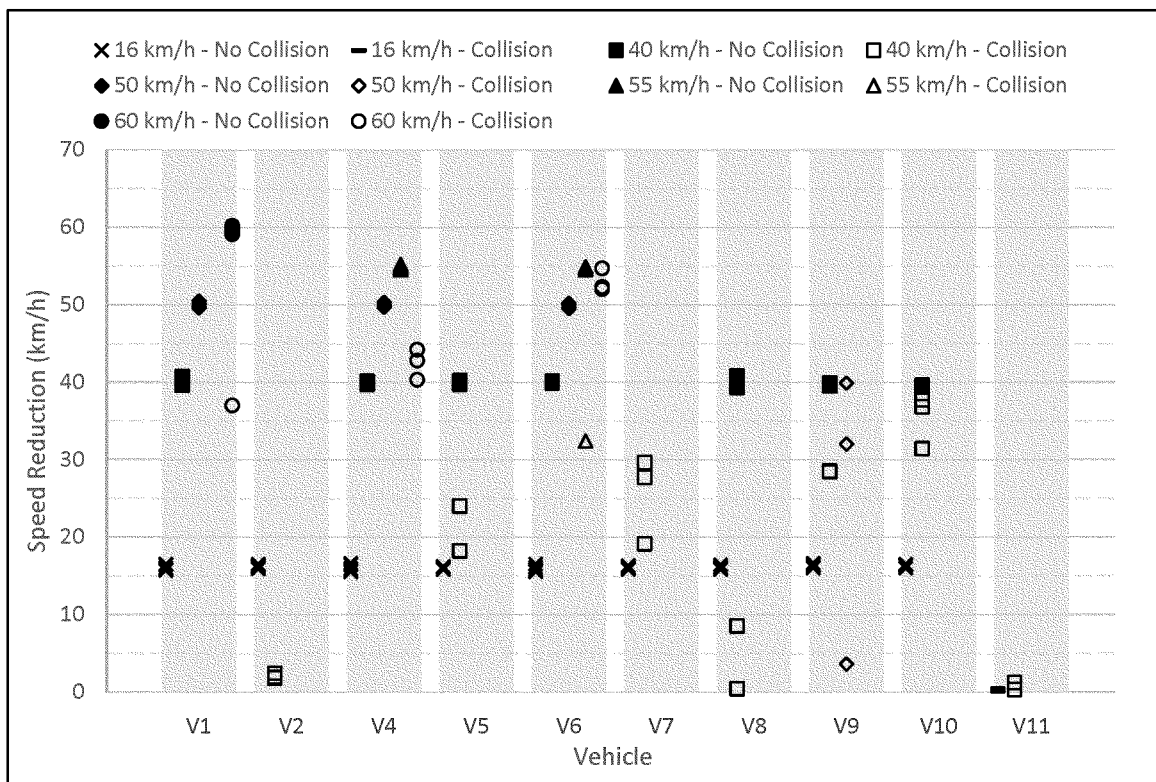
Subject Vehicle Speed (km/h)	V1	V2	V4	V5	V6	V7	V8	V9	V10	V11
11	--	--	--	--	--	--	--	--	--	0/3
16	5/5	5/5	5/5	5/5	5/5	5/5	5/5	6/6	5/5	0/3
20	--	--	--	--	--	--	--	5/5	--	--
30	--	--	--	--	--	--	--	5/5	--	--
35	--	--	--	--	--	3/5	5/5	--	4/5	--
40	5/5	0/3	5/5	3/5	5/5	0/3	2/5	3/5	2/5	0/2
45	--	--	--	0/3	--	--	--	3/5	--	--
50	4/4	--	5/5	--	5/5	--	--	0/3	--	--
55	--	--	5/5	--	4/5	--	--	--	--	--
60	5/6	--	0/3	--	0/3	--	--	--	--	--

The three vehicles tested at 60 km/h (37 mph), vehicles V1, V4, and V6, had considerable speed reduction on the tests where they collided with the test mannequin. Where V1 collided with the test mannequin, it achieved a speed reduction of 37 km/h (23 mph). Where V6 collided with the test mannequin, it

showed very consistent results and had a speed reduction between 52 km/h (32 mph) and 55 km/h (34 mph) on all three tests at 60 km/h (37.5 mph). Similarly, V4 had a speed reduction when tested at 60 km/h (37.5 mph) of between 40 km/h (25 mph) and 45 km/h (28 mph). The consistent speed reduction results

at 60 km/h (37.5 mph) reinforce the agency's opinion that minimal tuning is required for existing systems to perform at the proposed requirements. Figure 19 shows the speed reduction at the test speed for all vehicles tested.

Figure 19: NHTSA R&D AEB speed reduction by vehicle and tested speed - stationary adult pedestrian scenario, 25 percent overlap, daylight



NHTSA upper beam testing using the stationary pedestrian along path scenario under dark lighting conditions resulted in one vehicle, V4, being able

to avoid collision in all tests at speeds up to and including 55 km/h (34 mph). The vehicle achieved an average speed reduction of 48 km/h (30 mph) in three

other tests conducted at 60 km/h (37 mph). Two other vehicles avoided collision in all tests at 40 km/h (25 mph) (See Table 33).

Table 33: NHTSA R&D AEB ratio of no contact trials to total trials by vehicle and tested speed - stationary adult pedestrian scenario, 25 percent overlap, dark upper beam

Subject Vehicle Speed (km/h)	V1	V2	V4	V5	V6	V7	V8	V9	V10	V11
11	--	5/5	--	--	--	0/3	--	--	--	--
16	3/5	0/3	5/5	5/5	5/5	0/3	5/5	5/5	4/5	2/5
35	--	0/3	--	--	1/4	--	3/5	0/3	0/3	--
40	0/3	2/5	5/5	5/5	2/5	0/3	0/2	0/3	0/3	5/5
45	--	--	--	1/4	--	--	--	--	--	--
50	--	--	5/5	--	--	--	--	--	--	3/5
55	--	--	5/5	--	--	--	--	--	--	0/3
60	--	--	0/3	--	--	--	--	--	--	0/2

When tested at 60 km/h, V4 and V11 collided with the test mannequin, but were still able to achieve significant speed reduction. V4 had very consistent speed reductions ranging from 46 km/h

(28.6 mph) to 52 km/h (32.3 mph), and V11 achieved a speed reduction of 29 km/h (18 mph) and 32 km/h (19.9 mph). When tested at 55 km/h (34 mph), V11 achieved a speed reduction of 25 km/h

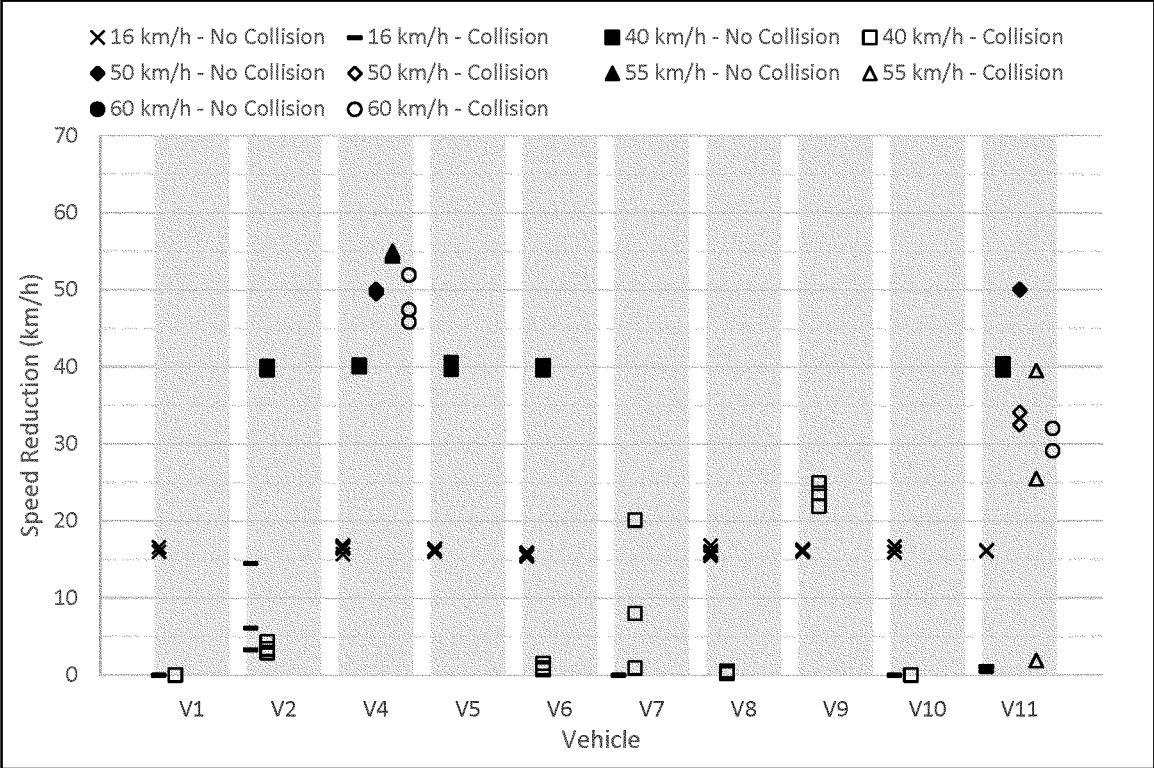
(15.5 mph) or more in two tests and did not have a large speed reduction on the other test. At 50 km/h (31.1 mph), V11 achieved speed reductions of more than 30 km/h (18.6 mph) when it contacted

the test mannequin. The other vehicles, where they did not avoid contact at 40 km/h (25 mph), had a significant number of tests without large speed

reductions when they contacted the test mannequin. However, V9 at 40 km/h (25 mph) showed an average speed reduction of 23.5 km/h (14.6 mph) in

the tests where it contacted the test mannequin. Figure 20 shows the speed reduction at the test speed for all vehicles tested.

Figure 20: NHTSA R&D AEB speed reduction by vehicle and tested speed - stationary adult pedestrian scenario, 25 percent overlap, dark upper beam



Based on the results of the testing, NHTSA has tentatively concluded that requiring testing up to 55 km/h (34.2 mph) is feasible give the three-year phase-in period after the publication of the final rule. At the speeds where some of the tested vehicles made contact, V4, with similar hardware, was able to avoid collision. The agency anticipates that the other vehicles will be able to avoid contact at the proposed testing speed ranges through tuning of their systems to the requirements. Concurrent with the development of this proposed rule, NHTSA performed PAEB testing

on model year 2021 and 2022 vehicles using the proposed performance requirements and test procedures. The results of that testing provide additional support to the tentative conclusion that the test conditions, parameters, and procedures are practical to conduct and that the proposed requirements are practical for manufacturers to achieve. The results of this testing are detailed in the PAEB report docketed with this proposed rule. The same vehicle that avoided collision in all tests up to 55 km/h (34 mph) under dark conditions with upper

beams (V4) also avoided collision during all lower beam testing under dark conditions in tests up to and including those performed at 50 km/h (31 mph) and during four out of five tests at 55 km/h (34 mph). The other tested vehicles contacted the test mannequin at speeds on all or most tests when tested at speeds above 16 km/h (10 mph). A brief overview of the results for the dark lower beam testing for the stationary along path scenario is presented in Figure 21 and Table 34.

Table 34: NHTSA R&D AEB ratio of no contact trials to total trials by vehicle and tested speed - stationary adult pedestrian scenario, 25 percent overlap, dark lower beam

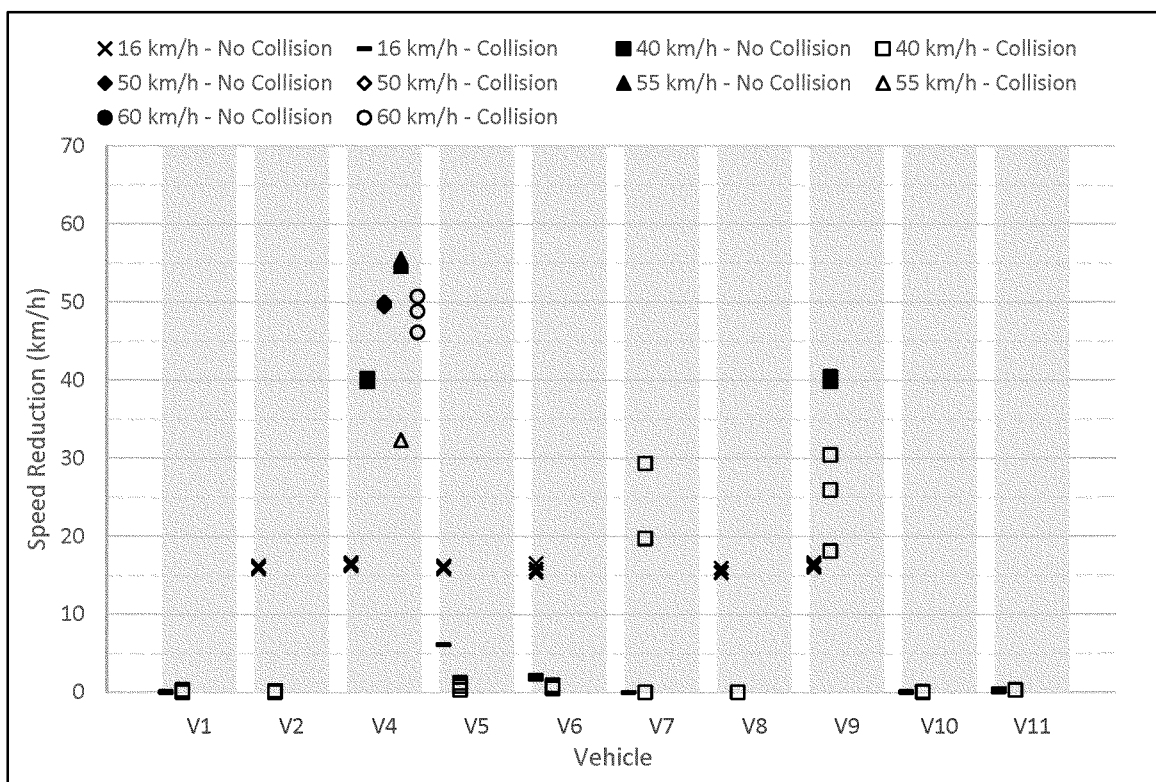
Subject Vehicle Speed (km/h)	V1	V2	V4	V5	V6	V7	V8	V9	V10	V11
11	--	--	--	--	--	0/3	--	--	0/3	0/3
16	0/3	5/5	5/5	4/5	3/5	0/3	5/5	5/5	0/3	0/3
35	--	0/3	--	0/3	0/3	--	0/3	0/3	--	--
40	0/3	0/3	5/5	0/3	0/3	0/3	0/1	2/5	0/2	0/1
50	--	--	5/5	--	--	--	--	--	--	--
55	--	--	4/5	--	--	--	--	--	--	--
60	--	--	0/3	--	--	--	--	--	--	--

V4 had significant and consistent speed reduction of between 45 km/h (28 mph) and 52 km/h (32 mph) when tested at 60 km/h (37 mph). V4 also reduced its speed by more than 30 km/h (19 mph) in the one instance it contacted the test mannequin when

tested at 55 km/h (34 mph). All other vehicles showed poor results at speeds above 16 km/h (10 mph). Three vehicles had no meaningful AEB activation on all tests, including 16 km/h (10 mph). V9 was the only vehicle that was able to avoid collision on two tests at 40 km/

h (25 mph) and had significant speed reduction on the other tests at this speed. Figure 21 shows the speed reduction at the test speed for all vehicles tested.

Figure 21: NHTSA R&D AEB speed reduction by vehicle and tested speed - stationary adult pedestrian scenario, 25 percent overlap, dark lower beam



Given that V4, using commonly found hardware in AEB systems, was able to

avoid contact on every test up to 50 km/h (31.1 mph), avoided contact on most

tests at 55 km/h (34 mph), and achieved significantly reduced speed on all other

higher speed tests (including 65 km/h (60 mph)), the agency has tentatively concluded that a no contact requirement for speed ranges up to 55 km/h (34 mph) is feasible. The proposed 50 km/h (31 mph) upper bound of the range 3 years after final rule publication and 55 km/h (34 mph) 4 years after publication of the final rule is necessary due to pedestrian crashes and fatalities predominantly happening at night and at higher speeds (see safety section and PRIA). Concurrent with the development of this proposed rule, NHTSA performed PAEB testing on model year 2021 and 2022 vehicles using the proposed performance

requirements and test procedures. The results of that testing provide additional support to this tentative conclusion. The results of this testing are detailed in the PAEB report docketed with this proposed rule.

6. Along Path Scenario Testing Speeds

The proposed travel speed range for the pedestrian test mannequin moving (walking at 5 km/h (3 mph)) along the vehicle's path is from 10 km/h (6 mph) to 65 km/h (40 mph). NHTSA's 2020 PAEB research testing identified three vehicles that avoided contact with the test mannequin during all tests performed at 65 km/h (40 mph) (V1 was

only tested once at 65 km/h (40 mph) where it avoided collision with the test mannequin). Of these three vehicles, V6 avoided collision on all tests and tested speeds up to 65 km/h (40 mph), V1 avoided collision on all but one test up to 65 km/h (40 mph), and V9 avoided collision on all or most of the tests up to 65 km/h (40 mph) and avoided collision on 2 out of 5 tests at 70 km/h (44 mph). Another vehicle that performed well, V4, avoided collision on all tests up to 60 km/h (37.5 mph). Table 35 provides a breakdown of tests based on the collision avoidance outcome.

Table 35: NHTSA R&D AEB ratio of no contact trials to total trials by vehicle and tested speed - along path moving adult pedestrian scenario, 25 percent overlap, daylight

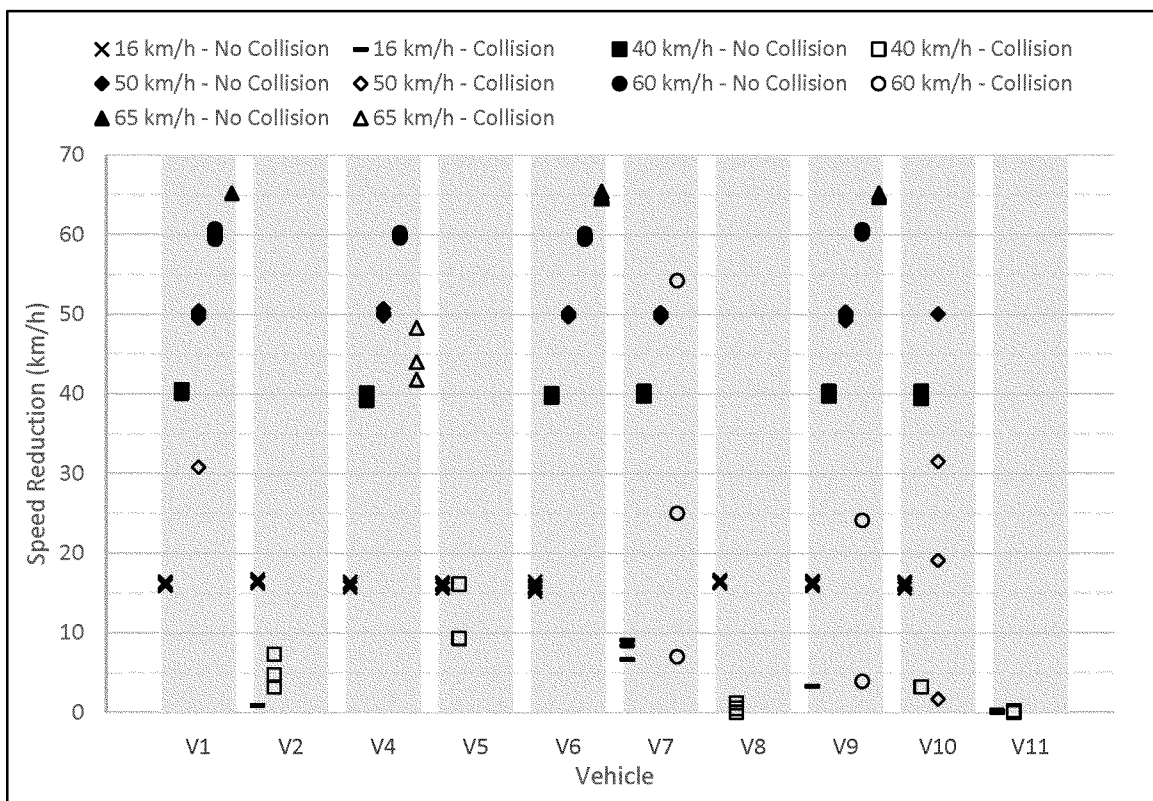
Subject Vehicle Speed (km/h)	V1	V2	V4	V5	V6	V7	V8	V9	V10	V11
11	--	--	--	--	--	--	--	--	--	1/4
16	5/5	4/5	5/5	5/5	5/5	0/3	5/5	5/6	5/5	0/3
35	--	--	--	2/5	--	--	5/5	--	--	--
40	3/3	0/3	5/5	0/2	5/5	5/5	0/3	5/5	4/5	0/3
45	--	--	--	--	--	--	--	--	5/6	--
50	6/7	--	5/5	--	5/5	5/5	--	5/5	1/4	--
55	--	--	--	--	--	2/5	--	--	--	--
60	5/5	--	5/5	--	5/5	0/3	--	4/6	--	--
65	1/1	--	0/3	--	5/5	--	--	5/5	--	--
70	--	--	0/3	--	0/3	--	--	2/5	--	--

V4 had a significant speed reduction of more than 40 km/h on all tests when tested at 65 km/h (40 mph). On the test at 50 km/h (31.1 mph), where V1 collided with the target, it still achieved

a speed reduction of more than 30 km/h (18.6 mph). Speed reduction for this scenario by relevant tested speeds is shown in Figure 22. Based on the results from the 2020 testing, NHTSA has

tentatively concluded that an upper speed bound of 65 km/h (40 mph) is practicable three years after the publication of the final rule.

Figure 22: NHTSA R&D AEB speed reduction by vehicle and tested speed - along path moving adult pedestrian scenario, 25 percent overlap, daylight



Testing for the dark upper beam along path pedestrian test mannequin moving scenario produced better performance than when testing for the dark upper beam stationary scenario. In the along path moving scenario, the test mannequin moves away from the subject vehicle at a constant speed and continues moving even as the subject vehicle decelerates during the AEB event. This has the potential to allow for

more time and distance to avoid collision. In the agency's research testing, one vehicle, V11, avoided collision on all tests at speeds up to 50 km/h (31.1 mph), had four out of five test runs at 55 km/h (34 mph) with no contact, and avoided collision once at 60 km/h (37 mph). V4 avoided collision on all tests up to 40 km/h (25 mph), collided once out of five tests at 50 km/h (31.1 mph), once out of five tests at

60 km/h (37 mph), and had one out of four no collision tests at 65 km/h (40 mph). Another vehicle, V9, avoided collision on all tests at 50 km/h (31.1 mph) and avoided collision on a majority of tests at the other tested speeds except at 65 km/h (40 mph). A total of five vehicles avoided collision on at least some of the tests at speeds up to 50 km/h (31.1 mph). Table 36 presents a summary of the test results.

Table 36: NHTSA R&D AEB ratio of no contact trials to total trials by vehicle and tested speed - along path moving adult pedestrian scenario, 25 percent overlap, dark upper beam

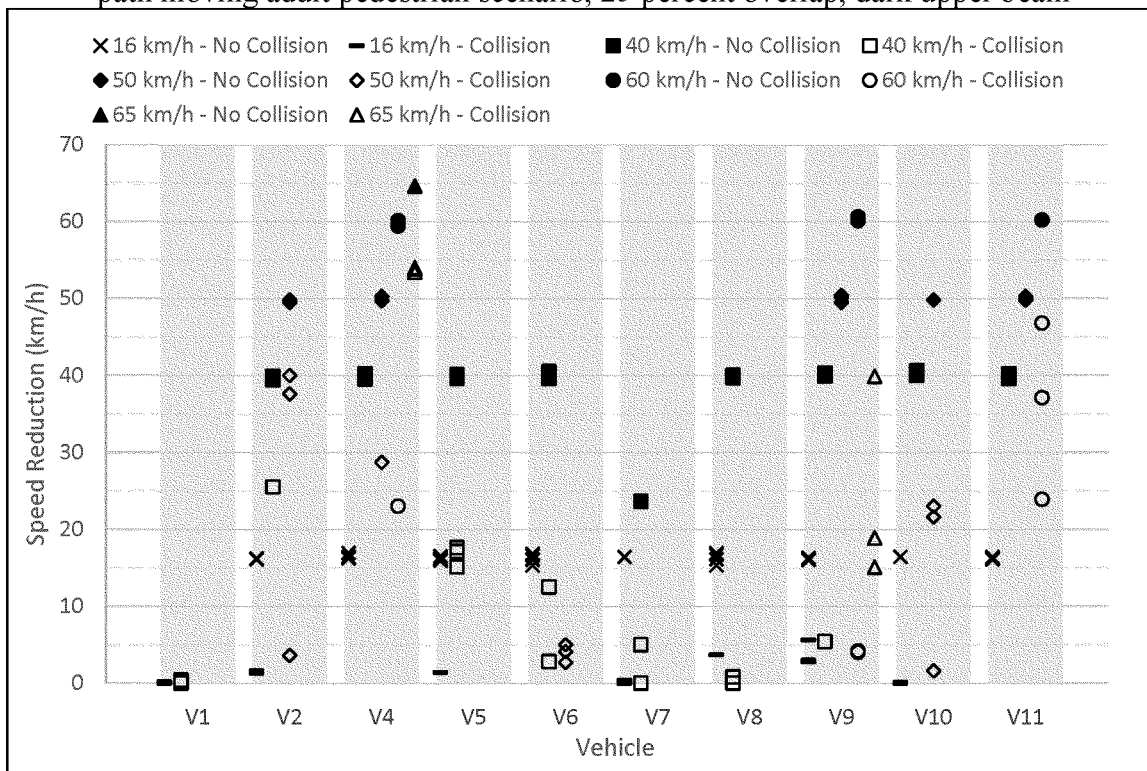
Subject Vehicle Speed (km/h)	V1	V2	V4	V5	V6	V7	V8	V9	V10	V11
11	--	1/4	--	--	--	0/3	--	--	--	--
16	0/3	2/5	5/5	4/5	5/5	1/4	4/5	3/6	1/4	5/5
35	--	--	--	3/5	--	--	--	--	--	--
40	0/4	6/7	5/5	2/5	3/5	0/3	3/5	4/5	5/5	6/6
45	--	5/5	--	--	2/5	--	1/4	--	1/4	--
50	--	2/5	4/5	--	0/4	--	--	5/5	1/4	5/5
55	--	--	--	--	--	--	--	--	--	4/5
60	--	--	4/5	--	--	--	--	3/5	--	1/4
65	--	--	1/4	--	--	--	--	0/3	--	--

Figure 23 shows the speed reduction achieved by each vehicle by tested speed. For example, when V11 contacted the test mannequin, it achieved significant speed reduction. Another vehicle achieving significant speed reduction in the tests where it contacted the test mannequin across all tested speeds was V4. This vehicle was the only one to avoid collision at 65 km/h (40 mph), and even though it only avoided collision in one test, it achieved

a speed reduction of more than 50 km/h (31.1 mph) in all others. The other vehicles did not provide consistent results during testing, with a wide range of speed reduction values. Because no vehicle was able to avoid collision on all tests at the higher speeds, the agency is proposing that the upper bound for the speed range for this scenario be 60 km/h (37 mph) three years after publication of the final rule and 65 km/h (40 mph) four years after publication

of the final rule. Concurrent with the development of this proposed rule, NHTSA performed PAEB testing on model year 2021 and 2022 vehicles using the proposed performance requirements and test procedures. The results of that testing provide additional support to this tentative conclusion. The results of this testing are detailed in the PAEB report docketed with this proposed rule.

Figure 23: NHTSA R&D AEB speed reduction by vehicle and tested speed - along path moving adult pedestrian scenario, 25 percent overlap, dark upper beam



Similar to the stationary scenarios, the results from lower beam testing in dark lighting conditions for the along path moving test condition were less consistent than for the other lighting conditions. The tested vehicles were able to avoid contact with the test

mannequin at higher speeds than in the stationary along path scenario. Two vehicles were able to avoid contact with the test mannequin in at least one test during tests performed at 60 km/h (37 mph). One vehicle, V4, avoided contact with the test mannequin in all tests at

60 km/h (37 mph) and had two out of five no contact tests at 50 km/h (31.1 mph). The other vehicle, V9, had one no contact test out of four at 60 km/h (37.5 mph) and a majority of no contact tests at all lower tested speeds. The results of the tests are presented in Table 37.

Table 37: NHTSA R&D AEB ratio of no contact trials to total trials by vehicle and tested speed - along path moving adult pedestrian scenario, 25 percent overlap, dark lower beam

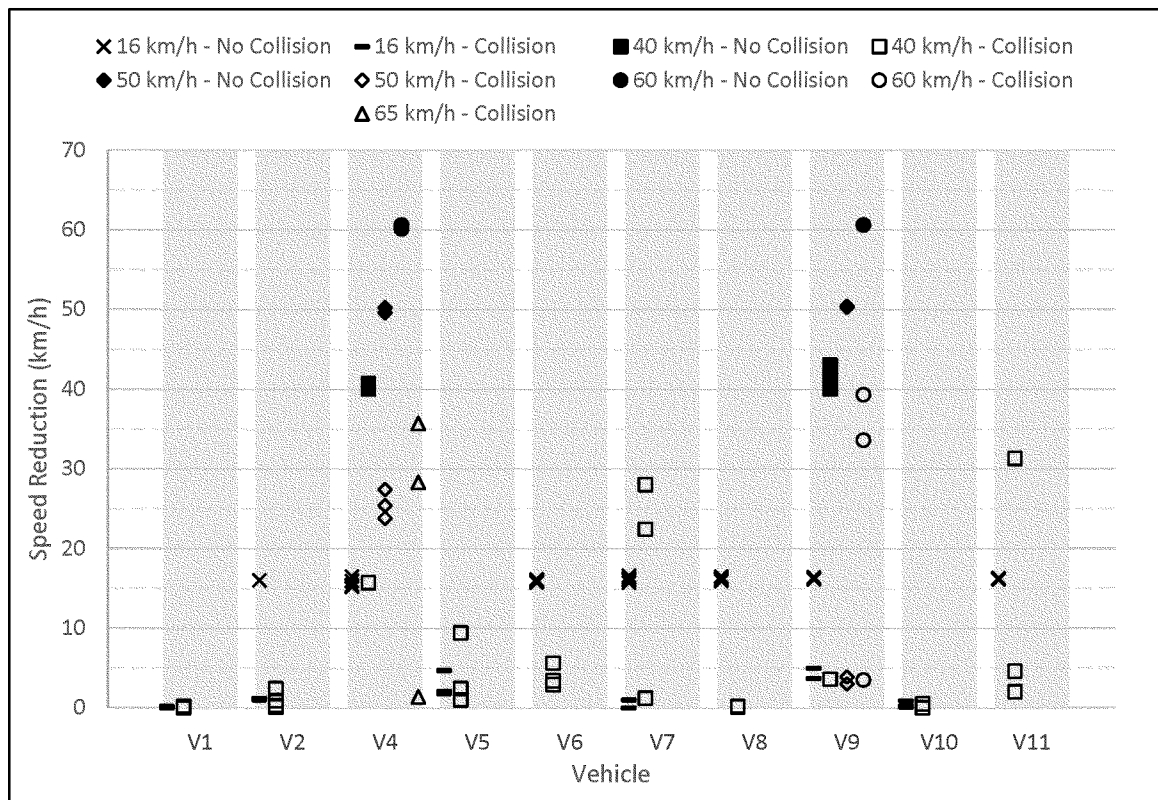
Subject Vehicle Speed (km/h)	V1	V2	V4	V5	V6	V7	V8	V9	V10	V11
11	--	0/4	--	0/3	--	--	--	--	0/4	--
16	0/3	1/4	5/5	0/3	5/5	5/7	5/5	3/5	0/3	4/4
35	--	0/3	--	--	1/4	0/3	2/5	--	--	0/3
40	0/3	0/4	4/5	0/3	0/3	0/3	0/3	4/5	0/3	0/3
50	--	--	2/5	--	--	--	--	3/5	--	--
60	--	--	5/5	--	--	--	--	1/4	--	--
65	--	--	0/3	--	--	--	--	--	--	--

For the along path moving scenario dark lower beam testing, V4 had significant speed reduction when tested at 65 km/h (40 mph) but failed to activate in a meaningful manner in one test. When tested at 60 km/h (37 mph), V9 had two tests with

a speed reduction of at least 30 km/h (18.6 mph) and one test with no meaningful speed reduction. The results from the other tested speeds for V4 and V9 show that their AEB systems performed in a similar manner to their performance for the upper speeds

already discussed. In general, the other tested vehicles performed poorly at all speeds except 16 km/h (10 mph) and did not show consistent speed reduction. Figure 24 shows the speed reduction at the test speed for all vehicles tested.

Figure 24: NHTSA R&D AEB speed reduction by vehicle and tested speed - along path moving adult pedestrian scenario, 25 percent overlap, dark lower beam



Two vehicles avoided contacting the surrogate in at least one test at 60 km/h (37 mph). NHTSA has tentatively concluded that this can be achieved across the fleet three years after the publication of a final rule. While no vehicle was able to avoid collision at a test speed of 65 km/h (40 mph), based on the fact that V4 and V9 (equipped with AEB systems with hardware in common) were able to avoid collision in at least one test at 60 km/h (37 mph), the agency tentatively concludes that four years after the publication of the final rule, vehicles will be able to achieve no contact at 65 km/h (40 mph). The need for testing at higher speeds in dark lighting conditions is dictated by the safety need, since as previously discussed, pedestrian fatalities predominantly occur during dark conditions and at higher speeds.

Concurrent with the development of this proposed rule, NHTSA performed PAEB testing on model year 2021 and 2022 vehicles using the proposed performance requirements and test procedures. The results of that testing provide additional support to this tentative conclusion. The results of this testing are detailed in the PAEB report docketed with this proposed rule.

7. PAEB Darkness Testing

During agency testing, PAEB system performance was not consistent for some of the proposed lighting conditions and speeds. However, the agency has tentatively concluded that testing in dark lighting conditions is necessary, and vehicles can be designed and produced to avoid collisions in all dark lighting test conditions given an adequate phase-in period. This is

consistent with recent IIHS tests finding that existing systems can perform in the dark-lighted conditions regardless of their IIHS headlamp ratings.^{191 192} NHTSA tentatively concludes that PAEB system performance is improving, and the latest PAEB systems are already able to perform much better under the proposed lighting conditions than previous iterations of the systems.¹⁹³ Concurrent with the development of this proposed rule, NHTSA performed PAEB testing on model year 2021 and 2022 vehicles using the proposed

¹⁹¹ IIHS dark light press release: <https://www.iihs.org/news/detail/pedestrian-crash-avoidance-systems-cut-crashes-but-not-in-the-dark>.

¹⁹² Id.

¹⁹³ “The better-performing systems are too new to be included in our study of real-world crashes . . . This may indicate that some manufacturers are already improving the darkness performance of their pedestrian AEB systems.” Id.

performance requirements and test procedures. The results of that testing provide additional support to the tentative conclusion that the test conditions, parameters, and procedures are practical to conduct and that the proposed requirements are practical for manufacturers to achieve. The results of this testing are detailed in the PAEB report docketed with this proposed rule.

When tested, the observed crash avoidance performance of the tested PAEB systems was best for the daylight

and upper beam conditions. Table 38 shows the maximum speeds at which the test vehicles did not collide with the test mannequin either on all trials or at least one trial. Based on the previously detailed results of the 2020 testing, the agency tentatively concludes that three years after final rule publication, consistent performance is possible for the darkness testing conditions through further tuning of existing AEB systems without major hardware upgrades. The additional year of phase-in for higher

speed darkness performance requirements would allow time for systems that currently do not perform consistently to be adjusted or tuned to the proposed requirements. NHTSA has also concluded that the crossing path running child from the right scenario and the running adult from the left scenario with dark lower beam or upper beam are not a practicable requirement at this time.

TABLE 38—PAEB: HIGHEST SPEED AT WHICH A VEHICLE AVOIDED CONTACT ON AT LEAST ONE TRIAL VERSUS ALL TRIALS

Lighting condition	Crossing path—right, 50 percent overlap		Stationary		Along-path	
	At least one trial	All trials	At least one trial	All trials	At least one trial	All trials
Daylight	60 km/h	60 km/h	60 km/h	55 km/h	70 km/h	65 km/h.
Dark, Upper Beam	60 km/h	60 km/h	55 km/h	55 km/h	65 km/h	50 km/h.
Dark, Lower Beam	50 km/h	40 km/h	55 km/h	50 km/h	60 km/h	60 km/h.

G. Alternatives to No-Contact Performance Test Requirement

NHTSA is considering two alternatives to a no-contact requirement for both the lead vehicle and pedestrian performance test requirements.

The first alternative would be to permit low speed contact in NHTSA's on-track testing. Under this alternative, the subject vehicle would meet the requirements of the standard if it applied the brakes automatically in a way that reduced the impact speed either by a defined amount or to a maximum collision speed. The speed at which the collision would be allowed to occur would be low enough that the crash would be highly unlikely to be fatal or to result in serious injury.

NHTSA seeks comment on the appropriateness of such a requirement, any factors to consider surrounding such a performance level, and what the appropriate reduction in speed or maximum impact speed should be. NHTSA has considered this alternative separately for the lead vehicle requirement and the pedestrian requirement and came to the same tentative conclusion to propose a no contact performance requirement for on-track testing in each case. However, NHTSA seeks comment on this level of performance separately for the lead vehicle and pedestrian requirements because the safety implications of low-speed impacts are different for each of these two crash types.

NHTSA also seeks comment on the potential consequences on testing if vehicle contact were allowed. NHTSA has extensive experience with

performing AEB evaluations and has observed that it is possible for even relatively low-speed collisions with the lead vehicle test device or pedestrian test mannequin to potentially damage the subject vehicle. For instance, if a test vehicle were to strike the lead vehicle test device, even at a low speed, sensors on the vehicle could become misaligned, and subsequent tests might not be representative of the vehicle condition at time of first sale. For instance, cameras or radar devices could become misaligned. Additionally, striking the vehicle test device or pedestrian test mannequin might prematurely degrade the appearance of the device and modify its specifications, including in ways that are not immediately observable. For example, damage to the test device might affect the radar cross section that requires a long verification procedure to discover. NHTSA is concerned that any performance test requirement that allows for vehicle contact could result in expensive or time-consuming interruptions to repair the subject vehicle or test device to ensure repeatable testing. NHTSA seeks comment on this concern.

The second alternative the agency is considering is a no contact requirement that permits the vehicle to use multiple runs to achieve the performance test requirements. For example, NHTSA's CIB and DBS NCAP test performance criteria currently specify that the speed reduction requirements for each test scenario must be met in at least 5 out of 7 tests runs. This approach would provide a vehicle more opportunities to

achieve the required performance and the agency more statistical power in characterizing the performance of the vehicle. The agency seeks comment on the number of repeated tests for a given test condition and on potential procedures for repeated tests. The agency also seeks comment on the merits of permitting a vehicle that fails to activate its AEB system in a test to be permitted additional repeat tests, including a repeat test process similar to that in the recent revisions to UN ECE Regulation No. 151.¹⁹⁴ Finally, the agency seeks comment on whether there should be additional tests performed in the event no failure occurs on an initial test for each series.

In the request for comments on upgrades to NCAP, NHTSA sought comment on an approach that permitted repeated trials for collision avoidance requirements if an impact occurred with a minimum speed reduction of at least 50 percent.¹⁹⁵ This approach would not permit repeated trials if an impact occurred above certain speeds during the test series conducted for a given test scenario/condition. NHTSA seeks comment on the implications if NHTSA were to require a partial speed reduction, such as 50 percent, in

¹⁹⁴ Section 6.10.1 of UN ECE Regulation No. 151 provides robustness criteria that specifies that each test condition is performed two times. If vehicle does not meet the required performance criteria in one of the two test runs, a third test may be conducted. A test scenario is considered passed if the required performance is met in two test runs. However, the total number of failed test runs cannot exceed 10 percent for the lead vehicle and pedestrian tests.

¹⁹⁵ 87 FR 13452 March 9, 2022.

combination with an alternate approach for multiple trials. For example, if a collision occurs and the relative impact speed is less than 50 percent of the initial speed, the test is repeated. If a collision occurs again, the subject vehicle would be noncompliant. Alternatively, even if the subject vehicle avoids a collision, NHTSA could test again. The number of repeated tests needed to meet the performance test requirement would be established by NHTSA. If the agency were to consider such an approach, what should be the required speed reduction (e.g., 50 percent, 75 percent, etc.) and how many tests must follow without a collision?

H. False Activation Requirement

NHTSA is also proposing to include two scenarios in which braking is not warranted. These tests are sometimes referred to as “false-positive” tests. AEB systems need to be able to differentiate between a real threat and a non-threat to avoid false activations. NHTSA is concerned that false activation events may introduce hard braking situations when such actions are not warranted, potentially causing rear-end crashes. The proposed false activation tests establish only a baseline for system functionality. They are by no means comprehensive, nor sufficient to

eliminate susceptibility to false activations. Rather, the proposed tests are a means to establish minimum performance. NHTSA expects that vehicle manufacturers will design AEB systems to thoroughly address the potential for false activations.¹⁹⁶ Vehicles that have excessive false positive activations may pose an unreasonable risk to safety and may be considered to have a safety-related defect. Previous implementations of other technologies have shown that manufacturers have a strong incentive to mitigate false positives and are successful even in the absence of specific requirements.

The two proposed false activation scenarios are the steel trench plate and the vehicle pass-through test scenarios. Both of these tests will include acceleration pedal release and testing both with and without manual braking, similar to testing with a stopped lead vehicle. NHTSA is proposing that, during each test trial, the subject vehicle accelerator pedal will be released either when a forward collision warning is given or at a headway that corresponds to a time-to-collision of 2.1 seconds, whichever occurs earlier. For tests where manual braking occurs, the brake is applied at a headway that

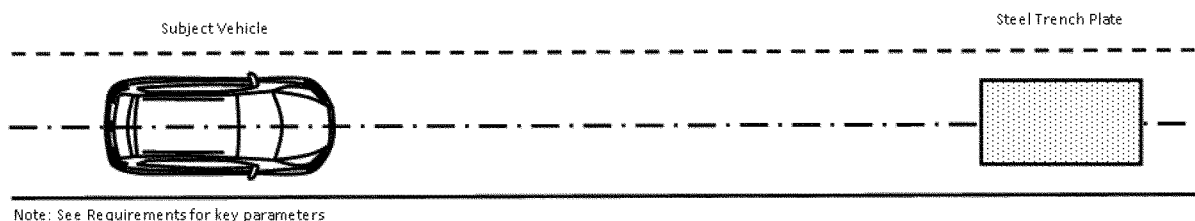
corresponds to a time-to-collision of 1.1 seconds.

1. Steel Trench Plate False Activation Scenario

The steel trench plate test was introduced in the NHTSA NCAP test procedures to assess whether a false positive condition could be identified and consistently utilized.¹⁹⁷ In the steel trench plate test, a steel plate commonly used in road construction is placed on the surface of a test track. The steel plate presents no imminent danger, and the subject vehicle can safely travel over the plate without harm.

In the steel trench plate false activation scenario, a subject vehicle traveling at 80 km/h (50 mph) encounters a secured 2.4 m (7.9 ft) wide by 3.7 m (12.1 ft) long steel by 25 mm (1 in) thick ASTM A36 steel plate placed flat in the subject vehicle's lane of travel, and centered in the travel path, with its short side toward the vehicle (long side transverse to the path of the vehicle). The AEB system must not engage the brakes to create a peak deceleration of more than 0.25g additional deceleration than any manual brake application generates (if used). The basic setup for the steel trench plate false positive test is shown in Figure 25.

Figure 25: Steel Trench Plate Test Scenario Basic Setup



2. Pass-Through False Activation Scenario

The pass-through test, as the name suggests, simulates the subject vehicle encountering two vehicles outside of the subject vehicle's path that do not present a threat to the subject vehicle. The test is similar to the UNECE R131 and UNECE R152 false reaction tests.¹⁹⁸ In the pass-through scenario, two VTDs

are positioned in the adjacent lanes to the left and right of the subject vehicle's travel path, while the lane in which the subject vehicle is traveling is free of obstacles.

The two stopped VTDs are positioned parallel to each other and 4.5 m (14.8 ft) apart in the two adjacent lanes to that of the subject vehicle (one to the left and one to the right with a 4.5 m (14.8 ft) gap between them). The 4.5 m (14.8 ft)

gap represents a typical travel lane of about 3.6 m (11.8 ft) plus a reasonable distance at which a vehicle would be stationary within the adjacent travel lanes.¹⁹⁹ Similar to the steel trench plate false activation scenario, the AEB must not engage the brakes to create a peak deceleration of more than 0.25g beyond any manual braking. In Figure 26, a basic setup for the test is shown.

¹⁹⁶ From the NCAP request for comments notice “Specifically, the Alliance stated that vehicle manufacturers will optimize their systems to minimize false positive activations for consumer acceptance purposes, and thus such tests will not be necessary. Similarly, Honda stated that vehicle manufacturers must already account for false positives when considering marketability and HMI.” 87 FR 13452 (Mar. 9, 2022) at 13460.

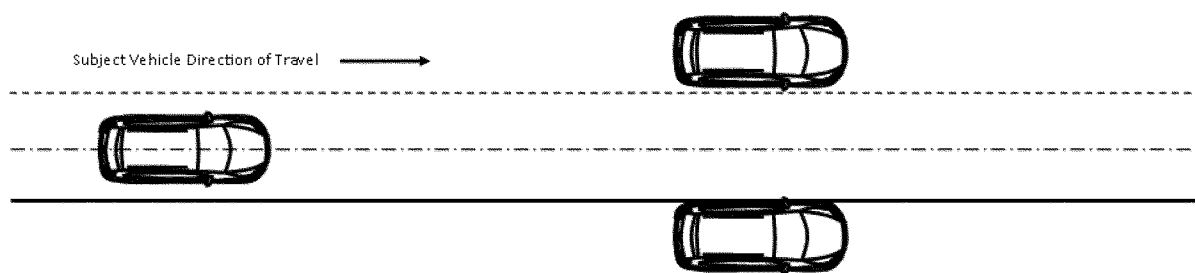
¹⁹⁷ CIB Non-Threatening Driving Scenarios (DOT HS 811 795); NHTSA CIB—Crash Imminent Braking test procedure- <https://www.regulations.gov/document/NHTSA-2015-0006-0025>, <https://www.regulations.gov/document/NHTSA-2015-0006-0176>.

¹⁹⁸ U.N. Regulation No. 131 (Feb. 27, 2020), available at <https://unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/2015/R131r1e.pdf>; U.N.

Regulation No. 152, E/ECE/TRANS/505/Rev.3/Add.151/Amend.1 (Nov. 4, 2020), available at <https://unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/2020/R152am1e.pdf>.

¹⁹⁹ Federal Highway Administration (Oct. 15, 2014), Range of lane widths for travel lanes and ramps, https://safety.fhwa.dot.gov/geometric/pubs/mitigationstrategies/chapter3/3_lanewidth.cfm.

Figure 26: Pass-Through Test Scenario Basic Setup



Note: See Requirements for key parameters

3. Potential Alternatives to False Activation Requirements

As alternatives to these two false activation tests, NHTSA is considering removing the false activation tests completely, requiring a robust documentation process or specifying a data storage requirement. First, NHTSA seeks comment on the anticipated impacts on safety and the certification burden if the agency were to finalize a rule that did not contain one or both of the proposed false positive tests. Alternatively, NHTSA is considering requiring that manufacturers maintain documentation demonstrating that robust process standards are followed specific to the consideration and suppression of false application of AEB in the real world. Other industries where safety-critical software-controlled equipment failures may be life-threatening (e.g., aviation²⁰⁰ and medical devices)²⁰¹ are regulated via process controls ensuring that good software development engineering practices are followed. This approach recognizes that system tests are limited in their ability to evaluate complex and constantly changing software-driven control systems. Software development lifecycle practices that include risk management, configuration management, and quality assurance processes are used in various safety-critical industries. ISO 26262, “Road vehicles—Functional safety,” ISO

21448, “Safety of the Intended Functionality (SOTIF),” and related standards, are examples of an approach for overseeing software development practices. Process standards could be a robust approach to the regulation of false positives because false activation of braking is a complex engineering problem with multiple factors and conditions that must be considered in the real world. The agency seeks public comment on all aspects of requiring manufacturers to document that they have followed process standards in the consideration of the real-world false activation performance of the AEB system.

Finally, NHTSA is considering requiring targeted data recording and storage of significant AEB activations. These data could then be used by manufacturers to improve system performance, or by the agency to review if a particular alleged false activation was part of a safety defect investigation. NHTSA is considering a requirement that an AEB event that results in a speed reduction of greater than 20 km/h (12 mph) activate the recording and storage of the following key information: date, time, engine hours (*i.e.*, the time as measured in hours and minutes during which an engine is operated), AEB activation speed, AEB exit speed (*i.e.*, vehicle speed at which the AEB is completely released), AEB exit reason (e.g., driver override with throttle or brake, or system decision), location, and camera image data. This information could be used by investigators to analyze the source of the activation and determine if there was a false activation. Such data would need to be accessible by the agency and potentially by the vehicle operator for a full and transparent analysis. The agency seeks comment on all aspects of this data collection approach as an alternative to false activation testing, including

whether this list of potential elements is incomplete, overinclusive, or impractical.

I. Malfunction Detection Requirement

NHTSA is proposing that AEB systems must continuously detect system malfunctions. If an AEB system detects a malfunction that prevents it from performing its required safety function, the vehicle would provide the vehicle operator with a warning. The warning would be required to remain active as long as the malfunction exists while the vehicle’s starting system is on. NHTSA would consider a malfunction to include any condition in which the AEB system fails to meet the proposed performance requirements. NHTSA is proposing that the driver must be warned in all instances of component or system failures, sensor obstructions, environmental limitations (like heavy precipitation), or other situations that would prevent a vehicle from meeting the proposed AEB performance requirements. While NHTSA is not proposing the specifics of the telltale, NHTSA anticipates that the characteristics of the alert will be documented in the vehicle owner’s manual and provide sufficient information to the vehicle operator to identify it as an AEB malfunction.

NHTSA is considering requirements pertaining to specific failures and including an accompanying test procedure. For instance, NHTSA could develop or use available tests that specify examples of how an AEB system might be placed in a malfunctioning state, such as disconnecting sensor wires, removing fuses, misaligning or covering sensors.

NHTSA is considering minimum requirements for the malfunction indication to standardize the means by which the malfunction is communicated to the vehicle operator. Malfunctions of

²⁰⁰ 14 CFR 33.201 (a) The engine must be designed using a design quality process acceptable to the FAA, that ensures the design features of the engine minimize the occurrence of failures, malfunctions, defects, and maintenance errors that could result in an IFSD, loss of thrust control, or other power loss.

²⁰¹ 21 CFR 820.30(a)(1) Each manufacturer of any class III or class II device, and the class I devices listed in paragraph (a)(2) of this section, shall establish and maintain procedures to control the design of the device in order to ensure that specified design requirements are met.

an AEB system are somewhat different than other malfunctions NHTSA has considered in the past. While some malfunctions may be similar to other malfunctions NHTSA has considered in FMVSSs because they require repair (loose wires, broken sensors, etc.), others are likely to resolve without any intervention, such as low visibility due to environmental conditions or blockages due to build-up of snow, ice, or loose debris.

NHTSA is considering requiring that the malfunction indicator convey the actions that a driver should take when an AEB malfunction is detected. NHTSA seeks comment on the potential advantages of specifying test procedures that would describe how the agency would test a malfunction indicator and on the level of detail that this regulation should require for a malfunction indicator. Additionally, NHTSA is considering requiring more details for the indicator itself, such as a standardized appearance (e.g., color, size, shape, illuminance). NHTSA seeks comment on the need and potential safety benefits of requiring a standardized appearance for the malfunction indicator and what standardized characteristics would achieve the best safety outcomes. NHTSA seeks comment on the use of an amber FCW warning indicator visual icon as the malfunction indicator.

NHTSA anticipates driving situations in which AEB activation may not increase safety and in some rare cases may increase risk. For instance, an AEB system in which sensors have been compromised because of misalignment, frayed wiring, or other partial failure, could provide the perception system with incomplete information that is then misinterpreted and causes a dangerous vehicle maneuver to result. In other instances, such as when a light vehicle is towing a trailer with no independent brakes, or brakes that do not include stability control functions, emergency braking may cause jack-knifing, or other dangerous outcomes. NHTSA is considering restricting the automatic deactivation of the AEB system generally and providing a list of situations in which the vehicle is permitted to automatically deactivate the AEB or otherwise restrict braking authority granted to the AEB system.

In addition to these, NHTSA is considering allowing the AEB system to be placed in a nonfunctioning mode whenever the vehicle is placed in 4-wheel drive low or when ESC is turned off, and whenever equipment such as a snowplow is attached to the vehicle that might interfere with the AEB system's sensors or perception system. The

malfunction indication requirements would apply in any such instance. NHTSA seeks comment on the permissibility of automatic deactivation of the AEB system and under which situations the regulation should explicitly permit automatic deactivation of the AEB system.

J. AEB System Disablement

This proposed rule would not permit manual AEB system disablement at any speed above the proposed 10 km/h (6 mph) minimum speed threshold above which the AEB system must operate. NHTSA seeks comment on whether manual deactivation for an AEB system should be allowed at speeds above 10 km/h (6 mph), similar to what is allowed for ESC systems in FMVSS No. 126.²⁰² NHTSA seeks comment on the appropriate performance requirements if the standard were to permit the installation of a manually operated deactivation switch. Such requirements might include limitations such that the default position of the switch be "AEB ON" with each cycle of the starting system, or the deactivation functionality could be limited to specific speeds.

K. AEB System Performance Information

This proposed rule has no requirements that the vehicle manufacturer provide information to vehicle operators about how the AEB system works. NHTSA is considering a requirement that manufacturers provide information describing the conditions under which the AEB system can avoid collisions, warning drivers that the AEB system is an emergency system and not designed for typical braking situations, and specifying the conditions under which the AEB system is not likely to prevent a collision. NHTSA seeks comment on the potential safety impacts of requiring such information be provided to vehicle operators and any costs associated with such an information requirement.

VII. AEB Test Procedures

To determine compliance with the proposed requirements, NHTSA proposes to test AEB systems on a test track using specified procedures and conditions. To establish the appropriate test procedures and conditions, the agency considered several factors, including the expected real-world conditions under which AEB systems need to operate to effectively reduce crash risk, the procedures and conditions that provide a high degree of test repeatability and reproducibility, the procedures and conditions needed

for safe testing, procedures and conditions that are within the practical operating range of AEB systems, the consistency between FMVSS and NCAP test procedures and conditions, and harmonization with test procedures and conditions in international AEB regulations and other test programs such as NCAP.

NHTSA's 2014 draft CIB and DBS research test procedures are the original basis for the proposed AEB-Lead Vehicle test procedures included in this NPRM.^{203 204} Similarly, NHTSA's 2019 draft research test procedure for PAEB systems is the original basis for the PAEB test procedures in this NPRM.²⁰⁵ Those documents reflect the agency's experience researching automatic braking systems at the NHTSA Vehicle Research and Test Center. They also are the main source of NHTSA's current NCAP test procedures for AEB-equipped vehicles.

To the extent possible, the proposed test conditions (such as environmental conditions, vehicle set-up, etc.) are the same in all tests unless otherwise specified. This provides for simplified, consistent test procedures and conditions.

A. AEB System Initialization

NHTSA is proposing that AEB systems will be initialized before each series of performance tests to ensure the AEB system is in a ready state for each test trial. The electronic components of an AEB system, including sensors and processing modules, may require a brief interval following each starting system cycle to reset to their default operating state. It also may be necessary for an AEB-equipped vehicle to be driven at a minimum speed for a period of time prior to testing so that the electronic systems can self-calibrate to a default or baseline condition, and/or for the AEB system to become active. The proposed initialization procedure specifies that, once the test vehicle starting system is cycled on, it will remain on for at least one minute and the vehicle is driven at a forward speed of at least 10 km/h (6 mph) before any performance trials

²⁰³ National Highway Traffic Safety Administration (2014, August), *Crash imminent brake system performance evaluation (working draft)*. Available at: <https://www.regulations.gov/document/NHTSA-2012-0057-0038>.

²⁰⁴ National Highway Traffic Safety Administration (2014, August), *Dynamic Brake Support Performance Evaluation (working draft)*. Available at: <https://www.regulations.gov/document/NHTSA-2012-0057-0038>.

²⁰⁵ National Highway Traffic Safety Administration (2019, April), *Pedestrian automatic emergency brake system confirmation test (working draft)*. Available at: <https://www.regulations.gov/document/NHTSA-2019-0102-0005>.

commence. This procedure also ensures that no additional driver actions are needed for the AEB system to be in a fully active state.

B. Travel Path

To maximize test repeatability, the travel path in each of the proposed test scenarios is straight rather than curved. A straight path simplifies vehicle motion and eliminates the more complex vehicle control needed for curve-following and which is likely to be less repeatable. NHTSA's draft research test procedures also specify straight-line vehicle tests, and other AEB test programs including NHTSA's NCAP employ a straight travel path.

The intended travel path is the target path for a given test scenario. For the proposed AEB tests as conducted by NHTSA for NCAP, the travel path has been programmed into a robotic steering controller, and a global positioning system (GPS) has been used to follow the intended path. The proposed text does not limit the method for steering the subject vehicle and as such any method including a human driver could be used by the agency during compliance testing. Regardless of the steering method, the positional tolerance would be maintained for a valid test. The travel path is identified by the projection onto the road surface of the frontmost point of the subject vehicle that is located on its longitudinal, vertical center plane. The subject vehicle's actual travel path is recorded and compared to the intended path. For test repeatability, the subject vehicle's actual travel path is measured during each test run and will not deviate more than a specified distance from the intended path.

NHTSA is proposing that the intended subject vehicle travel path be coincident with the center of a test lane whenever there are two edge lines marking a lane on the test track surface. If there is only one lane line (either a single or double line) marked on the test track, the vehicle path will be parallel to it and offset by 1.8 m (6 ft) to one side (measured from the inside edge of the line). Modern vehicles equipped with AEB often are equipped with other advanced driver assistance systems, such as lane-centering technology, which detects lane lines and which might be triggered if the travel path diverges substantially from the center of a marked test lane, potentially leading to unrepeatable results. These specifications reflect the agency's NCAP tests for AEB.^{206 207 208}

C. Subject Vehicle Preparation

NHTSA is proposing that there be no specific limitations on how a subject vehicle may be driven prior to the start of a test trial. As long as the specified initialization procedure is executed, a subject vehicle may be driven under any conditions including any speed and direction, and on any road surface, for any elapsed time prior to reaching the point where a test trial begins. This is because the manner in which a subject vehicle is operated prior to a crash imminent situation should not compromise or otherwise affect the functionality of the AEB system. Also, ancillary subject vehicle operation on and around a test track will vary depending on exigencies of testing such as test lane location. For example, a subject vehicle may need to be driven across an unmarked section of pavement, be maneuvered using unspecified steering, braking, and accelerator inputs, and/or be driven in reverse in order to reach the start position for a test trial.

D. Subject Vehicle Tolerance Specifications

NHTSA is proposing that the subject vehicle speed would be maintained within a tolerance range of ± 1.6 km/h (± 1.0 mph) of the chosen test speed between the beginning of a test and the onset of the forward collision warning. For test repeatability, subject vehicle speed would be as consistent as possible from run to run. Subject vehicle speed determines the time-to-collision, which is a critical variable in AEB tests. In NHTSA's experience, subject vehicle speed can be reliably controlled within the ± 1.6 km/h (± 1.0 mph) tolerance range, and speed variation within that range yields consistent test results. A smaller speed tolerance is unnecessary for repeatability and burdensome as it may result in a higher test rejection rate without any greater assurance of accuracy of the AEB system's test track performance. This speed tolerance also is the same as that specified in the agency's NCAP tests for AEB systems.

NHTSA is proposing that, during each test trial, the subject vehicle accelerator

pedal will be released when a forward collision warning is given or when the AEB system first engages, whichever is sooner. Input to the accelerator pedal after AEB has engaged will potentially interfere with the system and may override the automatic braking. Therefore, it is necessary to fully release the subject vehicle's accelerator pedal. The proposed procedure states that the accelerator pedal is released at any rate and is fully released within 500 milliseconds. This ensures consistent release of the accelerator to eliminate any interference with AEB engagement and improve test repeatability. This procedure also better reflects real-world conditions because a driver's first reaction to a forward collision warning is likely to be accelerator release.²⁰⁹ This manner of accelerator pedal control is the same as specified in the agency's NCAP test procedures for AEB systems.

The accelerator pedal release can be omitted from tests of vehicles with cruise control actively engaged because there is no driver input to the accelerator pedal in that case. The AEB performance requirements in this proposal are the same for vehicles with and without cruise control engaged, and AEB systems must provide an equivalent level of crash avoidance or mitigation whether or not cruise control is active.

NHTSA is proposing that the subject vehicle yaw rate does not exceed ± 1.0 deg/s prior to onset of when the subject vehicle forward collision warning is given or the subject vehicle AEB system first engages, whichever is sooner. The agency proposes to adopt this tolerance for test repeatability. A ± 1.0 deg/s yaw rate tolerance, which is the most stringent value among the yaw rate limits specified in the agency's NCAP test procedures for AEB.

NHTSA is proposing that the travel path of the subject vehicle does not deviate more than 0.3 m (1.0 ft) laterally from the centerline of the lead vehicle. For consistent test conduct, it is necessary to maintain close alignment between the subject vehicle path and the lead vehicle path. Significant misalignment of the travel paths may change detection characteristics such as range and relative direction, potentially resulting in test-to-test inconsistency. Therefore, the agency proposes to use the tolerance requirement of 0.3 m (1.0 ft) for the subject vehicle's lateral position, which is more stringent than

brake system performance evaluation (working draft). Available at: <https://www.regulations.gov/document/NHTSA-2012-0057-0038>.

²⁰⁷ National Highway Traffic Safety Administration (2014, August), Dynamic Brake Support Performance Evaluation (working draft). Available at: <https://www.regulations.gov/document/NHTSA-2012-0057-0038>.

²⁰⁸ National Highway Traffic Safety Administration (2013, February), Lane departure warning system confirmation test and lane keeping support performance documentation. See <https://www.regulations.gov>, Docket No. NHTSA-2006-26555-0135.

²⁰⁹ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration.

²⁰⁶ National Highway Traffic Safety Administration (2014, August), Crash imminent

the lateral tolerance used in NHTSA's NCAP test procedures for AEB, but less stringent than the lateral tolerance specified in NHTSA's NCAP test procedures for PAEB. This tolerance is consistent with the SAE International recommended practice for AEB. In this proposal, the same lateral tolerance 0.3 m (1.0 ft) would be used for both lead vehicle AEB and PAEB.

E. Lead Vehicle Test Set Up and Tolerance

NHTSA is proposing that the speed of the lead vehicle would be maintained within a tolerance of ± 1.6 km/h (± 1.0 mph) during slower-moving tests and during decelerating lead vehicle tests until the lead vehicle initiates its deceleration. Like the subject vehicle speed, the speed of the lead vehicle (*i.e.*, the target vehicle) is a key parameter that directly influences TTC and other test outcomes. Results from a series of tests with run-to-run speed variations outside this tolerance range may be inconsistent. Therefore, for lead vehicle speed, the agency is proposing to use the same tolerance of ± 1.6 km/h (± 1.0 mph) specified for the subject vehicle speed, which also reflects the tolerance value used for NHTSA's NCAP AEB tests.

NHTSA is proposing that the lead vehicle would not diverge laterally more than 0.3 m (1.0 ft) from the intended travel path. This tolerance applies to both the slower-moving and decelerating lead vehicle test scenarios (for the stopped lead vehicle scenario, the lead vehicle is stationary and is centered on the projected subject vehicle travel path). If the lead vehicle's lateral position deviates significantly from the intended travel path, its alignment within the field of view of the forward sensors of the subject vehicle will be off-center, which can contribute to test series variability. The ± 0.3 m (± 1.0 ft.) tolerance for the lead vehicle's lateral position is the same tolerance specified for the subject vehicle's lateral position, which is consistent with the tolerance used in the SAE recommended practice for AEB testing.²¹⁰

Controlled lead vehicle deceleration is essential for repeatable decelerating lead vehicle AEB testing because the reaction of the subject vehicle depends largely on the position and motion of the lead vehicle. NHTSA is proposing that the lead vehicle will achieve the specified deceleration within 1.5 seconds of the onset of lead vehicle

braking. Over this time period, the overall deceleration will be lower than the target, but will rise over time, allowing for easier test completion. This lead-in time also makes it easier for the test to be performed while not making the test harder to pass. The lead vehicle will maintain this deceleration until 250 milliseconds prior to the vehicle coming to rest. Over these 250 milliseconds the vehicle dynamics do not reflect the overall dynamics of the test, and any acceleration data recorded is dismissed. This deceleration profile is consistent with NHTSA's NCAP test procedures and SAE's industry recommended practice for AEB systems.²¹¹

F. Test Completion Criteria for Lead Vehicle AEB Tests

For lead vehicle tests, NHTSA is proposing test-completion criteria to clearly establish the point at which a test trial has concluded. For all lead vehicle scenarios, each test run is considered complete immediately when the subject vehicle makes contact with the lead vehicle. In the case of stopped or decelerating lead vehicle tests, each test run also would be considered complete when the subject vehicle comes to a complete stop without impact. For slower-moving lead vehicle tests, the test is complete when the subject vehicle's speed is less than the lead vehicle speed. These test completion criteria are important in identifying a pass-fail outcome for AEB-equipped light vehicles. These criteria also are needed to limit consideration of vehicle motion or behavior after there is no longer a foreseeable collision with the lead vehicle.

G. PAEB Test Procedures and Tolerance

For PAEB testing, NHTSA proposes using the same general procedures described above, as applicable, including procedures for subject vehicle speed, yaw rate, travel path, lateral tolerance, subject vehicle accelerator pedal release.

Overlap refers to the test mannequin's potential impact point measured horizontally across the front end of the subject vehicle. It identifies the point on the subject vehicle that would contact a test mannequin that is within the subject vehicle travel path if the subject vehicle were to maintain its speed without braking. NHTSA proposes using an overlap value of either 50 percent, the midpoint of the subject vehicle's frontal surface, or 25 percent indicating the point that is one-quarter of the

subject vehicle width from the right side of the subject vehicle. NHTSA is proposing a 0.15 m (0.5 ft) overlap tolerance, which provides a high degree of test repeatability while also allowing a spacing tolerance for the pedestrian test mannequin position.

NHTSA is proposing different test scenarios in which the pedestrian test mannequin enters the path of the subject vehicle, including entering from the right side and left side of the subject vehicle's lane. For a pedestrian test mannequin initially positioned on the right side, NHTSA proposes an origination point that is 4.0 ± 0.1 m (13.1 ± 0.3 ft) from the subject vehicle's intended travel path. For a pedestrian test mannequin initially positioned on the left side, NHTSA proposes an origination point that is 6.0 ± 0.1 m (19.7 ± 0.3 ft) from the intended travel path. These initial pedestrian test mannequin positions are somewhat longer than those specified in NHTSA's 2019 draft test procedures for PAEB, which specify a right-side test mannequin offset of 3.5 m (11.5 ft) and left-side test mannequin offset of 5.5 m (18.0 ft).²¹² NHTSA is proposing the larger test mannequin offsets because the agency has found that the test mannequin sways and oscillates in an inconsistent manner when it is just starting to move, and the extra distance will provide time for it to stabilize before entering the subject vehicle's travel path. This, in turn, will enhance repeatability and accuracy of the test.

For test scenarios with a moving pedestrian test mannequin, NHTSA proposes to specify the maximum distance for the pedestrian test mannequin to reach its intended speed. NHTSA is proposing 1.5 m (4.9 ft) as the maximum distance which will be used for both crossing path test scenarios and along path test scenarios. Although it is generally desirable for the test mannequin to attain its final speed as quickly as possible to efficiently execute tests, the agency has found that acceleration that is too sudden often results in inconsistent, jerky test mannequin motions that may compromise repeatability. NHTSA therefore is proposing distances that are similar to the requirements in NHTSA's 2019 draft research test procedures for a PAEB system.

NHTSA is proposing that the simulated walking speed of the pedestrian test mannequin be maintained within 0.4 km/h (± 0.2 mph)

²¹⁰ SAE International (2017), *Automatic Emergency Braking (AEB) System Performance Testing* (SAE J3087).

²¹¹ SAE International (2017), *Automatic Emergency Braking (AEB) System Performance Testing* (SAE J3087).

²¹² National Highway Traffic Safety Administration (2019, April), *Pedestrian automatic emergency brake system confirmation test (working draft)*. Available at: <https://www.regulations.gov/document/NHTSA-2019-0102-0005>.

during PAEB tests. In NHTSA's 2020 PAEB research experience in conducting hundreds of tests, this amount of test mannequin speed tolerance is consistently achievable and provides a high level of run-to-run repeatability and consistent test results.

NHTSA is proposing clear test completion criteria to establish a point when a PAEB test may be considered fully concluded. In all PAEB test scenarios, a test is immediately complete if the subject vehicle makes contact with the pedestrian test mannequin. In test scenarios with the pedestrian test mannequin either crossing or stationary within the subject vehicle path, a test is complete when the subject vehicle comes to a complete stop without contacting the pedestrian test mannequin. In scenarios where the pedestrian mannequin moves along the forward path of the subject vehicle, the test is complete when the subject vehicle slows to below the pedestrian test mannequin speed. These test completion criteria are important for identifying a pass-fail outcome for PAEB-equipped light vehicles. These criteria also are needed to limit consideration of vehicle motion or behavior after there is no longer a risk of collision with a pedestrian test mannequin.

NHTSA is proposing that, when conducting PAEB tests with two VTDs, their left sides are aligned on the same plane, and they are positioned 1.0 ± 0.1 m (3.3 ± 0.3 ft) from the subject vehicle's right side when coincident with the intended travel path. The VTD positioning is consistent with NHTSA's 2019 draft research test procedures for PAEB systems for the scenario where an obscured child test mannequin runs into traffic from behind two parked vehicles. These test specifications are repeatable and provide for consistent test results.

H. False Positive AEB Test Procedures

For the steel trench plate test, the starting point, L_0 , is measured between the subject vehicle's front plane and the leading edge (closest to the subject vehicle) of the steel trench plate. For the pass-through scenario, the starting point is measured between the front plane of the subject vehicle and the vertical plane that contains the rearmost point of the vehicle test devices.

NHTSA is proposing criteria to clearly establish when a false-activation test trial may be considered fully concluded. For steel trench plate tests, a test trial is complete when the subject vehicle either comes to a stop or passes the leading edge of the steel trench plate. For the pass-through test, a test trial is complete when the subject vehicle

either comes to a stop or passes between the vehicle test devices. These criteria provide a definitive, observable pass-fail basis for false-activation test outcomes in each of the two scenarios.

I. Environmental Test Conditions

NHTSA proposes testing AEB systems in daylight and in darkness to ensure performance in a wide range of ambient light conditions.

For daylight testing, the proposed ambient illumination at the test site is not less than 2,000 lux.²¹³ This minimum level approximates a typical roadway light level on an overcast day.²¹⁴ The acceptable range also includes any higher illumination level including levels associated with bright sunlight on a clear day.

To ensure test repeatability, the agency further proposes that testing is not performed while the intended travel path is such that the heading angle of the vehicle is less than 25 degrees with respect to the sun²¹⁵ and while the solar elevation angle is less than 15 degrees. The intensity of low-angle sunlight aligned directly into the sensing element of a camera or other optical AEB sensor can saturate or "wash out" the sensor and lead to unrepeatable test results. Also, low-angle sunlight may create long shadows around a test vehicle, which could potentially compromise test repeatability.

For the proposed PAEB testing in darkness, the ambient illumination at the test site must be no greater than 0.2 lux. This value approximates roadway lighting in dark conditions without direct overhead lighting with moonlight and low levels of indirect light from other sources, such as reflected light from buildings and signage. An illumination level of 0.2 lux also is the same level specified in the test procedures for the recently issued final rule for adaptive driving beams.²¹⁶ This darkness level accounts for the effect ambient light has on AEB performance, particularly for camera-based systems. This ensures robust performance of all AEB systems, regardless of what types of sensors they may use.

NHTSA proposes that the ambient temperature in the test area be between

0 Celsius (32 °F) and 40 Celsius (104 °F) during AEB testing. This ambient temperature range matches the range specified in NHTSA's safety standard for brake system performance.²¹⁷ These temperatures represent a wide range of conditions that AEB-equipped vehicles will encounter. While AEB controls and sensors can operate at lower temperatures, the limiting factor in this case is the braking performance. The reduced surface friction possible in below-freezing temperatures may result in unrepeatable test conditions and may adversely affect subject vehicle braking performance.

NHTSA is proposing that the maximum wind speed during AEB compliance testing be no greater than 10 m/s (22 mph) for lead vehicle avoidance tests and 6.7 m/s (15 mph) for pedestrian avoidance tests. These are the same maximum wind speeds specified for AEB tests in the agency's AEB NCAP procedures and PAEB draft research test procedure.^{218 219} Excessive wind during testing could disturb the test devices in various ways. For example, high wind speeds could affect the ability of the VTD to maintain consistent speed and/or lateral position. The pedestrian mannequin could bend or sway unpredictably in excessively windy conditions. Test equipment that needs to remain stable also could be affected by wind. To ensure test repeatability, the agency has tentatively decided to adopt these wind speed specifications to minimize wind effects during testing.

NHTSA is proposing that AEB compliance tests not be conducted during periods of precipitation, including rain, snow, sleet, or hail. The presence of precipitation could influence the outcome of the tests. Wet, icy, or snow-covered pavement has lower friction, which may affect the outcome of the test. More importantly, in those conditions compared to dry conditions, it is more difficult to reproduce a friction level with good precision. Therefore, the agency is proposing to adopt the precipitation specification specified in the agency's NCAP test procedures for AEB systems.

NHTSA is proposing that AEB performance tests be conducted when visibility at the test site is unaffected by

²¹³ This illumination threshold is the same as that adopted in SAE J3087 "Automatic Emergency Braking (AEB) System Performance Testing."

²¹⁴ During an overcast day (no sun), when the solar altitude is around 6 degrees, the light intensity on a horizontal surface is around 2,000 lux. Illuminating Engineering Society of North America. 1979. "Recommended Practice of Daylighting."

²¹⁵ The horizontal angle between the sun and a vertical plane containing the centerline of the subject vehicle would be not less than 25 degrees for a valid test.

²¹⁶ 87 FR 9916.

²¹⁷ FMVSS No. 135—Light vehicle brake systems.

²¹⁸ National Highway Traffic Safety Administration (2014, August), *Crash imminent brake system performance evaluation (working draft)*. Available at: <https://www.regulations.gov/document/NHTSA-2012-0057-0038>.

²¹⁹ National Highway Traffic Safety Administration (2019, April), *Pedestrian automatic emergency brake system confirmation test (working draft)*. Available at: <https://www.regulations.gov/document/NHTSA-2019-0102-0005>.

fog, smoke, ash, or airborne particulate matter. AEB systems may use cameras to detect other vehicles and pedestrians. Reduced visibility due to the presence of fog or other substances is difficult to reproduce in a manner that produces repeatable test results. A current industry standard specifies that the horizontal visibility at ground level must be greater than 1 km (0.62 miles), and AEB test procedures in the European NCAP use that requirement.^{220 221} NHTSA believes a minimum visibility range is unnecessary to ensure test repeatability. Therefore, the agency is proposing a limitation on the presence of conditions that would obstruct visibility, including fog or smoke during AEB testing, but is not proposing a minimum visibility range. NHTSA seeks comment on whether to adopt a minimum level of visibility.

J. Test Track Conditions

NHTSA is proposing that the test track surface have a peak friction coefficient of 1.02 when measured using an ASTM F2493 standard reference test tire, in accordance with ASTM E1337–19 at a speed of 64.4 km/h (40 mph), without water delivery.²²² Surface friction is a critical factor in brake system performance testing, including AEB. The presence of moisture will significantly change the measured performance of a braking system. A dry surface is more consistent and provides for greater test repeatability. The proposed peak friction coefficient is the same value that NHTSA selected for an update of a NHTSA FMVSS related to surface friction for brake performance testing.²²³

NHTSA is proposing that the test surface have a consistent slope between 0 and 1 percent. The slope of a road surface can affect the performance of an AEB-equipped vehicle.²²⁴ It also influences the dynamics and layout involved in the proposed AEB test scenarios for both lead vehicle AEB and PAEB. Therefore, NHTSA proposes to limit the slope of the test surface by

adopting the slope requirement specified for AEB tests in the agency's lead vehicle AEB NCAP procedures and PAEB draft research test procedure.^{225 226}

NHTSA proposes that the lead vehicle and pedestrian test mannequin be unobstructed from the subject vehicle's view during compliance tests except where specified. Furthermore, each compliance test would be conducted without any vehicles, obstructions, or stationary objects within one lane width of either side of the subject vehicle's path unless specified as part of the test procedure. This test condition is the same as that specified in the agency's research test procedures for AEB systems. The presence of unnecessary objects near the path of the subject vehicle could interfere with detection of a lead vehicle or test mannequin and have an unintentional effect on the field of view of the AEB system, which may compromise test repeatability.

K. Subject Vehicle Conditions

NHTSA is proposing that the subject vehicle be loaded with not more than 277 kg (611 lb.), which includes the sum of any vehicle occupants and any test equipment and instrumentation. The agency proposes this lightly loaded vehicle specification because the primary goal of the AEB testing is to measure the sensing and perception capability of a vehicle, which is relatively insensitive to the level of the vehicle load. In addition, braking tests with fully loaded vehicles are already required and conducted under exiting FMVSS, such as FMVSS No. 135, *Light Vehicle Brake Systems*, to measure the maximum brake capacity of a vehicle.

To maximize test repeatability, NHTSA is proposing that subject vehicle brakes be burnished prior to AEB performance testing according to the specifications of either S7.1 of FMVSS No. 135, which applies to passenger vehicles with GVWR of 3,500 kilograms or less, or according to the specifications of S7.4 of FMVSS No. 105, which applies to passenger vehicles with GVWR greater than 3,500 kilograms. AEB capability relies upon the function of the service brakes on a vehicle. Thus, it is reasonable and logical that the same pre-test conditioning procedures that apply to

service brake performance evaluations should also apply to AEB system performance evaluations.

To maximize test repeatability, NHTSA is proposing that the subject vehicle service brakes be maintained at an average temperature between 65 °C (149 °F) and 100 °C (212 °F). The brake temperature is evaluated using either the front or rear brakes, depending on which has a higher temperature. This temperature range is the same as the range specified in NHTSA's safety standard for light vehicle brake systems²²⁷ and is important for consistent brake performance and test repeatability. Foundation brakes that are too cool or too hot may perform with less consistency, such that stopping distance may be unrepeatable. Hot or cold brakes also may fade or experience stiction or other effects that exacerbate inconsistent brake performance.

User adjustable settings, such as regenerative braking settings and FCW settings, would be tested in any setting state. Furthermore, adaptive and traditional cruise control may be used in any selectable setting during testing. The agency would test vehicles with any cruise control or adaptive cruise control setting to make sure that these systems do not disrupt the ability for the AEB system to stop the vehicle in crash imminent situations. However, for vehicles that have an ESC off switch, NHTSA will keep ESC engaged for the duration of the test.

VIII. Test Devices

A. Pedestrian Test Mannequins

NHTSA is proposing specifications for two pedestrian test devices to be used for compliance testing for the new PAEB requirements. These specifications would be referenced within the PAEB test procedures and NHTSA would use test devices meeting these specifications when it performs compliance testing. The two pedestrian test devices would each consist of a test mannequin and a motion apparatus (carrier system) that positions the test mannequin during a test. NHTSA is proposing specifications for a pedestrian test mannequin representing a 50th percentile adult male and a pedestrian test mannequin representing a 6- to 7-year-old child. NHTSA would use these pedestrian test mannequins to ensure that light vehicles are equipped with PAEB systems that detect pedestrians and automatically provide emergency braking to avoid pedestrian test mannequin contact in the tests specified in this proposal. NHTSA is proposing to

²²⁰ SAE International (2017), *Automatic Emergency Braking (AEB) System Performance Testing* (SAE J3087).

²²¹ European New Car Assessment Program (Euro NCAP) (2019, July), *Test Protocol—AEB Car-to-Car systems, Version 3.0.2*.

²²² ASTM E1337–19, *Standard Test Method for Determining Longitudinal Peak Braking Coefficient (PBC) of Paved Surfaces Using Standard Reference Test Tire*.

²²³ 87 FR 34800 (June 8, 2022), Final rule, Standard Reference Test Tire.

²²⁴ Kim, H. et al., *Autonomous Emergency Braking Considering Road Slope and Friction Coefficient*, International Journal of Automotive Technology, 19, 1013–1022 (2018).

²²⁵ National Highway Traffic Safety Administration (2014, August), *Crash imminent brake system performance evaluation (working draft)*. Available at: <https://www.regulations.gov/document/NHTSA-2012-0057-0038>.

²²⁶ National Highway Traffic Safety Administration (2019, April), *Pedestrian automatic emergency brake system confirmation test (working draft)*. Available at: <https://www.regulations.gov/document/NHTSA-2019-0102-0005>.

²²⁷ FMVSS No. 135—Light vehicle brake systems.

incorporate by reference specifications from three ISO standards.

1. Background

Since the introduction of PAEB, vehicle manufacturers and other entities have been engaged in testing and evaluating the technology. Because testing cannot be performed with live pedestrians, test mannequins have been developed to facilitate a safe and practical way to perform these evaluations objectively. However, to ensure the PAEB systems operate as intended, the test mannequins must be representative of pedestrians from the perspective of the vehicle sensors. That is, sensors used to detect the test mannequins must operate as if they were detecting actual pedestrians in the real world, which in turn allows the PAEB system to interpret and respond to the sensor data in a realistic manner. This representativeness ensures that PAEB system test results translate to real-world safety benefits.

There have been several efforts by different organizations to develop common specifications for PAEB testing, including an ISO Standard, ISO 19206–2:2018, “Road vehicles—Test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 2: Requirements for pedestrian targets,” and an SAE Recommended Practice, SAE International Standard J3116, “Active Safety Pedestrian Test Mannequin Recommendation.” ISO 19206–4:2020, “Road vehicles—test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 4: Requirements for bicyclists targets,” has color and infrared reflectivity specifications. Additionally, Euro NCAP specifies use of test mannequins that conform to the specifications in its “Articulated Pedestrian Target Specification Document,”²²⁸ which sets specifications for size, color, motion patterns, and detectability by vehicle sensors.

In November 2019, NHTSA published a **Federal Register** notice that sought comment on NHTSA’s draft research test procedure for PAEB testing (84 FR 64405). The draft test procedures provided methods and specifications for performing PAEB systems performance evaluations.²²⁹ During the development

of these test procedures, NHTSA used the 4activePS pedestrian static mannequin that was developed by 4Active Systems.²³⁰ The 4activePS pedestrian static mannequin was developed specifically for testing PAEB systems and conforms to the specifications in ISO 19206–2:2018. NHTSA continues to test with test mannequins developed by 4Active Systems. However, NHTSA has transitioned to performing tests using the 4activePA, which has articulated legs.

The change from using static mannequins to mannequins equipped with articulated, moving legs is in response to information that demonstrates that articulated mannequins may be more representative of actual pedestrians. In response to NHTSA’s 2015 NCAP request for comments notice, the agency received comments asking that NHTSA use articulated mannequins to test PAEB systems. The commenters reasoned that the articulated mannequins better represent actual pedestrians. In response to these comments, NHTSA proposed, in its 2022 NCAP RFC, the use of articulated mannequins.²³¹ In adopting this approach, NHTSA noted that using articulating mannequins would harmonize with other major consumer information-focused entities that use articulating mannequins, such as Euro NCAP and IIHS.²³²

For the test scenarios involving a moving pedestrian, NHTSA is proposing that the legs of the pedestrian test mannequin would articulate to emulate a walking motion.²³³ A test mannequin that has leg articulation when in motion more realistically represents an actual walking or running pedestrian. For test scenarios involving a stationary pedestrian, NHTSA is proposing that the legs of the pedestrian test

mannequin remain at rest (*i.e.*, emulate a standing posture).

In developing the specifications for the pedestrian test mannequins that will be used in NHTSA compliance testing, NHTSA first considered what characteristics these devices need to have. Not only does a test mannequin need to be able to facilitate accurate, repeatable, and reproducible tests when used for compliance testing, but it must also ensure that performance during the PAEB tests will be representative of performance in the real world. This means that a PAEB system should detect and classify the test mannequin similarly to real pedestrians.

It is NHTSA’s understanding that PAEB systems currently on the market may use a combination of camera and radar-based systems, and that Automated Driving Systems may also use lidar systems. NHTSA is proposing specifications for the pedestrian test mannequin based on these technologies. These specifications include those for visual characteristics, such as the color and physical dimensions. They also include specifications for infrared reflectivity, radar cross section, and articulation (the latter two affect how radar-based systems will perceive the pedestrian test mannequin radar signature).

Additionally, NHTSA has considered the need for the test mannequins to allow for safe and non-destructive testing. In the course of testing PAEB systems, the subject vehicle may impact the test mannequin. In the event contact is made, it is important that the test mannequin has characteristics that do not pose safety risks to those conducting the tests. From a practical standpoint, it is also important for test mannequins to be durable so they can be used repeatedly, yet strikable in a way that minimizes the risk of damage to the subject vehicle should contact be made with the test mannequin, even at a high relative velocity.

NHTSA’s proposed specifications incorporate by reference existing industry standards that represent the culmination of many years of coordination and research. NHTSA not only believes these specifications are sufficient to ensure that test results are objective and translate to real-world safety benefits, but also that there are currently available test mannequins that meet these specifications and possess characteristics that allow for safe and non-destructive testing.

2. Mannequin Appearance

The pedestrian test mannequin specification includes basic body proportions that, from any angle,

emergency brake system confirmation test (working draft). Available at: <https://www.regulations.gov/document/NHTSA-2019-0102-0005>.

²³⁰ *Id.* at 8, citing 4activeSystems GmbH. (n.a.). 4activePS pedestrian static (web page). Traboch, Austria: Author. Available at www.4activesystems.at/en/products/dummies/4activeps.html.

²³¹ 87 FR 13452, March 9, 2022, *supra*.

²³² *Id.*

²³³ The velocity of the articulated legs could be detected by an AEB system because some sensing technologies, such as radar, “may be able to measure and detect the relative velocities of moving legs.” Since the articulated legs of the current test mannequin move at a constant pace during a test, identifying proper leg velocities for a range of speeds would be needed in developing the next generation test mannequin. European Automobile Manufacturers’ Association (ACEA), February 2016, “Articulated Pedestrian Target Specification Document,” Version 1.0. <https://www.acea.auto/publication/articulated-pedestrian-target-acea-specifications/>.

²²⁸ European Automobile Manufacturers’ Association (ACEA), February 2016, “Articulated Pedestrian Target Specification Document,” Version 1.0, available at <https://www.acea.auto/publication/articulated-pedestrian-target-acea-specifications/>.

²²⁹ National Highway Traffic Safety Administration (2019, April), *Pedestrian automatic*

represent either a 50th percentile adult male or a 6 to 7-year-old child. The pedestrian test mannequins' specifications include a head, torso, two arms, and two articulating legs. The pedestrian test mannequin appears clothed in a black long-sleeved shirt and blue long pants. The black shirt and blue pants are selected to challenge a camera system, as the minimal contrast between the shirt and pants is challenging for a camera system to detect.

The physical dimensions of the pedestrian test mannequins are intended to be consistent with live pedestrians. NHTSA is proposing that the pedestrian test mannequins have the dimensions specified in ISO 19206–2:2018, which would be incorporated by reference into proposed 49 CFR part 561.

Evaluation of crash data indicates that the pedestrian injury and fatality safety problem is one that predominately affects adults, with adults aged 21 or older comprising 93 percent of all pedestrian fatalities.²³⁴ However, to address child pedestrian safety, NHTSA is proposing requirements for a scenario representing a child running into the street from an obstructed location, such as from behind a parked car. Children are among the most vulnerable road users, especially in the absence of adult supervision. Due to the small size of children, they can be obstructed from view until they are already in the travel path of a vehicle. This situation can be challenging for drivers and represents an area in which PAEB can also offer safety benefits.

Both the ISO Standard and SAE Recommended Practice J3116 set forth specifications for an adult and child test mannequin. The ISO Standard specifies a 50th percentile adult male test mannequin and a 6 to 7-year-old child test mannequin. The SAE recommendation specifies an adult test mannequin based on the average adult pedestrian involved in fatal pedestrian crashes, and a 6-year-old child test mannequin. The specific dimensions for the test mannequins differ slightly between the two recommended practices, but NHTSA has tentatively concluded that this difference is immaterial as it relates to this NPRM. As an example, one of the biggest differences in dimensions is the height of the adult test mannequin, where the ISO document specifies a height for the adult test mannequin of 1800 mm (70.9 in) with shoes and the SAE specifies a

height of 1715 mm (67.5 in) without shoes (the SAE recommended practice provides no recommendation for shoe height, or for a test mannequin with shoes).²³⁵ In considering the appropriate dimensions for the test mannequins used for AEB testing, NHTSA found most persuasive ISO 19206–2:2018, particularly due to the wide adoption of the specification and commercial availability of test mannequins based on the specification.²³⁶ Furthermore, NHTSA uses the test mannequins recommended in the ISO standard for all PAEB tests. NHTSA has no information on how a different recommendation for the test mannequin, such as the SAE recommended practice, would affect correlation between results and test repeatability. However, NHTSA requests comments on whether it would be more appropriate to use the SAE Recommended Practice specifications because they are more representative of the average pedestrian fatality.

For the remaining proposed PAEB scenarios, NHTSA is proposing to use only the adult test mannequin. For these scenarios, NHTSA is proposing specifications that are largely from ISO 19206–2:2018. However, for color and infrared reflectivity, including skin color, NHTSA is proposing specifications from ISO 19206–4:2020, “Road vehicles—test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 4: Requirements for bicyclists targets.”

NHTSA believes that it is important for PAEB performance requirements to ensure real world safety benefits across a broad spectrum of real-world pedestrian crash scenarios. While NHTSA understands that, for practical reasons the performance requirements cannot address every pedestrian crash scenario, NHTSA also seeks to understand better whether the specifications for the adult test mannequin in the ISO standards are reasonably sufficient to address the crash risks for pedestrians of other sizes, such as small adult women. NHTSA seeks comment on whether use of the 50th percentile adult male test mannequin ensures PAEB systems would react to small adult females and other pedestrians other than mid-size adult males.

²³⁵ A mannequin wearing shoes is representative of a person crossing the road. If considering a 30 mm (1.2 in) height for shoes the differences in height between the two recommended practices is 55 mm (2.2 in).

²³⁶ NHTSA is not aware of any commercially available test mannequins conforming to SAE J3116.

NHTSA has considered whether a small adult female mannequin is necessary. However, NHTSA is unaware of any standards providing specifications for a 5th percentile adult female test mannequin, or of any consumer information programs testing with such a device. Instead, NHTSA seeks comment on whether the child test mannequin also should be specified for use in all PAEB scenarios. Such an approach could better ensure that PAEB systems are able to perceive and respond to a larger range of pedestrians in the real world than if only the 50th percentile adult male test mannequin was prescribed. However, as NHTSA has not performed testing with the child test mannequin in all of the test scenarios, the agency requests comment on whether such a requirement is feasible or appropriate.

In summary, NHTSA is proposing to incorporate by reference the dimensions and posture specifications found in ISO 19206–2:2018 for a test mannequin representing a 50th percentile adult male and a 6- to 7-year-old child. NHTSA considers these specifications to be an appropriate representation for the test mannequins. Specifically, NHTSA is proposing to incorporate by reference the complete set of dimensions for the adult and child test mannequins found in Annex A, Table A.1 of ISO 19206–2:2018. NHTSA is also proposing to incorporate by reference Figures A.1 and A.2, which illustrate reference dimensions for the adult and child test mannequins.

3. Color and Reflectivity

Specifications for test mannequin skin color are not found in ISO 19206–2:2018. Further, while the standard provides specifications for reflectivity, it does not include procedures for measuring it. For these reasons, NHTSA is proposing to incorporate by reference the bicyclist mannequin specifications for color and reflectivity found in ISO 19206–4:2018, “Road vehicles—test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 4: Requirements for bicyclists targets.” Although this standard provides requirements for bicyclist test devices, NHTSA proposes to reference these specifications for color and reflectivity for the prescribed adult and child test mannequins because the specifications appear workable for use with the ISO Standard for pedestrian test devices. NHTSA is specifying that the test mannequins be of a color that matches a specified range of skin colors representative of very dark to very light complexions, with features that

²³⁴ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813079> Pedestrian Traffic Facts 2019 Data, May 2021.

represent hair, facial skin, hands, a long-sleeve black shirt, blue long pants, and black shoes.

NHTSA believes that the specifications in ISO 19206–4:2020 for color and infrared reflectivity for a bicyclist mannequin can be used for PAEB testing and should be incorporated by reference to fill in gaps in ISO 19206–2:2018 for those specifications. Not only would these specifications provide needed specifications for these features, but they also allow NHTSA to harmonize with specifications for test mannequins in use by Euro NCAP.

4. Radar Cross Section

Some PAEB systems use radar sensors to detect the presence of pedestrians. Accordingly, NHTSA is proposing that the pedestrian test mannequins have radar reflectivity characteristics that are representative of real pedestrians. Specifically, NHTSA is proposing that the radar cross section of the pedestrian test mannequin, when measured in accordance with procedures specified in ISO 19206–2:2018, Annex C, fall within the upper and lower boundaries shown in Annex B, Section B.3, Figure B.6.

5. Other Considerations

In addition to the characteristics specified in this proposal, NHTSA considered whether the test mannequins should have thermal characteristics. NHTSA believes there is a potential that thermal sensing technologies may be used in active safety systems in the future. While NHTSA does not want to dissuade manufacturers from developing or implementing such technology, the agency is not aware of any vehicle manufacturers currently using such technology for the detection of pedestrians as part of a PAEB system. NHTSA has also not conducted research on what specifications would be needed to ensure that a test mannequin has thermal characteristics that are representative of real-world pedestrians. Accordingly, NHTSA has not included thermal specifications for the pedestrian test mannequins in the draft regulatory text.

NHTSA also considered whether it was necessary to propose specifications for the motion of the pedestrian test mannequin carrier system. The carrier system is needed to control the speed (where applicable) and position of the pedestrian test device. Specifically, this equipment is needed to achieve the necessary closed-loop test scenario choreography between the subject vehicle and pedestrian test mannequin (e.g., lateral overlap relative to the front of the subject vehicle and desired

baseline contact points). ISO 19206–2:2018 provides recommended specifications in section 7. These specifications are designed to ensure that the carrier system is capable of positioning the pedestrian test mannequin relative to the target within the specific tolerances required by the different test procedures. Careful positioning is necessary because the relative position and speed of the subject vehicle and pedestrian test mannequin need to be consistent in order to achieve repeatable and reproducible test results.

However, ISO 19206–2:2018 also includes specifications intended to ensure that the carrier system minimally affects how the pedestrian test mannequin is perceived by the subject vehicle. Tentatively, NHTSA has concluded that including specifications for the pedestrian test mannequin carrier system itself is not necessary. This is primarily because no specific reflective or radar characteristics of the carrier system are needed to ensure objective and representative PAEB testing. Moreover, the characteristics of the carrier system should be irrelevant for conducting the test, as the carrier system ought not bear on the results of the test. To the extent that the carrier system is detected by a PAEB-equipped vehicle during compliance testing, NHTSA believes that such detection would not adversely affect the test result. Accordingly, NHTSA intends to use a carrier system for compliance testing that has minimal radar cross-section and minimal optical features based on test environment.

B. Vehicle Test Device

1. Description and Development

To ensure repeatable and reproducible testing that reflects how a subject vehicle would be expected to respond to an actual vehicle in the real world, this proposal includes broad specifications for a vehicle test device to be used as a lead vehicle, pass through vehicle, or obstructing vehicle during testing. NHTSA is proposing that the vehicle test device be based on certain specifications defined in ISO 19206–3:2021, “Road vehicles—Test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 3: Requirements for passenger vehicle 3D targets.”²³⁷ The vehicle test device is a tool that NHTSA proposes to use to facilitate the agency’s compliance tests to measure the performance of AEB

²³⁷ <https://www.iso.org/standard/70133.html>. May 2021.

systems required by the proposed FMVSS. This NPRM describes the vehicle test device that NHTSA would use.

The surrogate vehicle NHTSA currently uses in its research testing is the Global Vehicle Target (GVT). The GVT is a full-sized harmonized surrogate vehicle developed to test crash avoidance systems while addressing the limitations of earlier generation surrogate vehicles. To obtain input from the public and from industry stakeholders, NHTSA participated in a series of five public workshops and three radar tuning meetings between August 2015 and December 2016. These workshops and meetings provided representatives from the automotive industry with an opportunity to inspect, measure, and assess the realism of prototype surrogates during the various stages of development. Workshop and meeting participants were permitted to take measurements and collect data with their own test equipment, which they could then use to provide specific recommendations about how the surrogate vehicle’s appearance, to any sensor, could be improved to increase realism.

After feedback from automotive vehicle manufacturers and suppliers was incorporated into an earlier design of the GVT, a series of high-resolution radar scans were performed by the Michigan Tech Research Institute (MTRI) under NHTSA contract. These measurements provided an independent assessment of how the radar characteristics of the GVT compared to those from four real passenger cars.²³⁸ This study found that the GVT has generally less radar scatter than the real vehicles to which it was compared. However, MTRI found that “even though the [GVT] may more often reflect a greater amount of energy than the [real] vehicles, it is not exceeding the maximum energy of the returns from the vehicles. Thus, a sensor intended for the purpose of detecting vehicles should perform well with the [GVT].”²³⁹

NHTSA also performed tests to determine the practicality of using the GVT for test-track performance evaluations by examining how difficult it was to reassemble the GVT after it was struck in a test. Using a randomized matrix designed to minimize the effect

²³⁸ The comparison passenger cars used were a 2008 Hyundai Accent, a 2004 Toyota Camry, a 2016 Ford Fiesta hatchback, and a 2013 Subaru Impreza.

²³⁹ Buller, W., Hart, B., Aden, S., and Wilson, B. (2017, May) “Comparison of RADAR Returns from Vehicles and Guided Soft Target (GST).” Michigan Technological University, Michigan Tech Research Institute. Docket NHTSA–2015–0002–0007 (www.regulations.gov).

of learning, these tests were performed with teams of three or five members familiar with the GVT reassembly process.²⁴⁰ NHTSA found that reassembly of the GVT on the robotic platform takes approximately 10 minutes to complete; however, additional time is often required to re-initialize the robotic platform GPS afterwards.²⁴¹

Finally, NHTSA conducted its own crash imminent braking tests to compare the speed reduction achieved by three passenger cars as they approached the GVT, compared to the Strikable Surrogate Vehicle (SSV), the surrogate vehicle NHTSA currently uses for its NCAP AEB tests. These tests found that any difference that might exist between the GVT and the SSV were small enough to not appreciably influence the outcome of vehicle testing.²⁴²

When used during lead vehicle AEB testing, the GVT is secured to the top of a low-profile robotic platform. The robotic platform is essentially flat and is movable and programmable. The vehicle test device's movement can be accurately and repeatably defined and choreographed with the subject vehicle and testing lane through the use of data from the robotic platform's on-board inertial measurement unit, GPS, and closed-loop control facilitated by communication with the subject vehicle's instrumentation. The shallow design of the robotic platform allows the tested vehicle to drive over it. The GVT is secured to the top of the robotic platform using hook-and-loop fastener attachment points, which allow the pieces of the GVT to easily and safely break away without significant harm to the vehicle being tested if struck.

The internal frame of the GVT is constructed primarily of vinyl-covered foam segments held together with hook-and-loop fasteners. The GVT's exterior is comprised of multiple vinyl "skin" sections designed to provide the dimensional, optical, and radar characteristics of a real vehicle that can be recognized as such by camera and radar sensors.²⁴³ If the subject vehicle impacts the GVT at low speed, the GVT is typically pushed off and away from the robotic platform without breaking apart. At higher impact speeds, the GVT breaks apart as the subject vehicle essentially drives through it.

2. Specifications

The most recent widely accepted iteration of vehicle test device specifications is contained in ISO 19206–3:2021. Using data collected by measuring the fixed-angle/variable-range radar cross section for several real vehicles, ISO developed generic "acceptability corridors," which are essentially boundaries that the vehicle test device's radar cross section must fit within to be deemed representative of a real vehicle.²⁴⁴ All vehicles that ISO tested have radar cross section measurements that fit within the boundaries set forth in the ISO standard.

This proposal would incorporate by reference ISO 19206–3:2021 into NHTSA's regulations and specify that the vehicle test device meets several specifications in ISO 19206–3:2021, in addition to other specifications identified by NHTSA. Because the GVT was considered during the development of ISO 19206–3:2021, the GVT would meet the standard's specifications. However, should the design of the GVT change or a new vehicle test device be developed, reference to the more general specifications of ISO 19206–3:2021 should ensure that NHTSA is able to test with such other vehicle test devices, and should also ensure that such vehicle test devices have properties needed by an AEB system to identify it as a motor vehicle.

The vehicle test device's physical dimensions are proposed to be consistent with those of the subcompact and compact car vehicle class. The specific range of dimensions in this proposal for individual surfaces of the vehicle test device are incorporated from ISO 19206–3:2021, Annex A, Table A.4. These include specifications for the test device's width and the placement of the license plate, lights, and reflectors relevant to the rear-end of the vehicle test device.

The vehicle test device is proposed to have features printed on its surface to represent features that are identifiable on the rear of a typical passenger vehicle, such as tail lamps, reflex reflectors, windows, and the rear license plate. The proposed color ranges for the various surface features, including tires, windows, and reflex reflectors, are incorporated from ISO 19206–3:2021, Annex B, Tables B.2 and B.3. Table B.2 specifies the colors of the tires, windows, and reflectors, which reflect the colors observed in the real world. The color of the exterior of the

vehicle is specified to be a range representing the color white, which provides a high color contrast to the other identifiable features. White is also a common color for motor vehicles.²⁴⁵ The proposed reflectivity ranges for the various features on the vehicle test device are incorporated from ISO 19206–3:2021, Annex B, Table B.1. Table B.3 specifies the recommended minimum, mean, and maximum color range for the white body, specifically the outer cover.

Because many AEB systems rely on radar sensors in some capacity to identify the presence of other vehicles, the vehicle test device must have a radar cross section that would be recognized as a real vehicle by an AEB system. In particular, the vehicle test device must have a radar cross section consistent with a real vehicle when approached from the rear over a range of distances.

NHTSA is proposing that the radar cross section of the vehicle test device fall within an "acceptability corridor" when measured using an automotive-grade radar sensor. This acceptability corridor would be defined by the upper and lower boundaries specified by ISO 19206–3:2021, Annex C, Equations C.1 and C.2, using the radar cross section boundary parameters defined in ISO 19206–3:2021, Annex C, Table C.3 for a fixed viewing angle of 180 degrees. NHTSA is aware that, unlike some predecessor specification documents, such as Euro NCAP Technical Bulletin 025 from May 2018, the ISO standard does not specify that the radar cross section measurements be verified using a specific model of radar. Rather, the ISO standard specifies that the radar sensor used have certain specifications and operational characteristics. NHTSA's proposal similarly does not specify that the vehicle test device's initial radar cross section be measured with a specific model or brand of radar. NHTSA only proposes that the radar sensor used to validate the radar cross section operate within the 76–81 GHz bandwidth, have a horizontal field of view of at least 10 degrees, a vertical field of view of at least 5 degrees, and a range greater than 100 m (328 ft). Additionally, NHTSA's proposal does not specify that the VTD's radar cross section during in-the-field verifications be performed to objectively assess whether the radar cross section still falls within the acceptability corridor. NHTSA seeks comment about whether

²⁴⁰ Snyder, Andrew C. et al., "A Test Track Comparison of the Global Vehicle Target (GVT) and NHTSA's Strikeable Surrogate Vehicle (SSV)," July 2019 <https://rosap.nhtl.bts.gov/view/dot/41936>.

²⁴¹ Id.

²⁴² Id.

²⁴³ Id.

²⁴⁴ The vehicles tested to develop the ISO standard are: 2016 BMW M235i, 2006 Acura RL, 2019 Tesla Model 3, 2017 Nissan Versa, 2018 Toyota Corolla, and 2019 Ford Fiesta.

²⁴⁵ Globally, white was the most popular color for light vehicles in 2021. <https://gmauthority.com/blog/2022/02/white-was-the-most-popular-car-color-again-in-2021/#:~:text=According%20to%20PPG%2C%2035%20percent,by%20silver%20at%2011%20percent.>

use of the optional field verification procedure provided in ISO 19206–3:2021, Annex E, section E.3 should be used.

Because the test procedures proposed in this rule only involve rear-end approaches by the subject vehicle, NHTSA is at this time only proposing to establish specifications applicable for the rear-end of the vehicle test device. NHTSA seeks comment on whether the specifications for the vehicle test device should include sides of the vehicle, as well as the rear-end. If NHTSA were to include, in a final rule, specifications for sides of a vehicle test device, NHTSA anticipates that those specifications would also be incorporated from ISO 19206–3:2021.

3. Alternatives Considered

One alternative test device that NHTSA considered for use in its lead vehicle AEB evaluations was the agency's self-developed Strikable Surrogate Vehicle device, which NHTSA currently uses in its NCAP testing of AEB performance. NHTSA adopted the use of the SSV as part of its 2015 NCAP upgrade, under which the agency began testing AEB performance.²⁴⁶ The SSV resembles the rear section of a 2011 Ford Fiesta hatchback. The SSV is constructed primarily from a rigid carbon fiber mesh, which allows it to maintain a consistent shape over time (unless damaged during testing). To maximize visual realism, the SSV shell is wrapped with a vinyl material that simulates paint on the body panels and rear bumper, and a tinted glass rear window. The SSV is also equipped with a simulated United States specification rear license plate. The taillights, rear bumper reflectors, and third brake light installed on the SSV are actual original equipment from a production vehicle. NHTSA testing shows that AEB systems will recognize the SSV and will respond in a way that is comparable to how they would to an actual vehicle.²⁴⁷

While the SSV and GVT are both recognized as real vehicles by AEB systems from the rear approach aspect, the SSV has several disadvantages compared to the GVT. The foremost disadvantage of the SSV is how easily it can be irreparably damaged when struck by a subject vehicle during testing, particularly at high relative velocities. While NHTSA has tried to address this issue by attaching a foam bumper to the rear of the SSV to reduce

the peak forces resulting from an impact by the subject vehicle, the SSV can still easily be damaged to a point where it can no longer be used if the relative impact speed is sufficiently high (*i.e.*, >40 km/h (25 mph), which is much lower than the maximum relative impact speed of 80 km/h (50 mph) potentially encountered during the AEB tests performed at the maximum relative speeds proposed in this notice). Also, unlike the GVT, which has its movement controlled by precise programming and closed loop control, the SSV moves along a visible monorail secured to the test surface, which may be visible to a camera-based AEB system.

In addition to the vehicle test device specifications, NHTSA seeks comment on specifying a set of real vehicles to be used as vehicle test devices in AEB testing. UN ECE Regulation No. 152 specifies that the lead vehicle be either a regular high-volume passenger sedan or a "soft target" meeting the specifications of ISO 19206–1:2018.²⁴⁸ UN ECE regulation does not require the use of real vehicles as targets, but rather offers them as an alternative to manufacturers to homologate their systems, at their choice. Although NHTSA has tentatively concluded that the specification in UN ECE Regulation No. 152 of any high-volume passenger sedan is not sufficiently specific for an FMVSS, NHTSA seeks comment on whether it should create a list of vehicles from which NHTSA could choose a lead vehicle for testing. Unlike the UN ECE regulation, which provides flexibility to manufacturers, inclusion of a list of vehicles would provide flexibility to the agency in the assessment of the performance of AEB systems. Such a list would be in addition to the vehicle test device proposed in this document, to provide assurance of vehicle performance with a wider array of lead vehicles. For example, the list could include the highest selling vehicle models in 2020.

Using actual vehicles has various challenges, including the potential for risk to individuals conducting the tests and damage to the vehicles involved, and assuring a safe testing environment that could encounter high energy collisions between real vehicles in cases of poor AEB system performance or AEB or test equipment malfunctions. NHTSA seeks comment on the utility and feasibility of test laboratories safely conducting AEB tests with real vehicles,

such as through removing humans from test vehicles and automating scenario execution, and how laboratories would adjust testing costs to factor in the risk of damaged vehicles.

Beyond the practical safety limits and cost of testing described above, managing a list of relevant lead vehicles would require the standard to be updated periodically to keep pace with the vehicle fleet and to ensure that lead vehicles are available years after a final rule. NHTSA seeks comments on the merits and potential need for testing using real vehicles, in addition to using a vehicle test device, as well as challenges, limitations, and incremental costs of such.

IX. Proposed Effective Date Schedule

NHTSA is proposing that, within four years after publication of a final rule, all requirements for AEB would be applicable. Most requirements would have to be met within three years of the date of publication of the final rule. Small-volume manufacturers, final-stage manufacturers, and alterers would be provided an additional year (added to those above) to meet the requirements of the final rule.

NHTSA anticipates that nearly all vehicles subject to this proposal would already have the hardware capable of meeting the proposed requirements by the effective date of a final rule. An AEB system requires sensing, perception, warning hardware, and electronically modulated braking subsystems. The perception subsystem is comprised of computer software that analyzes information provided by the sensors and computational hardware to process the code. NHTSA anticipates that manufacturers will need time to build code that analyses the frontal view of the vehicle in a way that achieves the requirements of this proposed rule.

NHTSA has found that some manufacturers have already built systems that are capable of meeting some of the scenarios that are proposed. Therefore, for all lead vehicle AEB, PAEB daylight, PAEB darkness with upper beam headlamps, and most PAEB darkness with lower beam headlamps activated, NHTSA proposes a three-year lead time for manufacturers to build the needed software capabilities. NHTSA proposes a four-year lead time for the remaining higher speed PAEB scenarios. NHTSA expects manufacturers to create any new code needed to meet the second stage lead time requirements as well as to modify existing vehicle equipment such as headlamps to support the functionality of PAEB in darkness.

²⁴⁶ 80 FR 68604.

²⁴⁷ www.regulations.gov. NHTSA Docket Nos. NHTSA–2012–0057–0032, NHTSA–2012–0057–0034, and NHTSA–2012–0057–0039.

²⁴⁸ U.N. Regulation No. 152, E/ECE/TRANS/505/Rev.3/Add.151/Amend.1 (Nov. 4, 2020), available at <https://unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/2020/R152am1e.pdf>.

NHTSA is concerned about the potential costs and practicability burdens imposed on manufacturers. Given that darkness pedestrian avoidance technology is new, the agency believes that more time should be afforded to manufacturers to refine PAEB systems to meet the crash avoidance requirements for the higher end of the speed range in darkness conditions, compared to lead vehicle avoidance or lower speed pedestrian avoidance. The agency is also aware that implementing new technology outside of the normal vehicle redesign cycle can increase costs of implementation.

With these considerations, NHTSA is proposing a split compliance schedule. For requirements other than those proposed for the darkness pedestrian avoidance requirements at higher speeds, NHTSA proposes an effective date of the first September 1st that is at

least three years from the date of publication of a final rule. The proposed schedule then requires full compliance for all vehicles manufactured on or after the first September 1st four years after publication of a final rule.

X. Summary of Estimated Effectiveness, Cost, and Benefits

NHTSA's assessment of available safety data indicates that between 2016 and 2019, light vehicles averaged 1.12 million rear-impact crashes annually. These crashes resulted in an annual average of 394 fatalities, 142,611 non-fatal injuries, and an additional 1.69 million damaged vehicles. Additionally, between 2016 and 2019, an average of approximately 23 thousand crashes annually could potentially have been addressed by PAEB. These crashes resulted in an annual average of 2,642 pedestrian fatalities and 17,689 non-fatal injuries.

A. Target Population

The target population for the lead vehicle AEB analysis includes two-vehicle, rear-end light vehicle crashes and their resulting occupant fatalities and non-fatal injuries. FARS is used to obtain the target population for fatalities and CRSS is used to obtain the target population for property damage only crashes and occupant injuries. The target population includes two-vehicle light-vehicle to light-vehicle crashes in which the manner of collision is a rear-end crash and the first harmful event was a collision with a motor vehicle in transport. Further refinement includes limiting the analysis to crashes where the striking vehicle was traveling straight ahead prior to the collision at a speed less than 90 mph (145 km/h) and the struck vehicle was either stopped, moving, or decelerating.

TABLE 39—LIGHT VEHICLE TO LIGHT VEHICLE TARGET POPULATION

Light vehicle to light vehicle target population	Crashes	PDOs	Injuries						Fatalities
			MAIS1	MAIS2	MAIS3	MAIS4	MAIS5	MAIS 1–5	
All Conditions	1,119,470	1,692,678	130,736	9,364	1,942	256	57	142,611	394

The target population for the PAEB analysis considered only light vehicle crashes that included a single vehicle and pedestrian in which the first injury-causing event was contact with a pedestrian. The area of initial impact was limited to the front of the vehicle,

specified as clock points 11, 12, and 1, and the vehicle's pre-event movement was traveling in a straight line. These crashes were then categorized as either the pedestrian crossing the vehicle path or along the vehicle path. The crashes are inclusive of all light, road surface,

and weather conditions to capture potential crashes, fatalities, and injuries in real world conditions. Data elements listed as "unknown" were proportionally allocated, as needed.

TABLE 40—TARGET POPULATION OF PEDESTRIAN FATALITIES AND NON-FATAL INJURIES

Light vehicle to pedestrian target population	Injuries						Fatalities
	MAIS 1	MAIS 2	MAIS 3	MAIS 4	MAIS 5	MAIS 1–5	
All Scenarios	13,894	3,335	1,541	300	75	19,511	2,508
Crossing Path	12,637	3,087	1,442	284	71	17,522	2,083
Along Path	1,257	248	98	16	4	1,622	425

B. Lead Vehicle AEB System Effectiveness

Lead vehicle AEB system effectiveness was determined based on the expected injury risk reduction applied to current crashes resulting in injuries or fatalities. The target population was split into three groups corresponding to the three lead vehicle test scenarios (lead vehicles stopped, moving, and decelerating). The crashes in these scenarios were further categorized into two sub-groups: Those in which the striking vehicle driver did not apply the brakes prior to impact and those where the striking vehicle driver

applied the brakes as an avoidance maneuver. The baseline for the system effectiveness analysis assumed that the striking vehicle in the control group is not equipped with FCW or any AEB functionality. For the treatment group, NHTSA predicted the crash outcomes if the striking vehicle were equipped with an AEB system meeting the proposed performance requirements.

For crashes where the striking vehicle's operator did not apply the brakes, the initial event treatment section has two stages. The first stage covers when FCW activates, and the second stage covers how the driver reacts to the FCW warning. Depending

on whether the striking vehicle driver is predicted to react to the warning or not, the second stage models how the vehicle intervenes. If the striking vehicle driver reacts to the FCW and applies the brakes, the vehicle was modeled to provide supplemental braking. If the striking vehicle driver was predicted to not apply the brakes, the vehicle was modeled to apply the brakes automatically.

Similarly, for cases where the striking vehicle driver applied the brakes according to the crash database, the initial treatment section has two stages. The first stage models the driver's reaction to FCW and the second stage

models supplemental braking (there are no conditions for which the driver is modeled not to apply the brakes in this situation because NHTSA does not anticipate that an FCW will decrease the probability of a driver applying the brakes). For cases where the driver applied the brakes, it was assumed that, in response to a forward collision warning, the driver would apply the brakes sooner compared to the crash database and that the resulting deceleration would be greater as a result of supplemental braking.

Although NHTSA evaluated the crash data assuming the striking vehicles were not equipped with any AEB functionality, NHTSA does anticipate that lead vehicle AEB systems will have substantial voluntary market penetration, though at lower performance level than the proposed requirements in this NPRM. Therefore, the baseline (what the world would look like in the absence of the proposed regulation) takes into account voluntary installation of AEB. The baseline is incorporated by evaluating injury risk based on the expected difference in vehicle performance between a baseline vehicle and a vehicle meeting the proposed requirements. System effectiveness is estimated based on the calculated difference of the vehicle

striking speed between the baseline and proposed rule and the difference in injury risk for each group and sub-group described above.

C. PAEB System Effectiveness

To estimate PAEB system effectiveness, the target populations for along path and crossing path were further grouped by vehicle travel speed.

NHTSA assumes that a PAEB system meeting the proposed requirements would recognize a pedestrian standing or moving along the same longitudinal path as the vehicle and be able to identify the speed differential between the two. NHTSA also estimates that the PAEB system's capabilities include reaching a stop 55 centimeters in front of the pedestrian. Thus, in the absence of external mitigating factors (the impacts of these factors are included later in the analyses), NHTSA estimates that PAEB would prevent all fatalities along path scenarios when activated within the operational speed range up to 45 mph (73 km/h).

For pedestrian crossing path crashes, NHTSA first estimated the distribution of collision by the location along the front of the vehicle at which the pedestrians were struck. This step establishes the time in which the pedestrian is within the path of the vehicle for a crossing path situation.

This timing is important for NHTSA to model the PAEB system's ability to avoid or mitigate the crash (very short times do not provide much time for the PAEB system to react and thus the reduction in speed before the impact is low). After this, the effectiveness of a PAEB system that meets the proposed requirements is established for each travel speed.

To account for external physical factors impeding PAEB-braking system effectiveness, NHTSA adjusted the estimated fatalities prevented and non-fatal injuries that would be mitigated by PAEB downward by 10 percent. This assumption represents limitations associated with factors such as tire traction and pedestrian visibility due to inclement weather, contaminants on the roadway, changes in vehicle balance affecting traction, and poor tire and road maintenance.

D. Fatalities Avoided and Injuries Mitigated

Table 41 presents the safety benefits associated with the proposed rule. As a result of the proposed rule, NHTSA estimates that a total of 362 fatalities would be prevented, and 24,321 non-fatal (MAIS 1–5) injuries would be mitigated over the course of one vehicle model year's lifetime.

TABLE 41—SUMMARY OF SAFETY BENEFITS: FATALITIES PREVENTED AND NON-FATAL INJURIES MITIGATED

Category	Lead vehicle AEB	PAEB	Total
Non-fatal Injuries (MAIS 1–5)	21,649	2,672	24,321
Fatalities	124	238	362

The agency considers these estimates to be conservative because some benefits of the proposed rule may not be quantified. The target population does not include multiple-vehicle rear-end crashes. AEB is also likely to be effective at reducing some rear-end crashes where the struck vehicle is something other than a light vehicle, such as a heavy vehicle or motorcycle.

Additionally, these estimates are influenced by voluntary adoption of AEB. If voluntary performance levels are lower than the agency estimates, the benefits of the rule will be higher than estimated.

E. Costs

The analysis makes use of annual sales data between calendar year 2011–

2020 to estimate the number of vehicles subject to the proposed rule. Table 42 presents the annual sales of new light vehicles for 2011 through 2020. Over the ten-year period, an average of 15.7 million light vehicles were sold annually, of which approximately 40 percent were cars and 60 percent were light trucks.

TABLE 42—ANNUAL SALES OF NEW LIGHT VEHICLES
[Thousands]

Year	Cars	Light trucks	Total light vehicle sales
2011	6,093	6,449	12,542
2012	7,245	6,975	14,220
2013	7,586	7,693	15,279
2014	7,708	8,484	16,192
2015	7,529	9,578	17,107
2016	6,883	10,296	17,179
2017	6,089	10,738	16,827
2018	5,310	11,609	16,919
2019	4,720	11,911	16,630

TABLE 42—ANNUAL SALES OF NEW LIGHT VEHICLES—Continued
[Thousands]

Year	Cars	Light trucks	Total light vehicle sales
2020	3,402	10,712	14,114
Annual Average	6,257	9,445	15,701
(% of total LV sales)	(39.8)	(60.2)	(100)

Because common hardware is used across lead vehicle AEB and PAEB systems, specific system functionality can be achieved through upgraded software. Therefore, the incremental cost associated with this proposed rule reflects the cost of a software upgrade

that would allow current systems to achieve lead vehicle AEB and PAEB functionality that meets the requirements specified in the proposed rule. The incremental cost per vehicle is estimated at \$82.15 for each design cycle change of the model. When

accounting for design cycles and annual sales of new light vehicles, the total annual cost associated with the proposed rule is approximately \$282.16 million in 2020 dollars.

TABLE 43—TOTAL ANNUAL COST

Category	Number of vehicles (thousands)	Per vehicle cost		Total annual cost (millions)
		Design cycle	Annual	
Cars	6,257	\$82.15	\$27.38	\$171.32
Light Trucks	9,445		11.74	110.84
Total	15,701			282.16

Note: Values may not sum due to rounding.

F. Cost-Effectiveness

This proposed rule is highly cost effective. Based on cost-effectiveness and benefit-cost analyses, it is expected that society would be better off as a result of this proposed rule. When discounted at three and seven percent,

the cost per equivalent life saved under the proposed rule ranges from \$0.50 to \$0.62 million. Because the cost per equivalent life saved is less than the comprehensive economic cost of a fatality, the proposed rule is considered to be cost-effective.²⁴⁹ Furthermore,

when discounted at three and seven percent, the net benefits associated with the proposed rule are estimated at approximately \$6.52 and \$5.24 billion, respectively. Positive net benefits indicate that the proposed rule generates a net benefit to society.

TABLE 44—SUMMARY OF COSTS AND BENEFITS

Benefits			Total cost (millions)	Cost per equivalent life saved (millions)		Net benefits (millions)	
Equivalent fatalities	Monetized benefits (millions)			3%	7%	3%	7%
	3%	7%					
675	\$6,802	\$5,518	\$282.16	\$0.50	\$0.62	\$6,520	\$5,235

G. Comparison of Regulatory Alternatives

To explore fully other possible rulemaking options, the agency examined a variety of combinations of performance requirements, with greater and lesser stringency than the preferred alternative. NHTSA evaluated regulatory alternatives for this rulemaking. These regulatory options were: (1) Requiring light vehicles to meet the proposed lead vehicle AEB

requirements only (no requirements for PAEB), (2) PAEB systems requirements only during daylight conditions (no change to the lead vehicle AEB requirements in the proposed rule), and (3) adding PAEB requirements in turning scenarios in addition to the requirements proposed in this NPRM (no change to the lead vehicle AEB requirements in the proposed rule). The last option, adding PAEB requirements in turning scenarios, is the only option that is expected to require new

hardware in addition to software to cover a wider field of view when the vehicle is turning. The added sensors contributed to the higher projected cost per vehicle and the low anticipated benefits from adding these scenarios contributed to the higher estimated cost per equivalent life saved shown in Table 45. When comparing cost-effectiveness and benefit-cost measures across regulatory options, the proposed rule is the most cost-effective option and also offers the highest net benefits.

²⁴⁹ The PRIA presents the Value of a Statistical Life as \$11.6 million based on the "Revised

Departmental Guidance, Treatment of Value of

Preventing Fatalities and Injuries in Preparing Economic Analyses", March 2021.

TABLE 45—SUMMARY OF REGULATORY ALTERNATIVES

Regulatory options	Relative to preferred option	Cost per equivalent life saved (millions)		Net benefits (millions)	
		3%	7%	3%	7%
Option #1: Lead Vehicle AEB Requirements	Less Stringent	\$0.88	\$1.09	\$3,650	\$2,910
Option #2: Daylight only PAEB	Less Stringent	0.71	0.87	4,594	3,674
Option #3: Proposed Rule	Preferred Option	0.50	0.62	6,520	5,235
Option #4: Add turning scenarios for PAEB	More Stringent	3.13	3.86	5,447	4,062

XI. Regulatory Notices and Analyses

Executive Orders 12866, 13563, and 14094 and DOT Regulatory Policies and Procedures

The agency has considered the impact of this rulemaking action under Executive Order (E.O.) 12866, E.O. 13563, E.O. 14094, and the Department of Transportation's regulatory procedures. This rulemaking is considered "(3)(f)(1) significant" and was reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review," as amended by E.O. 14094, "Modernizing Regulatory Review." It is expected to have an annual effect on the economy of \$200 million or more. NHTSA has prepared a preliminary regulatory impact analysis that assesses the cost and benefits of this proposed rule, which has been included in the docket listed at the beginning of this NPRM. The benefits, costs, and other impacts of this NPRM are summarized in the prior section of this NPRM.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. I certify that this NPRM would not have a significant economic impact on a substantial number of small entities.

The PRIA discusses the economic impact of the proposed rule on small vehicle manufacturers, of which NHTSA is aware of 12. NHTSA believes that this proposed rule would not have a significant economic impact on these manufacturers. Much of the work developing and manufacturing AEB system components would be conducted by suppliers. Although the final certification would be made by the manufacturer, this proposal would allow one additional year for small-volume manufacturers to comply with any requirement. This approach is similar to the approach we have taken in other rulemakings in recognition of manufacturing differences between

larger and smaller manufacturers. This NPRM proposes a phased compliance schedule to attain lead vehicle AEB and PAEB safety benefits as soon as practicable, while providing more time to develop technology improvements, such as those needed to meet darkness PAEB requirements. As the countermeasures are developed, AEB suppliers would likely supply larger vehicle manufacturers first, before small manufacturers. This NPRM recognizes this and proposes to provide smaller manufacturers flexibility, so they have time to obtain the equipment and work with the suppliers after the demands of the larger manufacturers are met.

This proposal may also affect final stage manufacturers, many of whom would be small businesses. However, it is NHTSA's understanding that final stage manufacturers rarely make modifications to a vehicle's braking system and instead rely upon the pass-through certification provided by a first-stage manufacturers. As with small-volume manufacturers, final stage manufacturers would be provided with one additional year to comply with any requirement.

Additional information concerning the potential impacts of this proposal on small business is presented in the PRIA accompanying this proposal.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) ²⁵⁰ requires Federal agencies to analyze the environmental impacts of proposed major Federal actions significantly affecting the quality of the human environment, as well as the impacts of alternatives to the proposed action. ²⁵¹ The Council on Environmental Quality (CEQ) directs federal agencies to prepare an environmental assessment for a proposed action "that is not likely to have significant effects or when the significance of the effects is unknown." ²⁵² When a Federal agency prepares an environmental assessment,

CEQ's NEPA implementing regulations require it to (1) "[b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact;" and (2) "[b]riefly discuss the purpose and need for the proposed action, alternatives . . . , and the environmental impacts of the proposed action and alternatives, and include a listing of agencies and persons consulted." ²⁵³

This section serves as NHTSA's Draft Environmental Assessment (EA). In this Draft EA, NHTSA outlines the purpose and need for the proposed rulemaking, a reasonable range of alternative actions the agency could adopt through rulemaking, and the projected environmental impacts of these alternatives.

Purpose and Need

This NPRM sets forth the purpose of and need for this action. In this NPRM, NHTSA proposes to adopt a new FMVSS to require AEB systems on light vehicles that are capable of reducing the frequency and severity of both lead vehicle rear-end (lead vehicle AEB) and pedestrian crashes (PAEB). As explained earlier in this preamble, the AEB system improves safety by using various sensor technologies and sub-systems that work together to detect when the vehicle is in a crash imminent situation, to automatically apply the vehicle brakes if the driver has not done so, or to apply more braking force to supplement the driver's braking, thereby detecting and reacting to an imminent crash with a lead vehicle or pedestrian. This NPRM promotes NHTSA's goal to reduce the frequency and severity of crashes described in the summary of the crash problem discussed earlier in the NPRM, and advances DOT's January 2022 National Roadway Safety Strategy that identified requiring AEB, including PAEB technologies, on new passenger vehicles as a key Departmental action to enable safer vehicles. This NPRM also responds to a mandate under the Bipartisan Infrastructure Law (BIL)

²⁵⁰ 42 U.S.C. 4321–4347.

²⁵¹ 42 U.S.C. 4332(2)(C).

²⁵² 40 CFR 1501.5(a).

²⁵³ 40 CFR 1501.5(c).

directing the Department to promulgate such a rule.

Alternatives

NHTSA has considered four regulatory alternatives for the proposed action and a “no action alternative.” Under the no action alternative, NHTSA would not issue a final rule requiring that vehicles be equipped with systems that meet minimum specified performance requirements, and manufacturers would continue to add AEB systems voluntarily. However, since the BIL directs NHTSA to promulgate a rule that would require that all passenger vehicles be equipped with an AEB system, the no action alternative is not a permissible option. Alternative 1 considers requirements specific to lead vehicle AEB only. Alternative 2 includes the lead vehicle AEB requirements in Alternative 1 and a requirement in which PAEB is only required to function in daylight conditions. Alternative 3, the preferred alternative, considers requirements for lead vehicle AEBs and PAEB requirements in both daylight and darkness conditions. Alternative 4 considers a more-stringent requirement in which PAEB would be required to provide pedestrian protections in turning scenarios (no change to the lead vehicle AEB requirements in the proposed rule).

NHTSA has also considered the International Organization for Standardization (ISO) standards, SAE International standards, the Economic Commission for Europe (ECE) standards, test procedures used by NHTSA’s New Car Assessment Program (NCAP) and Euro NCAP, and more which are described above in this preamble and accompanying appendixes. In the proposed rule, NHTSA incorporates aspects of the test procedures and standards mentioned here, but departs from them in numerous and significant ways.

Environmental Impacts of the Proposed Action and Alternatives

This proposed rule is anticipated to result in the employment of sensor technologies and sub-systems on light vehicles that work together to sense when a vehicle is in a crash imminent situation, to automatically apply the vehicle brakes if the driver has not done so, and to apply more braking force to supplement the driver’s braking. This proposed rule is also anticipated to improve safety by mitigating the amount of fatalities, non-fatal injuries, and property damage that would result from crashes that could potentially be prevented or mitigated because of AEB.

As a result, the primary environmental impacts²⁵⁴ that could potentially result from this rulemaking are associated with: greenhouse gas emissions and air quality, socioeconomics, public health and safety, solid waste/property damage/congestion, and hazardous materials. Consistent with CEQ regulations and guidance, this EA discusses impacts in proportion to their potential significance. The effects of the proposed rulemaking that were analyzed further are summarized below.

Greenhouse Gas Emissions and Air Quality

NHTSA has previously recognized that additional weight required by FMVSS could potentially negatively impact the amount of fuel consumed by a vehicle, and accordingly result in greenhouse gas emissions or air quality impacts from criteria pollutant emissions. Atmospheric greenhouse gases (GHGs) affect Earth’s surface temperature by absorbing solar radiation that would otherwise be reflected back into space. Carbon dioxide (CO₂) is the most significant greenhouse gas resulting from human activity. Motor vehicles emit CO₂ as well as other GHGs, including methane and nitrous oxides, in addition to criteria pollutant emissions that negatively affect public health and welfare.

Additional weight added to a vehicle, like added hardware from safety systems, can cause an increase in vehicle fuel consumption and emissions. An AEB system requires the following hardware: sensing, perception, warning hardware, and electronically modulated braking subsystems. As discussed in the preamble and the PRIA, NHTSA anticipates that under the no-action alternative and Alternatives 1–3, nearly all vehicles subject to the proposal would already have all of the hardware capable of meeting the proposed requirements by the effective date of a final rule. For all alternatives, NHTSA assumes that manufacturers will need time to build code that analyses the frontal view of the vehicle (*i.e.*, manufacturers would need to upgrade the software for the perception subsystem) in a way that achieves the requirements of this proposed rule, but no additional hardware would need to

²⁵⁴ NHTSA anticipates that the proposed action and alternatives would have negligible or no impact on the following resources and impact categories, and therefore has not analyzed them further: topography, geology, soils, water resources (including wetlands and floodplains), biological resources, resources protected under the Endangered Species Act, historical and archeological resources, farmland resources, environmental justice, and Section 4(f) properties.

be added. Alternative 4 does include an assumption that two cameras will be added; however, based on weight assumptions included in studies cited in the PRIA, that weight impact would be minimal, at approximately 1570 grams, or 3.46 pounds. NHTSA has previously estimated that a 3–4-pound increase in vehicle weight is projected to reduce fuel economy by 0.01 mpg.²⁵⁵ Accordingly, while Alternatives 1–3 would not have any fuel economy penalty because no hardware would be added, Alternative 4 would potentially have a negligible fuel economy penalty.

Pursuant to the Clean Air Act (CAA), the U.S. Environmental Protection Agency (EPA) has established a set of National Ambient Air Quality Standards (NAAQS) for the following “criteria” pollutants: carbon monoxide (CO), nitrogen dioxide (NO₂), ozone, particulate matter (PM) less than 10 micrometers in diameter (PM₁₀), PM less than 2.5 micrometers in diameter (PM_{2.5}), sulfur dioxide (SO₂), and lead (Pb). The NAAQS include “primary” standards and “secondary” standards. Primary standards are intended to protect public health with an adequate margin of safety. Secondary standards are set at levels designed to protect public welfare by accounting for the effects of air pollution on vegetation, soil, materials, visibility, and other aspects of the general welfare. Under the General Conformity Rule of the CAA,²⁵⁶ EPA requires a conformity determination when a Federal action would result in total direct and indirect emissions of a criteria pollutant or precursor originating in nonattainment or maintenance areas equaling or exceeding the emissions thresholds specified in 40 CFR 93.153(b)(1) and (2). However, the General Conformity Rule does not require a conformity determination for Federal actions that are “rulemaking and policy development and issuance,” such as this action.²⁵⁷ Therefore, NHTSA has determined it is not required to perform a conformity analysis for this action.

Socioeconomics

The socioeconomic impacts of the proposed rulemaking would be primarily felt by vehicle manufacturers, light vehicle drivers, passengers, and pedestrians on the road that would

²⁵⁵ Final Regulatory Impact Analysis, Corporate Average Fuel Economy for MYs 2012–2016 Passenger Cars and Light Trucks, Table IV–5 (March 2010).

²⁵⁶ Section 176(c) of the CAA, codified at 42 U.S.C. 7506(c); To implement CAA Section 176(c), EPA issued the General Conformity Rule (40 CFR part 51, subpart W and part 93, subpart B).

²⁵⁷ 40 CFR 93.153(c)(2)(iii).

otherwise be killed or injured in light vehicle crashes. NHTSA conducted a detailed assessment of the economic costs and benefits of establishing the new rule in its PRIA. The main economic benefits come primarily from the reduction in fatalities and non-fatal injuries (safety benefits). Reductions in the severity of motor vehicle crashes would be anticipated to have corresponding reductions in costs for medical care, emergency services, insurance administrative costs, workplace costs, and legal costs due to the fatalities and injuries avoided. Other socioeconomic factors discussed in the PRIA that would affect these parties include software costs and property damage savings. Overall, Alternative 1 is anticipated to have societal net benefits of \$2.91 to \$3.65 billion, Alternative 2 is anticipated to have societal net benefits of \$3.67 to \$4.59 billion, Alternative 3 (the preferred alternative) is anticipated to have societal net benefits of \$5.24 to \$6.52 billion, and Alternative 4 is anticipated to have societal net benefits of \$4.06 to \$5.45 billion. The PRIA discusses this information in further detail.

Public Health and Safety

The affected environment for public health and safety includes roads, highways and other driving locations used by all light vehicle drivers, other drivers, passengers in light vehicles and other motor vehicles, and pedestrians or other individuals who could be injured or killed in crashes involving the vehicles regulated by the proposed action. In the PRIA, the agency determined the impacts on public health and safety by estimating the reduction in fatalities and injuries resulting from the decreased crash severity due to the use of AEB systems under the four action alternatives. Under Alternative 1, it is expected that the addition of a less stringent requirement that only specifies requirements for lead vehicle AEB would result each year in 260 to 320 equivalent lives saved. Under Alternative 2, it is expected that the less-stringent requirement, in which PAEB is only required to function in daylight conditions, would result each year in 323 to 398 equivalent lives saved. Under Alternative 3 (the preferred alternative), it is expected that the regulatory option would result each year in 454 to 559 equivalent lives saved. Finally, under Alternative 4, it is expected that the addition of more stringent requirements in which PAEB would be required to provide pedestrian protections in turning scenarios would result each year in 490 to 604 equivalent

lives saved. The PRIA discusses this information in further detail.

Solid Waste/Property Damage/ Congestion

Vehicle crashes can generate solid wastes and release hazardous materials into the environment. The chassis and engines, as well as associated fluids and components of automobiles and the contents of the vehicles, can all be deemed waste and/or hazardous materials. Solid waste can also include damage to the roadway infrastructure, including road surface, barriers, bridges, and signage. Hazardous materials are substances that may pose a threat to public safety or the environment because of their physical, chemical, or radioactive properties when they are released into the environment, in this case as a result of a crash.

NHTSA's proposed rulemaking is projected to reduce the amount and severity of light vehicle crashes, and therefore may reduce the quantity of solid waste, hazardous materials, and other property damage generated by light vehicle crashes in the United States. The addition of an AEB system may also result in reduced damage to the vehicles and property, as well as reduced travel delay costs due to congestion. This is especially the case in "property damage only" crashes, where no individuals are injured or killed in the crash, but there may be damage to the vehicle or whatever is impacted by it. NHTSA estimates that based off data from 2016–2019 alone, an average of 1.12 million rear-impact crashes involving light vehicles occurred annually. These crashes resulted in an annual average of 394 fatalities, 142,611 non-fatal injuries, and approximately 1.69 million property damage only vehicles (PDOV).

Less solid waste translates into cost and environmental savings from reductions in the following areas: (1) transport of waste material, (2) energy required for recycling efforts, and (3) landfill or incinerator fees. Less waste will result in beneficial environmental effects through less GHG emissions used in the transport of it to a landfill, less energy used to recycle the waste, less emissions through the incineration of waste, and less point source pollution at the scene of the crash that would result in increased emissions levels or increased toxins leaking from the crashed vehicles into the surrounding environment.

The addition of an AEB system may also result in reduced post-crash environmental effects from congestion. As discussed in the PRIA, NHTSA's monetized benefits are calculated by

multiplying the number of non-fatal injuries and fatalities mitigated by their corresponding "comprehensive costs." The comprehensive costs include economic costs that are external to the value of a statistical life (VSL) costs, such as emergency management services or legal costs, and congestion costs. NHTSA has recognized that motor vehicle crashes result in congestion that has both socioeconomic and environmental effects. These environmental effects include "wasted fuel, increased greenhouse gas production, and increased pollution as engines idle while drivers are caught in traffic jams and slowdowns."²⁵⁸ NHTSA's monetized benefits therefore do include a quantified measure of congestion avoidance. NHTSA did not calculate congestion effects specifically for each regulatory alternative, however, because comprehensive costs are a discrete cost applied to non-fatal injuries and fatalities at the same rate, we can conclude that there are increasing benefits associated with fewer crashes, and specifically decreased congestion, as the monetized benefits increase across regulatory alternatives. To the extent that any regulatory option for AEB results in fewer crashes and accordingly higher monetized benefits, there would be fewer congestion-related environmental effects.

NHTSA has tentatively concluded that under the agency's proposal, the economic benefits resulting from improved safety outcomes, property damage savings, fuel savings, and GHG reductions would not only limit the negative environmental impacts caused by additional solid waste/property damage due to crashes but also would limit such effects. Similarly, while the potential degree of hazardous materials spills prevented due to the reduction of crash severity and crash avoidance expected from the rulemaking has not specifically been analyzed in the PRIA or NPRM, the addition of the AEB system is projected to reduce the amount and severity of light vehicle crashes and may improve the environmental effects with respect to hazardous material spills. While the PRIA does not specifically quantify these impact categories, in general NHTSA believes the benefits would increase relative to the crashes avoided and would be relative across the different alternatives. The PRIA

²⁵⁸ Blincoe, L.J., Miller, T.R., Zaloshnja, E., & Lawrence, B.A. (2015, May). The economic and societal impact of motor vehicle crashes, 2010. (Revised) (Report No. DOT HS 812 013). Washington, DC: National Highway Traffic Safety Administration.

discusses information related to quantified costs and benefits of crashes, and in particular property damage due to crashes, for each regulatory alternative in further detail.

Cumulative Impacts

In addition to direct and indirect effects, CEQ regulations require agencies to consider cumulative impacts of major Federal actions. CEQ regulations define cumulative impacts as the impact “on the environment that result from the incremental [impact] of the action when added to . . . other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”²⁵⁹ NHTSA notes that the public health and safety, solid waste/property damage/congestion, air quality and greenhouse gas emissions, socioeconomic, and hazardous material benefits identified in this EA were based on calculations described in the PRIA, in addition to other NHTSA actions and studies on motor vehicle safety. That methodology required the agency to adjust historical figures to reflect vehicle safety rulemakings that have recently become effective. As a result, many of the calculations in this EA already reflect the incremental impact of this action when added to other past actions.

NHTSA’s and other parties’ past actions that improve the safety of light vehicles, as well as future actions taken by the agency or other parties that improve the safety of light vehicles, could further reduce the severity or number of crashes involving light vehicles. Any such cumulative improvement in the safety of light vehicles would have an additional effect in reducing injuries and fatalities and could reduce the quantity of solid and hazardous materials generated by crashes. With regard to vehicle fuel use that leads to criteria air pollutant and GHG emissions, Federal or State actions, like NHTSA’s Corporate Average Fuel Economy standards for light duty vehicles or EPA’s greenhouse gas and criteria pollutant emissions standards for light duty vehicles, may result in additional emissions reductions by light vehicles in the future.

Agencies and Persons Consulted

This preamble describes the various materials, persons, and agencies consulted in the development of the proposal.

Finding of No Significant Impact

Although this rule is anticipated to result in increased FMVSS requirements for light vehicle manufacturers, AEB systems have already largely been introduced by manufacturers voluntarily. The addition of regulatory requirements (depending on the regulatory alternative) to standardize the AEB systems in all vehicle models is anticipated to result in no or negligible fuel economy and emissions penalties (*i.e.*, only Alternative 4 would potentially require additional hardware, but the added weight is negligible), increasing socioeconomic and public safety benefits as the alternatives get more stringent, and an increase in benefits from the reduction in solid waste, property damage, and congestion (including associated traffic level impacts like reduction in energy consumption and tailpipe pollutant emissions) from fewer vehicle crashes across the regulatory alternatives.

Based on the information in this Draft EA and assuming no additional information or changed circumstances, NHTSA expects to issue a Finding of No Significant Impact (FONSI).²⁶⁰ NHTSA has tentatively concluded that none of the impacts anticipated to result from the proposed action and alternatives under consideration will have a significant effect on the human environment. Such a finding will be made only after careful review of all public comments received. A Final EA and a FONSI, if appropriate, will be issued as part of the final rule.

Executive Order 13132 (Federalism)

NHTSA has examined this NPRM pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concludes that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The NPRM 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.”

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a

motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law. 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved.

However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA’s rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer’s compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this proposed rule could or should preempt State common law causes of action. The agency’s ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation. To this end, the agency has examined the nature (*i.e.*, the language and structure of the regulatory text) and objectives of this proposed rule and finds that this rule, like many NHTSA

²⁵⁹ 40 CFR 1508.1(g)(3).

²⁶⁰ 40 CFR 1501.6(a).

rules, would prescribe only a minimum safety standard. As such, NHTSA does not intend this NPRM to preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers rule. Establishment of a higher standard by means of State tort law will not conflict with the minimum standard adopted here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

Civil Justice Reform

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly 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. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this rulemaking is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Paperwork Reduction Act (PRA)

Under the PRA of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There are no “collections of information” (as defined at 5 CFR 1320.3(c)) in this NPRM.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that

are developed or adopted by voluntary consensus standards bodies, such as the International Organization for Standardization and SAE International. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

NHTSA is proposing to incorporate by reference ISO and ASTM standards into this proposed rule. NHTSA considered several ISO standards and has proposed to use ISO 19206–3:2021 to specify the vehicle test device and a combination of ISO 19206–2:2018 and ISO 19206–4:2020 to specify the test mannequins. NHTSA is incorporating by reference ASTM E1337–19, which is already incorporated by reference into many FMVSSs, to measure the peak braking coefficient of the testing surface.

NHTSA considered SAE International Recommended Practice J3087, “Automatic emergency braking (AEB) system performance testing,” which define the conditions for testing AEB and FCW systems. This standard defines test conditions, test targets, test scenarios, and measurement methods, but does not provide performance criteria. There is considerable overlap in the test setup and conditions between this proposed rule and the SAE standard including the basic scenarios of lead vehicle stopped, slower moving, and decelerating. This SAE recommended practice is substantially similar to the existing NCAP test procedures and this proposal.

NHTSA also considered SAE International Standard J3116, “Active Safety Pedestrian Test Mannequin Recommendation,” which provides recommendations for the characteristics of a surrogate that could be used in testing of active pedestrian safety systems. NHTSA proposed to incorporate the ISO standard because the ISO Standard specifications are more widely adopted than the SAE Recommended Practice. However, NHTSA requests comments on whether it would be more appropriate to use the SAE Recommended Practice specifications because they are more representative of the average pedestrian fatality.

In Appendix B of this preamble, NHTSA describes several international test procedures and regulations the agency considered for use in this NPRM. This proposed rule has substantial technical overlap with UNECE Regulation No. 131 and UNECE Regulation No. 152. This proposal and the UNECE regulations both specify a forward collision warning and automatic emergency braking. Several

lead vehicle AEB scenarios are nearly identical, including the lead vehicle stopped and lead vehicle moving scenarios. The pedestrian crossing path scenario specified in UNECE Regulation No. 152 is substantially similar to this NPRM. As discussed in the preamble, this proposed rule differs from the UNECE standards in the areas of maximum test speed and the minimum level of required performance. This proposed rule uses higher test speeds and a requirement that the test vehicle avoid contact. This approach would increase the repeatability of the test and maximize the realized safety benefits of the rule.

Incorporation by Reference

Under regulations issued by the Office of the Federal Register (1 CFR 51.5(a)), an agency, as part of a proposed rule that includes material incorporated by reference, must summarize material that is proposed to be incorporated by reference and discuss the ways the material is reasonably available to interested parties or how the agency worked to make materials available to interested parties.

In this NPRM, NHTSA proposes to incorporate by reference six documents into the Code of Federal Regulations, one of which is already incorporated by reference. The document already incorporated by reference into 49 CFR part 571 is ASTM E1337, “Standard Test Method for Determining Longitudinal Peak Braking Coefficient (PBC) of Paved Surfaces Using Standard Reference Test Tire.” ASTM E1337 is a standard test method for evaluating peak braking coefficient of a test surface using a standard reference test tire using a trailer towed by a vehicle. NHTSA uses this method in all of its braking and electronic stability control standards to evaluate the test surfaces for conducting compliance test procedures.

NHTSA is also proposing to incorporate by reference into part 571 SAE J2400 “Human Factors in Forward Collision Warning System: Operating Characteristics and User Interface Requirements.” SAE J2400 is an information report that is intended as a starting point of reference for designers of forward collision warning systems. NHTSA would incorporate this document by reference solely to specify the location specification and symbol for a visual forward collision warning.

NHTSA is proposing to incorporate by reference four ISO standards into 49 CFR part 596. The first of these standards is ISO 3668:2017, “Paints and varnishes—Visual comparison of colour of paints.” This document specifies a

method for the visual comparison of the color of paints against a standard. This method would be used to verify the color of certain elements of the pedestrian test mannequin NHTSA is proposing to use in PAEB testing. Specifically, NHTSA is using these procedures in order to determine that the color of the hair, torso, arms, and feet of the pedestrian test mannequin is black and that the color of the legs are blue.

NHTSA is also proposing to incorporate by reference ISO 19206–2:2018(E), “Road vehicles—Test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 2: Requirements for pedestrian targets.” This document addresses the specification for a test mannequin. It is designed to resemble the characteristics of a human, while ensuring the safety of the test operators and preventing damage to subject vehicles in the event of a collision during testing. NHTSA is referencing many, but not all, of the specifications of ISO 19206–2:2018(E), as discussed in section VIII.A of this NPRM.

NHTSA is also proposing to incorporate by reference ISO 19206–3:2021(E), “Test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 3: Requirements for passenger vehicle 3D targets.” This document provides specification of three-dimensional test devices that resemble real vehicles. Like the test mannequin described in the prior paragraph, it is designed to ensure the safety of the test operators and to prevent damage to subject vehicles in the event of a collision during testing. NHTSA is referencing many, but not all, of the specifications of ISO 19206–3:2021(e), as discussed in section VIII.B of this NPRM.

Finally, NHTSA is proposing to incorporate by reference ISO 19206–4:2020, “Road vehicles—test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 4: Requirements for bicyclists targets.” This standard describes specifications for bicycle test devices, which are representative of adult and child sizes. However, NHTSA is not proposing to use a bicycle test device during testing. Rather, this standard is incorporated by reference solely because it contains specifications for color and reflectivity, including skin color, that NHTSA is applying to its pedestrian test mannequin.

All standards proposed to be incorporated by reference in this NPRM

are available for review at NHTSA’s headquarters in Washington, DC, and for purchase from the organizations promulgating the standards. The ASTM standard presently incorporated by reference into other NHTSA regulations is also available for review at ASTM’s online reading room.²⁶¹

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by States, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for 2021 results in an estimated current value of \$165 million (2021 index value of 113.07/1995 index value of 68.60 = 1.65). The assessment may be included in conjunction with other assessments, as it is here.

A proposed rule on lead vehicle AEB and PAEB is not likely to result in expenditures by State, local or tribal governments of more than \$100 million annually. However, it is estimated to result in the estimated expenditure by automobile manufacturers and/or their suppliers of \$282 million annually (estimated to be \$27.38 per passenger car and \$11.74 per light truck annually). This range in estimated cost impacts reflects that the estimated incremental costs depend on a variety of lead vehicle AEB hardware and software that manufacturers plan to install (in vehicles used as “baseline” for the cost estimate). The final cost will greatly depend on choices made by the automobile manufacturers to meet the lead vehicle AEB and PAEB test requirements. These effects have been discussed in this Preliminary Regulatory Impact Analysis in Chapter 5.3.

The Unfunded Mandates Reform Act requires the agency to select the “least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.” As an alternative, the agency considered a full-vehicle dynamic test to evaluate the capability of lead vehicle AEB and PAEB systems to prevent crashes or mitigate the severity of crashes. Based on our experience on conducting vehicle tests for vehicles equipped with lead vehicle AEB and PAEB where we utilize a reusable surrogate target crash vehicle and test mannequins instead of

conducting the test with an actual vehicle as the target, we determined that full vehicle-to-vehicle crash tests can have an undesired amount of variability in vehicle kinematics. Unlike vehicle-to-vehicle tests, the lead vehicle AEB and PAEB tests with a surrogate target vehicle is conducted in a well-controlled test environment, which results in an acceptable amount of variability. In addition, the agency’s lead vehicle AEB and PAEB tests with surrogate target vehicle and pedestrian were able to reveal deficiencies in the system that resulted in inadequate system capability in detecting and activating the brakes. Therefore, we concluded that a full vehicle-to-vehicle test would not achieve the objectives of the rule.

In addition, the agency evaluated data across a broad range of test scenarios in an effort to identify the maximum range of test speeds at which it is feasible for test vehicles to achieve a no-contact result. The range of feasible speeds identified in the review was specified as the mandated range in the proposed rule. Thus, there are no alternative test procedures available that would improve the ability of manufacturers to achieve no-contact results. In turn, the agency concluded that lead vehicle AEB and PAEB systems designed to meet the no-contact requirement at speeds outside the ranges specified in the proposed rule would not achieve the objectives of the rule.

Executive Order 13609 (Promoting International Regulatory Cooperation)

The policy statement in section 1 of E.O. 13609 states, in part, that the regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues and that, in some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. The E.O. states that, in meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation, and that international regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. NHTSA requests public comment on the “regulatory approaches taken by foreign governments” concerning the subject matter of this rulemaking.

²⁶¹ <https://www.astm.org/READINGLIBRARY/>.

Regulation Identifier Number

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
 - Are the requirements in the rule clearly stated?
 - Does the rule contain technical language or jargon that isn't clear?
 - Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
 - Would more (but shorter) sections be better?
 - Could we improve clarity by adding tables, lists, or diagrams?
 - What else could we do to make the rule easier to understand?
- If you have any responses to these questions, please write to us with your views.

XII. Public Participation

How long do I have to submit comments?

Please see the **DATES** section at the beginning of this document.

How do I prepare and submit comments?

- Your comments must be written in English.
- To ensure that your comments are correctly filed in the Docket, please include the Docket Number shown at the beginning of this document in your comments.
- Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.
- If you are submitting comments electronically as a PDF (Adobe) File, NHTSA asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy

certain portions of your submissions. Comments may be submitted to the docket electronically by logging onto the Docket Management System website at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/information-regulatory-affairs/information-policy/>. DOT's guidelines may be accessed at <http://www.transportation.gov/dot-information-dissemination-quality-guidelines>.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512). To facilitate social distancing during COVID-19, NHTSA is temporarily accepting confidential business information electronically. Please see <https://www.nhtsa.gov/coronavirus/submission-confidential-business-information> for details.

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing the final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

XIII. Appendices to the Preamble

Appendix A: Description of Technologies

For the convenience of readers, this section describes various technologies of an AEB system. An AEB system employs multiple sensor technologies and sub-systems that work together to sense a crash imminent scenario and, where applicable, automatically apply the vehicle brakes to avoid or mitigate a crash. Current systems utilize radar- and camera-based sensors, and the agency is aware of emerging technologies such as lidar and infrared sensors. AEB builds upon electronic stability control (ESC) technology joined with a perception system, and ESC itself is an extension of antilock braking system (ABS) technologies. It also builds upon older forward collision warning-only (FCW-only) systems.

Radar-Based Sensors

At its simplest form, radar is a time-of-flight sensor that measures the time between when a radio wave is transmitted, and its reflection is recorded. This time-of-flight is then used to calculate the distance to the object that caused the reflection. More information about the reflecting object,

such as speed, can be determined by comparing the output signal to the input signal. Typical automotive applications use a type of radar called Frequency Modulated Continuous Wave radar. This radar system sends out a radio pulse where the pulse frequency rises through the duration of the pulse. This pulse is reflected off the object and the radar sensor compares the reflected signal to the original pulse to determine the range and relative speed.

Radar sensors are widely used in AEB applications, for many reasons. These sensors can have a wide range of applicability, with automotive grade radar sensing ranges on the order of 1 meter (3 ft) up to over 200 meters (656 ft). Radar sensors are also relatively unaffected by time of day, precipitation, fog, and many other adverse weather conditions. Automotive radar systems typically operate on millimeter wave lengths, easily reflecting off even the smallest metallic surfaces found on vehicles. Radio waves tend to penetrate soft materials, such as rubber and plastic, allowing these sensors to be mounted in the front ends of vehicles behind protective and visually appealing grilles and bumper fascia.

Radar-based sensors have limitations that impact their effectiveness. Radar is a line-of-sight sensor, in that it only operates in the direction the receiving antenna is pointed and therefore has a limited angular view. Also, while radar is excellent at identifying radar-reflective objects, the nature of the radar reflection makes classification of those objects difficult. In addition, objects that do not reflect radio waves easily, such as rubber, plastic, humans, and other soft objects, are difficult for radar-based sensors to detect. Lastly, because forward facing radar sensors are usually mounted inside the front end of equipped vehicles, damage caused from front-end collisions can lead to alignment issues and reduced effectiveness.

Camera Sensors

Cameras are passive sensors that record optical data using digital imaging chips, which are then processed to allow for object detection and classification. They are an important part of most automotive AEB systems, and one or more cameras are typically mounted behind the front windshield, often high up near the rearview mirror. This provides a good view of the road, and the windshield wipers can provide a way to clear debris, dirt, and other contaminants from the windshield in front of the sensor.

Camera-based imaging systems are one of the few sensor types that can

determine both color and contrast information. This makes them able to recognize and classify objects such as road signs, other vehicles, and pedestrians, much in the same way the human eye does. In addition, systems that utilize two or more cameras can see stereoscopically, allowing the processing system to determine range information along with detection and classification.

Like all sensor systems, camera-based sensors have their benefits and limitations. Monocular camera systems lack depth perception and are poor at determining range, and even stereoscopic camera systems are not ideal for determining speed. Because cameras rely on the visible spectrum of light, conditions that make it difficult to see, such as rain, snow, sleet, fog, and even dark unlit areas, decrease the effectiveness of perception checks of these systems. It is also possible for the imaging sensor to saturate when exposed to excessive light, such as driving towards the sun. For these reasons, camera sensors are often used in conjunction with other sensors like radar.

Thermal Imaging Systems

While rare in the current generation of AEB systems, suppliers of AEB technologies are looking at advanced sensor technologies to augment the limitations of camera/radar systems. Thermal imaging systems are one such advanced sensor. Very similar to cameras, thermal imaging systems are optical sensors that record visual information. The difference is that, where cameras rely on the visible spectrum of light, thermal imaging systems rely on infrared radiation, also known as thermal radiation.

Infrared radiation is the part of the electromagnetic spectrum between visible light and microwave radiation. Typically, the wavelengths range from 750 nm up to 1 mm. This spectrum also corresponds to the energy output by warm bodies, making these sensors ideal for use in dark areas where traditional cameras may have difficulties. Thermal imaging systems can be particularly useful for darkness detection of pedestrians. They can also have an active component, either a blanket infrared flood light or an infrared laser system, to augment the passive collection of a camera.

These systems, however, also have limitations. They may not be able to differentiate between multiple hot bodies, and in the presence of thermal insulation, such as a jacket or cold weather clothing, warm bodies can appear cold and difficult to differentiate

from the background. Reflectivity of the detected object as well as the ambient environment can affect the performance of these systems.

Lidar

Lidar, or Light Detection and Ranging is a laser-based time-of-flight sensor that uses pulses of visual light to determine distances between the sensor and an object. Much like radar, by calculating the amount of time between the transmission and reception of a pulse of light, a lidar system can determine the distance to the object. These sensors are one of the primary sensors in prototype automated driving systems under development for future AEB systems.²⁶²

Because a lidar system uses lasers for range-finding, it can infer exact measurements of most objects surrounding a vehicle, including other vehicles and pedestrians. Because of how accurately lidar can measure distances and speeds, it is very good at determining the differences between cars, pedestrians, cyclists, light posts, road signs, and many other obstacles in the path of a vehicle. With proper control software, a lidar sensor can detect things like lane boundaries.

Limitations of lidar tend to be similar to those of both camera systems and radar systems. lidar is an active system, so it is unaffected by dark lighting conditions, but it can be severely degraded by rain, sleet, fog, or snow. It is a line-of-sight sensor and cannot see through certain objects in the way that radar can. Its maximum effective range is often limited by surface reflectivity, illumination saturation (driving towards the sun or other bright light), and environmental attenuation, such as hazy conditions or heat shimmer. Other limiting factors are the large computational processing needs to adequately utilize the lidar sensor, and its currently high costs.

Electronically Modulated Braking Systems

Automatic actuation of the vehicle brakes requires more than just systems to sense when a collision is imminent. Regardless of how good a sensing system is, hardware is needed to physically apply the brakes without relying on the driver to modulate the brake pedal. The automatic braking system relies on two foundational

²⁶² SAE J3016, "Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles," APR2021, defines an automated driving system as the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain.

braking technologies, antilock braking systems and electronic stability control.

Antilock brakes are a foundational braking technology that automatically controls the degree of wheel slip during braking to prevent wheel lock and minimize skidding, by sensing the rate of angular rotation of the wheels and modulating the braking force at the wheels to keep the wheels from slipping. Modern ABS systems have wheel speed sensors and independent brake modulation at each wheel and can increase and decrease braking pressures as needed.

ESC builds upon the antilock brakes with the addition of at least two sensors, a steering wheel angle sensor and an inertial measurement unit. These sensors allow the ESC controller to determine the intended steering direction (from the steering wheel angle sensor), compare it to the actual vehicle direction, and then modulate braking forces at each wheel, without the driver applying input to the brake pedal, to induce a counter yaw when the vehicle starts to lose lateral stability.

AEB uses the hardware needed for ESC and automatically applies the brakes to avoid certain scenarios where a crash with a vehicle or pedestrian is imminent.

Forward Collision Warning

Using the sensors described above, coupled with an alert mechanism and perception calculations, a FCW system is able to monitor a vehicle's speed, the speed of the vehicle in front of it, and the distance between the two vehicles. If the FCW system determines that the distance from the driver's vehicle to the vehicle in front of it is too short and the closing velocity between the two vehicles is too high, the system warns the driver of an impending rear-end collision.

Typically, FCW systems are comprised of two components: a sensing system, which can detect a vehicle in front of the driver's vehicle, and a warning system, which alerts the driver to a potential crash threat. The sensing portion of the system may consist of forward-looking radar, camera systems, lidar, or a combination of these. Warning systems in use today provide drivers with a visual display, such as an illuminated telltale on the instrument panel, an auditory signal (e.g., beeping tone or chime), and/or a haptic signal that provides tactile feedback to the driver (e.g., rapid vibrations of the seat pan or steering wheel or a momentary brake pulse) to alert the driver to an impending crash so that the driver may manually intervene (e.g., apply the vehicle's brakes or make an evasive

steering maneuver) to avoid or mitigate the crash.

FCW systems alone are designed to warn the driver, but do not provide automatic braking of the vehicle (some FCW systems use haptic brake pulses to alert the driver of a crash-imminent driving situation, but they are not intended to effectively slow the vehicle). Since the first introduction of FCW systems, the technology has advanced so that it is now possible to couple those sensors, software, and alerts with the vehicle's service brake system to provide additional functionality covering a broader portion of the safety problem.

From a functional perspective, research suggests that active braking systems, such as AEB, provide greater safety benefits than warning systems, such as FCW systems. However, NHTSA has found that current AEB systems often integrate the functionalities of FCW and AEB into one frontal crash prevention system to deliver improved real-world safety performance and high consumer acceptance. FCW can now be considered a component of lead vehicle AEB. As such, this NPRM integrates FCW directly into the performance requirements for AEB—Lead Vehicle. This integration would also enable the agency to assess vehicles' compliance with the proposed FCW and AEB requirements at the same time in a single test.

Automatic Emergency Braking—Lead Vehicle

Unlike systems that only alert, AEB systems (systems that automatically apply the brakes), are designed to actively help drivers avoid or mitigate the severity of rear-end crashes. AEB—Lead Vehicle has been previously broken down into two primary functions, crash imminent braking and dynamic brake support. CIB systems provide automatic braking when forward-looking sensors indicate that a crash is imminent and the driver has not applied the brakes, whereas DBS systems use the same forward-looking sensors, but provide supplemental braking after the driver applies the brakes when sensors determine that driver-applied braking is insufficient to avoid an imminent rear-end crash. This NPRM does not split the terminology of these functionalities and instead discusses them together as "AEB." In some crash situations, AEB functions independently of the driver's use of the brake pedal (CIB), while in other situations, the vehicle uses the driver's pedal input to better evaluate the situation and avoid the crash (DBS). This proposal considers each function

necessary to address the safety need and presents a performance-based regulatory approach that can permit the detailed application of each function to be based on the specific vehicle application and the manufacturer's approach to meeting the standard.

In response to an FCW or a driver noticing an imminent crash scenario, a driver may initiate braking to avoid a rear-end crash. In situations where the driver's braking is insufficient to prevent a collision, the AEB system can automatically supplement the driver's braking action to prevent or mitigate the crash. Similar to FCW systems, AEB systems employ forward-looking sensors such as radar, cameras, infrared, and/or lidar sensors to detect vehicles in the path directly ahead and monitor the subject vehicle's operating conditions such as speed or brake application. However, AEB systems can also actively supplement braking to assist the driver, whereas FCW systems serve only to warn the driver of a potential crash threat.

If a driver does not take action to apply the brakes when a rear-end crash is imminent, AEB systems utilize the same types of forward-looking sensors to apply the vehicle's brakes automatically to slow or stop the vehicle. The amount of braking applied varies by manufacturer, and several systems are designed to achieve maximum vehicle deceleration just prior to impact. In reviewing model year 2017–2019 NCAP crash imminent braking test data, NHTSA observed a deceleration range of 0.31 to 1.27 g. This NPRM does not directly require a particular deceleration capability but specifies situations in which crash avoidance must be achieved. Avoidance may be produced by the automatic application of the subject vehicle brakes or by automatically supplementing the deceleration achieved by driver's braking action in the case where the subject vehicle brakes are manually applied.

Pedestrian Automatic Emergency Braking

PAEB systems function like lead vehicle AEB systems, but detect pedestrians instead of leading vehicles. PAEB uses information from forward-looking sensors to actively and automatically apply the vehicle's brakes when a pedestrian is in front of the vehicle and the driver has not acted to avoid the impending impact. Similar to lead vehicle AEB, PAEB systems typically use cameras to determine whether a pedestrian is in imminent danger of being struck by the vehicle, but some systems may use a

combination of cameras, radar, lidar, and infrared sensors.

A camera's field of view plays a key role in the type of pedestrian crashes that a PAEB system can assist in avoiding. Cameras used for PAEB can provide the information required by the system to provide crash protection in situations where the pedestrian is either directly in the path of a vehicle or is entering the path of the vehicle while the vehicle is moving straight ahead.

Sensor performance may be limited by the availability of environmental lighting. The cameras used in PAEB systems rely on reflected light in the same way as a human eye. As such, the vehicle's integration of headlighting systems along with the tuning of camera exposure rates and sensor light sensitivities are important considerations in producing an PAEB system that assists in avoiding pedestrian crashes that happen at night. The permeance limits proposed in this NPRM can be achieved with radar and camera system technologies.

Appendix B: International Activities

International AEB Testing Standards

NHTSA has considered other vehicle testing organizations' AEB test procedures as part of the development of this proposal. The ISO has published Standard 22733-1, "Road vehicles—Test method to evaluate the performance of autonomous emergency braking systems." This ISO standard does not set minimum performance requirements for lead vehicle AEB systems or any pass/fail conditions. Instead, the standard sets forth a test procedure using progressively increasing speeds at which a vehicle equipped with lead vehicle AEB approaches a stationary or moving surrogate vehicle until it makes contact.

The surrogate vehicle specified is the vehicle target defined in ISO 19206-3:2021, "Road vehicles—Test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 3: requirements for passenger vehicle 3D targets."

ISO is developing but has not published Standard 22733-2 describing tests for PAEB systems. SAE International has published recommended practice J3087,

"Automatic emergency braking (AEB) system performance testing," defining the conditions for testing AEB and FCW systems. This standard defines test conditions, test targets, test scenarios, and measurement methods, but, like ISO 22733-1, does not provide performance criteria. Unlike ISO 22733-

1, SAE J3087 does not require specific speed ranges for test execution. Test scenarios are employed where the lead surrogate vehicle is stopped, moving at a constant slower speed, or decelerating, broadly similar to that proposed in this NPRM. SAE International Standard J3116, "Active Safety Pedestrian Test Mannequin Recommendation," provides recommendations for the characteristics of a surrogate that could be used in testing of active pedestrian safety systems, but there is no SAE International standard defining test procedures for PAEB systems.

International AEB Regulation

The United Nations (UN) Economic Commission for Europe (ECE) Regulation No. 152 "Uniform provisions concerning the approval of motor vehicles with regard to the Advanced Emergency Braking System (AEBS) for M1 and N1 vehicles,"²⁶³ provides definitions and standards for AEB Systems for signatory nations to the "1958 Agreement."²⁶⁴ Some signatories mandate the regulation and others accept it as "if-fitted." ECE Regulation No. 152 describes the timing of warnings, mode of warnings, required minimum deceleration, and allowable impact speeds for AEB tests for both stationary lead surrogate vehicles and lead surrogate vehicles moving at 20 km/h. Each test run is conducted "in absence of driver's input," (*i.e.*, testing CIB but not DBS). A "false reaction test" is also specified, where a vehicle must pass between two parked vehicles without issuing a warning or applying the brakes. AEB systems are required to operate between 10 km/h and 60 km/h, and cannot be deactivated at speeds above 10 km/h.

ECE Regulation No. 152 also describes requirements and test procedures for PAEB systems, including specification of minimum daylight lighting conditions (which match this NPRM) and surrogates. Test scenarios for PAEB systems include a test for a crossing test mannequin, and a false positive test where a test mannequin is parallel with and outside of the subject vehicle's

path, and the vehicle must not issue a warning or provide braking. Further specifications test for electrical failure and compliance with deactivation requirements (if equipped). A "car to bicycle" test and required standards are also specified, which our proposed regulation does not include.

For both the "car to car" and "car to pedestrian" tests, performance requirements are differentiated for M1 passenger vehicles and N1 goods carrying vehicles at different loaded masses and at different speeds; for some speed and weight combinations, collision avoidance is required. Starting at 38 km/h (24 mph), the standard specifies a maximum allowable impact speed; in contrast, our proposed regulation requires collision avoidance at up to 80 km/h (50 mph) without driver intervention. Up to 10 percent of test runs in any category can be failed and the system would still be given certification.

International AEB Consumer Testing

Internationally, several organizations also test vehicles' lead vehicle AEB systems to provide safety information to consumers. Euro NCAP, Australasian NCAP, and Korean NCAP each test lead vehicle AEB systems using scenarios similar to NHTSA's NCAP, where the lead vehicle test device is stationary, moving more slowly, or decelerating. ASEAN NCAP, China NCAP, and Japan NCAP each test vehicle lead vehicle AEB systems using stationary or slower-moving lead vehicle scenarios. Latin NCAP tests lead vehicle AEB systems using slower moving or decelerating lead vehicle scenarios. As discussed further in this notice, NHTSA will require collision avoidance over a range of subject vehicle test speeds; in contrast, Euro NCAP, Australasian NCAP, Korean NCAP, Chinese NCAP, and Japan NCAP each test AEB starting at 10 km/h and increase the speed during progressive test runs until the vehicle strikes the surrogate. There are no false positive tests, and points are awarded based on the speed at which the vehicle surrogate was struck.

Euro NCAP, China NCAP, Japan NCAP, and Korean NCAP each test PAEB systems in crossing path scenarios with a test mannequin. Euro NCAP and China NCAP further test PAEB systems for pedestrians walking parallel along the subject vehicle's forward path. Euro NCAP also tests PAEB systems for vehicles turning into a crossing test mannequin's path at an intersection. A variety of lighting conditions are used depending upon the scenario tested, with each organization conducting PAEB tests using daylight

²⁶³ As defined in the Addenda to the 1958 Agreement, inclusive of Amendments published Dec 21, 2021. <https://unece.org/transport/vehicle-regulations/wp29/standards/addenda-1958-agreement-regulations-141-160>.

²⁶⁴ United Nations Economic Commission for Europe. *Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations (Revision 3)*. (Original: 1958; Current, as amended: 20 Oct. 2017). <https://unece.org/trans/main/wp29/wp29regs>. The U.S. is not a signatory to the 1958 Agreement.

conditions, darkness conditions with streetlights, or darkness conditions without streetlights for at least one of their tests. There are no false positive tests, and for each test, the testing programs award points or provide a rating based on each vehicle's AEB performance.

Euro NCAP specifies the test mannequin in its "Articulated Pedestrian Target Specification Document,"²⁶⁵ which sets specifications for size, color, motion patterns, and detectability by vehicle sensors. China NCAP, Japan NCAP, and Korean NCAP use the same specifications, either by reference or substantially similar translation. These specifications are used by the test mannequin supplier to IIHS and NHTSA research.

List of Subjects

49 CFR Part 571

Imports, Incorporation by Reference, Motor vehicle safety, Motor vehicles, and Tires.

49 CFR Part 596

Automatic emergency braking, Incorporation by Reference, Motor vehicle safety, Test devices.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR chapter V as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 571.5 by:

■ a. Revising paragraph (d)(34);
■ b. Redesignating paragraphs (l)(49) and (50) as paragraphs (l)(50) and (51), respectively; and

■ c. Adding new paragraph (l)(49).

The revisions and additions read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(d) * * *

(34) ASTM E1337–19, "Standard Test Method for Determining Longitudinal Peak Braking Coefficient (PBC) of Paved Surfaces Using Standard Reference Test Tire," approved December 1, 2019, into §§ 571.105; 571.121; 571.122; 571.126; 571.127; 571.135; 571.136; 571.500.

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²⁶⁵ European Automobile Manufacturers' Association (ACEA), February 2016, "Articulated Pedestrian Target Specification Document," Version 1.0. <https://www.acea.auto/publication/articulated-pedestrian-target-acea-specifications/>.

(l) * * *

(49) SAE J2400, "Human Factors in Forward Collision Warning System: Operating Characteristics and User Interface Requirements," August 2003 into § 571.127.

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■ 3. Add § 571.127 to read as follows:

§ 571.127 Standard No. 127; Automatic emergency braking systems for light vehicles.

S1. *Scope.* This standard establishes performance requirements for automatic emergency braking (AEB) systems for light vehicles.

S2. *Purpose.* The purpose of this standard is to reduce the number of deaths and injuries that result from crashes in which drivers do not apply the brakes or fail to apply sufficient braking power to avoid or mitigate a crash.

S3. *Application.* This standard applies to passenger cars and to multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less.

S4. *Definitions.*

Adaptive cruise control system is an automatic speed control system that allows the equipped vehicle to follow a lead vehicle at a pre-selected gap by controlling the engine, power train, and service brakes.

Ambient illumination is the illumination as measured at the test surface, not including any illumination provided by the subject vehicle.

Automatic emergency braking (AEB) system is a system that detects an imminent collision with vehicles, objects, and road users in or near the path of a vehicle and automatically controls the vehicle's service brakes to avoid or mitigate the collision.

Brake pedal application onset is when 11 N of force has been applied to the brake pedal.

Forward collision warning is an auditory and visual warning provided to the vehicle operator by the AEB system that is designed to induce immediate forward crash avoidance response by the vehicle operator.

Forward collision warning onset is the first moment in time when a forward collision warning is provided.

Headway is the distance between the lead vehicle's rearmost plane normal to its centerline and the subject vehicle's frontmost plane normal to its centerline.

Lead vehicle is a vehicle test device facing the same direction and preceding a subject vehicle within the same travel lane.

Lead vehicle braking onset is the point at which the lead vehicle achieves

a deceleration of 0.05 g due to brake application.

Pedestrian test mannequin is a device used during AEB testing, when approaching pedestrians, meeting the specifications of subpart B of 49 CFR part 596.

Small-volume manufacturer means an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States.

Steel trench plate is a rectangular steel plate often used in road construction to temporarily cover sections of pavement unsafe to drive over directly.

Subject vehicle is the vehicle under examination for compliance with this standard.

Travel path is the path projected onto the road surface of a point located at the intersection of the subject vehicle's frontmost vertical plane and longitudinal vertical center plane, as the subject vehicle travels forward.

Vehicle Test Device is a device meeting the specifications set forth in subpart C of 49 CFR part 596.

S5. *Requirements.*

(a) Except as provided in paragraphs (b) and (c) of this section S5, vehicles manufactured on or after [the first September 1 that is three years after publication of a final rule] must meet the requirements of this standard.

(b) The following lower-speed performance test requirements apply to vehicles manufactured on or after [the first September 1 that is three years after date of publication of a final rule] and before [the first September 1 that is four years after the date of publication of a final rule].

(1) For testing in the darkness condition using lower beam headlamps with an intended overlap of 50 percent, the subject vehicle test speed in S8.3.1(g) is any speed between 10 km/h and 40 km/h.

(2) For testing in the darkness condition using lower beam headlamps, the subject vehicle test speed in S8.4.1(e) is any speed between 10 km/h and 50 km/h.

(3) For testing in the darkness condition, the subject vehicle test speed in S8.5.1(f) is any speed between 10 km/h and 60 km/h.

(c) The requirements of paragraphs (a) and (b) of this section S5 do not apply to small-volume manufacturers, final-stage manufacturers and alterers until one year after the dates specified in those paragraphs.

S5.1. *Requirements when approaching a lead vehicle.*

S5.1.1. *Forward Collision Warning.* A vehicle is required to have a forward

collision warning system, as defined in S4 of this section, that provides an auditory and visual signal to the driver of an impending collision with a lead vehicle when traveling at any forward speed greater than 10 km/h (6.2 mph). The auditory signal must have a high fundamental frequency of at least 800 Hz, a duty cycle of 0.25–0.95, and tempo in the range of 6–12 pulses per second. The visual signal must be located according to SAE J2400 (incorporated by reference see § 571.5), paragraph 4.1.14 and must include the symbol in the bottom right of paragraph 4.1.16. Line of sight is based on the forward-looking eye midpoint (M_f) as described in S14.1.5. of § 571.111 of this part. The symbol must be red in color and steady-burning.

S5.1.2. Automatic Emergency Braking. A vehicle is required to have an automatic emergency braking system, as defined in S4 of this section, that applies the service brakes automatically when a collision with a lead vehicle is imminent. The system must operate when the vehicle is traveling at any forward speed greater than 10 km/h (6.2 mph).

S5.1.3. Performance Test Requirements. The vehicle must provide a forward collision warning and subsequently apply the service brakes automatically when a collision with a lead vehicle is imminent such that the subject vehicle does not collide with the lead vehicle when tested using the procedures in S7 under the conditions specified in S6. The forward collision warning is not required if adaptive cruise control is engaged.

S5.2. Requirements when approaching pedestrians.

S5.2.1. Forward Collision Warning. A vehicle is required to have a forward collision warning system, as defined in S4 of this section, that provides an auditory and visual signal to the driver of an impending collision with a pedestrian. The auditory signal must have a high fundamental frequency of at least 800 Hz, a duty cycle of 0.25–0.95, and tempo in the range of 6–12 pulses per second. The visual signal must be located according to SAE J2400, (incorporated by reference see § 571.5), paragraph 4.1.14 and must include the crash icon in the bottom right of paragraph 4.1.16. Line of sight is based on the forward-looking eye midpoint (M_f) as described in S14.1.5. of § 571.111. The symbol must be red in color and steady burning. The system must operate at any forward speed greater than 10 km/h (6.2 mph).

S5.2.2. Automatic Emergency Braking. A vehicle is required to have an automatic emergency braking system, as

defined in S4 of this section, that applies the service brakes automatically when a collision with a pedestrian is imminent when the vehicle is traveling at any forward speed greater than 10 km/h (6.2 mph).

S5.2.3. Performance Test Requirements. The vehicle must automatically apply the brakes and alert the vehicle operator such that the subject vehicle does not collide with the pedestrian test mannequin when tested using the procedures in S8 under the conditions specified in S6.

S5.3. False Activation. The vehicle must not automatically apply braking that results in peak additional deceleration that exceeds what manual braking would produce by 0.25g or greater, when tested using the procedures in S9 under the conditions specified in S6.

S5.4. Malfunction Detection. The system must continuously detect system malfunctions, including malfunctions caused solely by sensor obstructions. If the system detects a malfunction that prevents the system from meeting the requirements specified in S5.1, S5.2, or S5.3, the system must provide the vehicle operator with a telltale notification that the malfunction exists.

S6. Test Conditions.

S6.1. Environmental conditions.

S6.1.1. Temperature. The ambient temperature is any temperature between 0 °C and 40 °C.

S6.1.2. Wind. The maximum wind speed is no greater than 10 m/s (22 mph) during lead vehicle avoidance tests and 6.7 m/s (15 mph) during pedestrian avoidance tests.

S6.1.3. Ambient Lighting.

(a) *Daylight testing.*

(1) The ambient illumination on the test surface is any level at or above 2,000 lux.

(2) Testing is not performed while driving toward or away from the sun such that the horizontal angle between the sun and a vertical plane containing the centerline of the subject vehicle is less than 25 degrees and the solar elevation angle is less than 15 degrees.

(b) *Dark testing.*

(1) The ambient illumination on the test surface is any level at or below 0.2 lux.

(2) Testing is performed under any lunar phase.

(3) Testing is not performed while driving toward the moon such that the horizontal angle between the moon and a vertical plane containing the centerline of the subject vehicle is less than 25 degrees and the lunar elevation angle is less than 15 degrees.

S6.1.4. Precipitation. Testing is not conducted during periods of

precipitation or when visibility is affected by fog, smoke, ash, or other particulate.

S6.2. Road conditions.

S6.2.1. Test Track Surface and Construction. The tests are conducted on a dry, uniform, solid-paved surface. Surfaces with debris, irregularities, or undulations, such as loose pavement, large cracks, or dips are not used.

S6.2.2. Surface Friction. The road test surface produces a peak friction coefficient (PFC) of 1.02 when measured using an American Society for Testing and Materials (ASTM) F2493 standard reference test tire, in accordance with ASTM E1337–19 (incorporated by reference, see § 571.5), at a speed of 64 km/h (40 mph), without water delivery.

S6.2.3. Slope. The test surface has any consistent slope between 0 percent and 1 percent.

S6.2.4. Markings. The road surface within 2 m of the intended travel path is marked with zero, one, or two lines of any configuration or color. If one line is used, it is straight. If two lines are used, they are straight, parallel to each other, and at any distance from 2.7 m to 4.5 m apart.

S6.2.5. Obstructions. Testing is conducted such that the vehicle does not travel beneath any overhead structures, including but not limited to overhead signs, bridges, or gantries. No vehicles, obstructions, or stationary objects are within 7.4 m of either side of the intended travel path except as specified.

S6.3. Subject vehicle conditions.

S6.3.1. Malfunction notification.

Testing is not conducted while the AEB malfunction telltale specified in S5.4 is illuminated.

S6.3.2. Sensor obstruction. All sensors used by the system and any part of the vehicle immediately ahead of the sensors, such as plastic trim, the windshield, etc., are free of debris or obstructions.

S6.3.3. Tires. The vehicle is equipped with the original tires present at the time of initial sale. The tires are inflated to the vehicle manufacturer's recommended cold tire inflation pressure(s) specified on the vehicle's placard or the tire inflation pressure label.

S6.3.4. Brake burnish.

(a) Vehicles subject to § 571.105 are burnished in accordance with S7.4 of that section.

(b) Vehicles subject to § 571.135 are burnished in accordance with S7.1 of that section.

S6.3.5. Brake temperature. The average temperature of the service brakes on the hottest axle of the vehicle during testing, measured according to

S6.4.1 of § 571.135, is between 65 °C and 100 °C prior to braking.

S6.3.6. *Fluids*. All non-consumable fluids for the vehicle are at 100 percent capacity. All consumable fluids are at any level from 5 to 100 percent capacity.

S6.3.7. *Propulsion battery charge*. The propulsion batteries are charged at any level from 5 to 100 percent capacity.

S6.3.8. *Cruise control*. Cruise control, including adaptive cruise control, is configured under any available setting.

S6.3.9. *Adjustable forward collision warning*. Forward collision warning is configured in any operator-configurable setting.

S6.3.10. *Engine braking*. A vehicle equipped with an engine braking system that is engaged and disengaged by the operator is tested with the system in any selectable configuration.

S6.3.11. *Regenerative braking*. Regenerative braking is configured under any available setting.

S6.3.12. *Headlamps*.

(a) Daylight testing is conducted with the headlamp control in any selectable position.

(b) Darkness testing is conducted with the vehicle's lower beams or upper beams active.

(c) Prior to performing darkness testing, headlamps are aimed according to the vehicle manufacturer's instructions. The weight of the loaded

vehicle at the time of headlamp aiming is within 10 kg of the weight of the loaded vehicle during testing.

S6.3.13. *Subject vehicle loading*. The vehicle load, which is the sum of any vehicle occupants and any test equipment and instrumentation, does not exceed 277 kg. The load does not cause the vehicle to exceed its GVWR or any axle to exceed its GAWR.

S6.3.14. *AEB system initialization*. The vehicle is driven at a speed of 10 km/h or higher for at least one minute prior to testing, and subsequently the starting system is not cycled off prior to testing.

S6.4. *Equipment and Test Devices*.

S6.4.1. The vehicle test device is specified in 49 CFR part 596 subpart C. Local fluttering of the lead vehicle's external surfaces does not exceed 10 mm perpendicularly from the reference surface, and distortion of the lead vehicle's overall shape does not exceed 25 mm in any direction.

S6.4.2. Adult Pedestrian Test Mannequin is specified in 49 CFR part 596 subpart B.

S6.4.3. Child Pedestrian Test Mannequin is specified in 49 CFR part 596 subpart B.

S6.4.4. The steel trench plate used for the false activation test has the dimensions 2.4 m x 3.7 m x 25 mm and

is made of ASTM A36 steel. Any metallic fasteners used to secure the steel trench plate are flush with the top surface of the steel trench plate.

S7. *Testing when approaching a lead vehicle*.

S7.1. *Setup*.

(a) The testing area is set up in accordance with Figure 2.

(b) Testing is conducted during daylight.

(c) For reference, Table 1 to S7.1 specifies the subject vehicle speed (V_{SV}), lead vehicle speed (V_{LV}), headway, and lead vehicle deceleration for each test that may be conducted.

(d) The intended travel path of the vehicle is a straight line toward the lead vehicle from the location corresponding to a headway of L_0 .

(e) If the road surface is marked with a single or double lane line, the intended travel path is parallel to and 1.8 m from the inside of the closest line. If the road surface is marked with two lane lines bordering the lane, the intended travel path is centered between the two lines.

(f) For each test run conducted, the subject vehicle speed (V_{SV}), lead vehicle speed (V_{LV}), headway, and lead vehicle deceleration will be selected from the ranges specified.

TABLE 1 TO S7.1—TEST PARAMETERS WHEN APPROACHING A LEAD VEHICLE

	Speed (km/hr)		Headway (m)	Lead vehicle decel (g)	Manual brake application
	V_{SV}	V_{LV}			
Stopped Lead Vehicle	Any 10–80	0	.....	.....	No.
	Any 70–100	0	.....	.....	Yes.
Slower Lead Vehicle	Any 40–80	20	.....	.....	No.
	Any 70–100	20	.....	.....	Yes.
Decelerating Lead Vehicle	50	50	Any 12–40	Any 0.3–0.5	No.
	50	50	Any 12–40	Any 0.3–0.5	Yes.
	80	80	Any 12–40	Any 0.3–0.5	No.
	80	80	Any 12–40	Any 0.3–0.5	Yes.

S7.2. *Headway calculation*. For each test run conducted under S7.3 and S7.4, the headway (L_0), in meters, providing 5 seconds time to collision (TTC) is calculated. L_0 is determined with the following equation where V_{SV} is the speed of the subject vehicle in m/s and V_{LV} is the speed of the lead vehicle in m/s:

$$L_0 = TTC_0 \times (V_{SV} - V_{LV})$$

$$TTC_0 = 5$$

S7.3. *Stopped lead vehicle*.

S7.3.1. *Test parameters*.

(a) For testing with no subject vehicle manual brake application, the subject vehicle test speed is any speed between 10 km/h and 80 km/h, and the lead vehicle speed is 0 km/h.

(b) For testing with manual brake application of the subject vehicle, the subject vehicle test speed is any speed between 70 km/h and 100 km/h, and the lead vehicle speed is 0 km/h.

S7.3.2. *Test conduct prior to forward collision warning onset*.

(a) The lead vehicle is placed stationary with its longitudinal centerline coincident to the intended travel path.

(b) Before the headway corresponds to L_0 , the subject vehicle is driven at any speed, in any direction, on any road surface, for any amount of time.

(c) The subject vehicle approaches the rear of the lead vehicle.

(d) Beginning when the headway corresponds to L_0 , the subject vehicle

speed is maintained within 1.6 km/h of the test speed with minimal and smooth accelerator pedal inputs.

(e) Beginning when the headway corresponds to L_0 , the subject vehicle heading is maintained with minimal steering input such that the travel path does not deviate more than 0.3 m laterally from the intended travel path and the subject vehicle's yaw rate does not exceed ± 1.0 deg/s.

S7.3.3. *Test conduct after forward collision warning onset*.

(a) The accelerator pedal is released at any rate such that it is fully released within 500 ms. This action is omitted for vehicles tested with cruise control active.

(b) For testing conducted with manual brake application, the service brakes are applied as specified in S10. The onset of brake pedal application occurs 1.0 $\pm$ 0.1 second after forward collision warning onset.

(c) For testing conducted without manual brake application, no manual brake application is made until the test completion criteria of S7.3.4 are satisfied.

S7.3.4. Test completion criteria. The test run is complete when the subject vehicle comes to a complete stop without making contact with the lead vehicle or when the subject vehicle makes contact with the lead vehicle.

S7.4. Slower-moving lead vehicle.

S7.4.1. Test parameters.

(a) For testing with no subject vehicle manual brake application, the subject vehicle test speed is any speed between 40 km/h and 80 km/h, and the lead vehicle speed is 20 km/h.

(b) For testing with manual brake application of the subject vehicle, the subject vehicle test speed is any speed between 70 km/h and 100 km/h, and the lead vehicle speed is 20 km/h.

S7.4.2. Test conduct prior to forward collision warning onset.

(a) The lead vehicle is propelled forward in a manner such that the longitudinal center plane of the lead vehicle does not deviate laterally more than 0.3m from the intended travel path.

(b) The subject vehicle approaches the lead vehicle.

(c) Beginning when the headway corresponds to L_0 , the subject vehicle and lead vehicle speed is maintained within 1.6 km/h of the test speed with minimal and smooth accelerator pedal inputs.

(d) Beginning when the headway corresponds to L_0 , the subject vehicle and lead vehicle headings are be maintained with minimal steering input such that the subject vehicle's travel path does not deviate more than 0.3 m laterally from the centerline of the lead vehicle, and the yaw rate of the subject vehicle does not exceed ± 1.0 deg/s prior to the forward collision warning onset.

S7.4.3. Test conduct after forward collision warning onset.

(a) The subject vehicle's accelerator pedal is released at any rate such that it is fully released within 500 ms. This action is omitted for vehicles tested with cruise control active.

(b) For testing conducted with manual braking application, the service brakes are applied as specified in S10. The onset of brake pedal application is 1.0 $\pm$ 0.1 second after the forward collision warning onset.

(c) For testing conducted without manual braking application, no manual brake application is made until the test completion criteria of S7.4.4 are satisfied.

S7.4.4. Test completion criteria. The test run is complete when the subject vehicle speed is less than or equal to the lead vehicle speed without making contact with the lead vehicle or when the subject vehicle makes contact with the lead vehicle.

S7.5. Decelerating lead vehicle.

S7.5.1. Test parameters.

(a) The subject vehicle test speed is 50 km/h or 80 km/h, and the lead vehicle speed is identical to the subject vehicle test speed.

(b) [Reserved]

S7.5.2. Test conduct prior to lead vehicle braking onset.

(a) Before the 3 seconds prior to lead vehicle braking onset, the subject vehicle is be driven at any speed, in any direction, on any road surface, for any amount of time.

(b) Between 3 seconds prior to lead vehicle braking onset and lead vehicle braking onset:

(1) The lead vehicle is propelled forward in a manner such that the longitudinal center plane of the vehicle does not deviate laterally more than 0.3 m from the intended travel path.

(2) The subject vehicle follows the lead vehicle at a headway of any distance between 12 m and 40 m.

(3) The subject vehicle's speed is maintained within 1.6 km/h of the test speed with minimal and smooth accelerator pedal inputs prior to forward collision warning onset.

(4) The lead vehicle's speed is maintained within 1.6 km/h.

(5) The subject vehicle and lead vehicle headings are maintained with minimal steering input such that their travel paths do not deviate more than 0.3 m laterally from the centerline of the lead vehicle, and the yaw rate of the subject vehicle does not exceed ± 1.0 deg/s until onset of forward collision warning.

S7.5.3. Test conduct following lead vehicle braking onset.

(a) The lead vehicle is decelerated to a stop with a targeted average deceleration of any value between 0.3g and 0.5g. The targeted deceleration magnitude is achieved within 1.5 seconds of lead vehicle braking onset and is maintained until 250 ms prior to coming to a stop.

(b) After forward collision warning onset, the subject vehicle's accelerator pedal is released at any rate such that it is fully released within 500 ms. This action is omitted for vehicles with cruise control active.

(c) For testing conducted with manual braking application, the service brakes are applied as specified in S10. The brake pedal application onset occurs 1.0 $\pm$ 0.1 second after the forward collision warning onset.

(d) For testing conducted without manual braking application, no manual brake application is made until the test completion criteria of S7.5.4 are satisfied.

S7.5.4. Test completion criteria. The test run is complete when the subject vehicle comes to a complete stop without making contact with the lead vehicle or when the subject vehicle makes contact with the lead vehicle.

S8. Testing when approaching a pedestrian.

S8.1. Setup.

S8.1.1. General.

(a) For reference, Table 2 to S8.1.1 specifies the subject vehicle speed (V_{SV}), the pedestrian test mannequin speed (V_P), the overlap of the pedestrian test mannequin, and the lighting condition for each test that may be conducted.

(b) The intended travel path of the vehicle is a straight line originating at the location corresponding to a headway of L_0 .

(c) If the road surface is marked with a single or double lane line, the intended travel path is parallel to and 1.8 m from the inside of the closest line. If the road surface is marked with two lane lines bordering the lane, the intended travel path is centered between the two lines.

(d) For each test run conducted, the subject vehicle speed (V_{SV}) will be selected from the range specified.

TABLE 2 TO S8.1.1—TEST PARAMETERS WHEN APPROACHING A PEDESTRIAN

	Direction	Overlap (%)	Obstructed	Speed (km/h)		Lighting condition
				V_{SV}	V_P	
Crossing Path	Right	25	No	Any 10–60	5	Daylight.
	Right	50	No	Any 10–60		

TABLE 2 TO S8.1.1—TEST PARAMETERS WHEN APPROACHING A PEDESTRIAN—Continued

	Direction	Overlap (%)	Obstructed	Speed (km/h)		Lighting condition
				V _{SV}	V _P	
Stationary	Right	50	No	Any 10–60 *	8	Lower Beams.
	Right	50	No	Any 10–60		Upper Beams.
	Right	50	Yes	Any 10–50		Daylight.
	Left	50	No	Any 10–60		Daylight.
	Right	25	No	Any 10–55		Daylight.
Along-Path	Right	25	No	Any 10–55 *	5	Lower Beams.
				Any 10–55		Upper Beams.
				Any 10–65		Daylight.
				Any 10–65 *		Lower Beams.
				Any 10–65 *		Upper Beams.

* Lower speed performance test requirements apply prior to [the first September 1 that is four years after publication of a final rule]. See S5(b).

S8.1.2. *Overlap.* As depicted in Figure 1 to this section, overlap describes the location of the point on the front of the subject vehicle that would make contact with a pedestrian if no braking occurred. Overlap is the percentage of the subject vehicle's overall width that the pedestrian test mannequin traverses. It is measured from the right or the left, depending on the side of the subject vehicle where the pedestrian test mannequin originates. For each test run, the actual overlap will be within 0.15 m of the specified overlap.

S8.1.3. *Pedestrian Test Mannequin.*

(a) For testing where the pedestrian test mannequin is secured to a moving apparatus, the pedestrian test mannequin is secured so that it faces the direction of motion. The pedestrian test mannequin leg articulation starts on apparatus movement and stops when the apparatus stops.

(b) For testing where the pedestrian test mannequin is stationary, the pedestrian test mannequin faces away from the subject vehicle, and the pedestrian test mannequin legs remain still.

S8.2. *Headway calculation.* For each test run conducted under S8.3, S8.4, and S8.5, the headway (L_0), in meters, between the front plane of the subject vehicle and a parallel contact plane on the pedestrian test mannequin providing 4.0 seconds time to collision (TTC) is calculated. L_0 is determined with the following equation where V_{SV} is the speed of the subject vehicle in m/s and V_{P-y} is the component of speed of the pedestrian test mannequin in m/s in the direction of the intended travel path: $L_0 = TTC_0 \times (V_{SV} - V_{P-y})$
 $TTC_0 = 4.0$

S8.3. *Pedestrian crossing road.*

S8.3.1. *Test parameters and setup (unobstructed from right).*

(a) The testing area is set up in accordance with Figure 3 to this section.

(b) Testing is conducted in the daylight or darkness conditions, except

that testing with the pedestrian at the 25 percent overlap is only conducted in daylight conditions.

(c) Testing is conducted using the adult pedestrian test mannequin.

(d) The movement of the pedestrian test mannequin is perpendicular to the subject vehicle's intended travel path.

(e) The pedestrian test mannequin is set up 4.0 ± 0.1 m to the right of the intended travel path.

(f) The intended overlap is 25 percent from the right or 50 percent.

(g) The subject vehicle test speed is any speed between 10 km/h and 60 km/h.

(h) The pedestrian test mannequin speed is 5 km/h.

S8.3.2. *Test parameters and setup (unobstructed from left).*

(a) The testing area is set up in accordance with Figure 4 to this section.

(b) Testing is conducted in the daylight condition.

(c) Testing is conducted using the adult pedestrian mannequin.

(d) The movement of the pedestrian test mannequin is perpendicular to the intended travel path.

(e) The pedestrian test mannequin is set up 6.0 ± 0.1 m to the left of the intended travel path.

(f) The intended overlap is 50 percent.

(g) The subject vehicle test speed is any speed between 10 km/h and 60 km/h.

(h) The pedestrian test mannequin speed is 8 km/h.

S8.3.3. *Test parameters and setup (obstructed).*

(a) The testing area is set up in accordance with Figure 5 to this section.

(b) Testing is conducted in the daylight condition.

(c) Testing is conducted using the child pedestrian test mannequin.

(d) The movement of the pedestrian test mannequin is perpendicular to the intended travel path.

(e) The pedestrian test mannequin is set up 4.0 ± 0.1 m to the right of the intended travel path.

(f) The intended overlap is 50 percent.

(g) Two vehicle test devices are secured in stationary positions parallel to the intended travel path. The two vehicle test devices face the same direction as the intended travel path. One vehicle test device is directly behind the other separated by 1.0 ± 0.1 m. The left side of each vehicle test device is 1.0 ± 0.1 m to the right of the vertical plane parallel to the intended travel path and tangent with the right outermost point of the subject vehicle when the subject vehicle is in the intended travel path.

(h) The subject vehicle test speed is any speed between 10 km/h and 50 km/h.

(i) The pedestrian test mannequin speed is 5 km/h.

S8.3.4. *Test conduct prior to forward collision warning or vehicle braking onset.*

(a) The subject vehicle approaches the crossing path of the pedestrian test mannequin.

(b) Beginning when the headway corresponds to L_0 , the subject vehicle speed is maintained within 1.6 km/h of the test speed with minimal and smooth accelerator pedal inputs.

(c) Beginning when the headway corresponds to L_0 , the subject vehicle heading is maintained with minimal steering inputs such that the subject vehicle's travel path does not deviate more than 0.3 m laterally from the intended travel path, and the yaw rate of the subject vehicle does not exceed ±1.0 deg/s prior to any automated braking onset.

(d) The pedestrian test mannequin apparatus is triggered at a time such that the pedestrian test mannequin meets the intended overlap, subject to the criteria in S8.1.2. The pedestrian test mannequin achieves its intended speed within 1.5 m after the apparatus begins to move and maintains its intended speed within 0.4 km/h until the test

completion criteria of S8.3.6 are satisfied.

S8.3.5. Test conduct after either forward collision warning or vehicle braking onset.

(a) After forward collision warning or vehicle braking onset, the subject vehicle's accelerator pedal is released at any rate such that it is fully released within 500 ms. This action is omitted for vehicles with cruise control active.

(b) No manual brake application is made until the test completion criteria of S8.3.6 are satisfied.

(c) The pedestrian mannequin continues to move until the completion criteria of S8.3.6 are satisfied.

S8.3.6. Test completion criteria. The test run is complete when the subject vehicle comes to a complete stop without making contact with the pedestrian test mannequin, when the pedestrian test mannequin is no longer in the path of the subject vehicle, or when the subject vehicle makes contact with the pedestrian test mannequin.

S8.4. Stationary pedestrian.

S8.4.1. Test parameters and setup.

(a) The testing area is set up in accordance with Figure 6 to this section.

(b) Testing is conducted in the daylight or darkness conditions.

(c) Testing is conducted using the adult pedestrian test mannequin.

(d) The pedestrian mannequin is set up at the 25 percent right overlap position facing away from the approaching vehicle.

(e) The subject vehicle test speed is any speed between 10 km/h and 55 km/h.

(f) The pedestrian mannequin is stationary.

S8.4.2. Test conduct prior to forward collision warning or vehicle braking onset.

(a) The subject vehicle approaches the pedestrian test mannequin.

(b) Beginning when the headway corresponds to L_0 , the subject vehicle speed is maintained within 1.6 km/h of the test speed with minimal and smooth accelerator pedal inputs.

(c) Beginning when the headway corresponds to L_0 , the subject vehicle heading is maintained with minimal steering inputs such that the subject vehicle's travel path does not deviate more than 0.3 m laterally from the intended travel path, and the yaw rate of the subject vehicle does not exceed ± 1.0 deg/s prior to any automated braking onset.

S8.4.3. Test conduct after either forward collision warning or vehicle braking onset.

(a) After forward collision warning or vehicle braking onset, the subject vehicle's accelerator pedal is released at

any rate such that it is fully released within 500 ms. This action is omitted with vehicles with cruise control active.

(b) No manual brake application is made until the test completion criteria of S8.4.4 are satisfied.

S8.4.4. Test completion criteria. The test run is complete when the subject vehicle comes to a complete stop without making contact with the pedestrian test mannequin, or when the subject vehicle makes contact with the pedestrian test mannequin.

S8.5. Pedestrian moving along the path

S8.5.1. Test parameters and setup.

(a) The testing area is set up in accordance with Figure 7 to this section.

(b) Testing is conducted in the daylight or darkness conditions.

(c) Testing is conducted using the adult pedestrian test mannequin.

(d) The movement of the pedestrian test mannequin is parallel to and in the same direction as the subject vehicle.

(e) The pedestrian test mannequin is set up in the 25 percent right offset position.

(f) The subject vehicle test speed is any speed between 10 km/h and 65 km/h.

(g) The pedestrian test mannequin speed is 5 km/h.

S8.5.2. Test conduct prior to forward collision warning or vehicle braking onset.

(a) The subject vehicle approaches the pedestrian test mannequin.

(b) Beginning when the headway corresponds to L_0 , the subject vehicle speed is maintained within 1.6 km/h of the test speed with minimal and smooth accelerator pedal inputs.

(c) Beginning when the headway corresponds to L_0 , the subject vehicle heading is maintained with minimal steering inputs such that the travel path does not deviate more than 0.3 m laterally from the intended travel path, and the yaw rate of the subject vehicle does not exceed ± 1.0 deg/s prior to any automated braking onset.

(d) The pedestrian test mannequin apparatus is triggered any time after the distance between the front plane of the subject vehicle and a parallel contact plane on the pedestrian test mannequin corresponds to L_0 . The pedestrian test mannequin achieves its intended speed within 1.5 m after the apparatus begins to move and maintains its intended speed within 0.4 km/h until the test completion criteria of S8.5.4 are satisfied.

S8.5.3. Test conduct after either forward collision warning or vehicle braking onset.

(a) After forward collision warning or vehicle braking onset, the subject

vehicle's accelerator pedal is released at any rate such that it is fully released within 500 ms. This action is omitted for vehicles with cruise control active.

(b) No manual brake application is made until the test completion criteria of S8.5.4 are satisfied.

S8.5.4. Test completion criteria. The test run is complete when the subject vehicle slows to speed below the pedestrian test mannequin travel speed without making contact with the pedestrian test mannequin or when the subject vehicle makes contact with the pedestrian test mannequin.

S9. False AEB activation.

S9.1. Headway calculation. For each test run to be conducted under S9.2 and S9.3, the headway (L_0 , $L_{2.1}$, $L_{1.1}$), in meters, between the front plane of the subject vehicle and either the steel trench plate's leading edge or the rearmost plane normal to the centerline of the vehicle test devices providing 5.0 seconds, 2.1 seconds, and 1.1 seconds time to collision (TTC) is calculated. L_0 , $L_{2.1}$, and $L_{1.1}$ are determined with the following equation where V_{SV} is the speed of the subject vehicle in m/s:

$$L_x = TTC_x \times (V_{SV})$$

$$TTC_0 = 5.0$$

$$TTC_{2.1} = 2.1$$

$$TTC_{1.1} = 1.1$$

S9.2. Steel trench plate.

S9.2.1. Test parameters and setup.

(a) The testing area is set up in accordance with Figure 8.

(b) The steel trench plate is secured flat on the test surface so that its longest side is parallel to the vehicle's intended travel path and horizontally centered on the vehicle's intended travel path.

(c) The subject vehicle test speed is 80 km/h.

(d) Testing may be conducted with manual brake application.

S9.2.2. Test conduct.

(a) The subject vehicle approaches the steel trench plate.

(b) Beginning when the headway corresponds to L_0 , the subject vehicle speed is maintained within 1.6 km/h of the test speed with minimal and smooth accelerator pedal inputs.

(c) Beginning when the headway corresponds to L_0 , the subject vehicle heading is maintained with minimal steering input such that the travel path does not deviate more than 0.3 m laterally from the intended travel path, and the yaw rate of the subject vehicle does not exceed ± 1.0 deg/s.

(d) If forward collision warning occurs, the subject vehicle's accelerator pedal is released at any rate such that it is fully released within 500 ms. This action is omitted for vehicles with cruise control active.

(e) For tests where no manual brake application occurs, manual braking is not applied until the test completion criteria of S9.2.3 are satisfied.

(f) For tests where manual brake application occurs, the subject vehicle's accelerator pedal, if not already released, is released when the headway corresponds to $L_{2.1}$ at any rate such that it is fully released within 500 ms.

(g) For tests where manual brake application occurs, the service brakes are applied as specified in S10. The brake application pedal onset occurs at headway $L_{1.1}$.

S9.2.3. Test completion criteria. The test run is complete when the subject vehicle comes to a stop prior to crossing over the leading edge of the steel trench plate or when the subject vehicle crosses over the leading edge of the steel trench plate.

S9.3. Pass-through.

S9.3.1. Test parameters and setup.

(a) The testing area is set up in accordance with Figure 9.

(b) Two vehicle test devices are secured in a stationary position parallel to one another with a lateral distance of 4.5 m $\pm$ 0.1 m between the vehicles' closest front wheels. The centerline between the two vehicles is parallel to the intended travel path.

(c) The subject vehicle test speed is 80 km/h.

(d) Testing may be conducted with manual subject vehicle pedal application.

S9.3.2. Test conduct.

(a) The subject vehicle approaches the gap between the two vehicle test devices.

(b) Beginning when the headway corresponds to L_0 , the subject vehicle speed is maintained within 1.6 km/h with minimal and smooth accelerator pedal inputs.

(c) Beginning when the headway corresponds to L_0 , the subject vehicle heading is maintained with minimal steering input such that the travel path does not deviate more than 0.3 m laterally from the intended travel path,

and the yaw rate of the subject vehicle does not exceed ± 1.0 deg/s.

(d) If forward collision warning occurs, the subject vehicle's accelerator pedal is released at any rate such that it is fully released within 500 ms.

(e) For tests where no manual brake application occurs, manual braking is not applied until the test completion criteria of S9.3.3 are satisfied.

(f) For tests where manual brake application occurs, the subject vehicle's accelerator pedal, if not already released, is released when the headway corresponds to $L_{2.1}$ at any rate such that it is fully released within 500 ms.

(g) For tests where manual brake application occurs, the service brakes are applied as specified in S10. The brake application onset occurs when the headway corresponds to $L_{1.1}$.

S9.3.3. Test completion criteria. The test run is complete when the subject vehicle comes to a stop prior to its rearmost point passing the vertical plane connecting the forwardmost point of the vehicle test devices or when the rearmost point of the subject vehicle passes the vertical plane connecting the forwardmost point of the vehicle test devices.

S10. Subject Vehicle Brake Application Procedure.

S10.1. The procedure begins with the subject vehicle brake pedal in its natural resting position with no preload or position offset.

S10.2. At the option of the manufacturer, either displacement feedback or hybrid feedback control is used.

S10.3. Displacement feedback procedure. For displacement feedback, the commanded brake pedal position is the brake pedal position that results in a mean deceleration of 0.4g in the absence of AEB system activation.

(a) The mean deceleration is the deceleration over the time from the pedal achieving the commanded position to 250 ms before the vehicle comes to a stop.

(b) The pedal displacement controller depresses the pedal at a rate of 254 mm/s $\pm$ 25.4 mm/s to the commanded brake pedal position.

(c) The pedal displacement controller may overshoot the commanded position by any amount up to 20 percent. If such an overshoot occurs, it is corrected within 100 ms.

(d) The achieved brake pedal position is any position within 10 percent of the commanded position from 100 ms after pedal displacement occurs and any overshoot is corrected.

S10.4. Hybrid brake pedal feedback procedure. For hybrid brake pedal feedback, the commanded brake pedal application is the brake pedal position and a subsequent commanded brake pedal force that results in a mean deceleration of 0.4g in the absence of AEB system activation.

(a) The mean deceleration is the deceleration over the time from the pedal achieving the commanded position to 250 ms before the vehicle comes to a stop.

(b) The hybrid controller displaces the pedal at a rate of 254 mm/s $\pm$ 25.4 mm/s to the commanded pedal position.

(c) The hybrid controller may overshoot the commanded position by any amount up to 20 percent. If such an overshoot occurs, it is corrected within 100 ms.

(d) The hybrid controller begins to control the force applied to the pedal and stops controlling pedal displacement 100 ms after pedal displacement occurs and any overshoot is corrected.

(e) The hybrid controller applies a pedal force of at least 11.1 N.

(f) The applied pedal force is maintained within 10 percent of the commanded brake pedal force from 350 ms after commanded pedal displacement occurs and any overshoot is corrected until test completion.

Figure 1 to § 571.127—Percentage Overlap Nomenclature

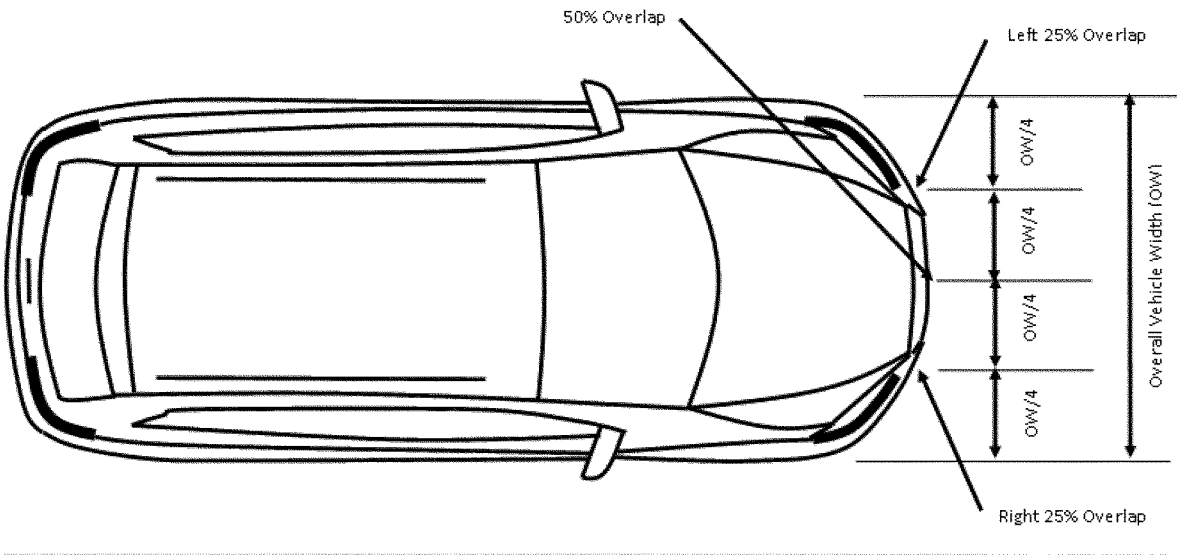


Figure 2 to § 571.127—Setup for Lead Vehicle Automatic Emergency Braking

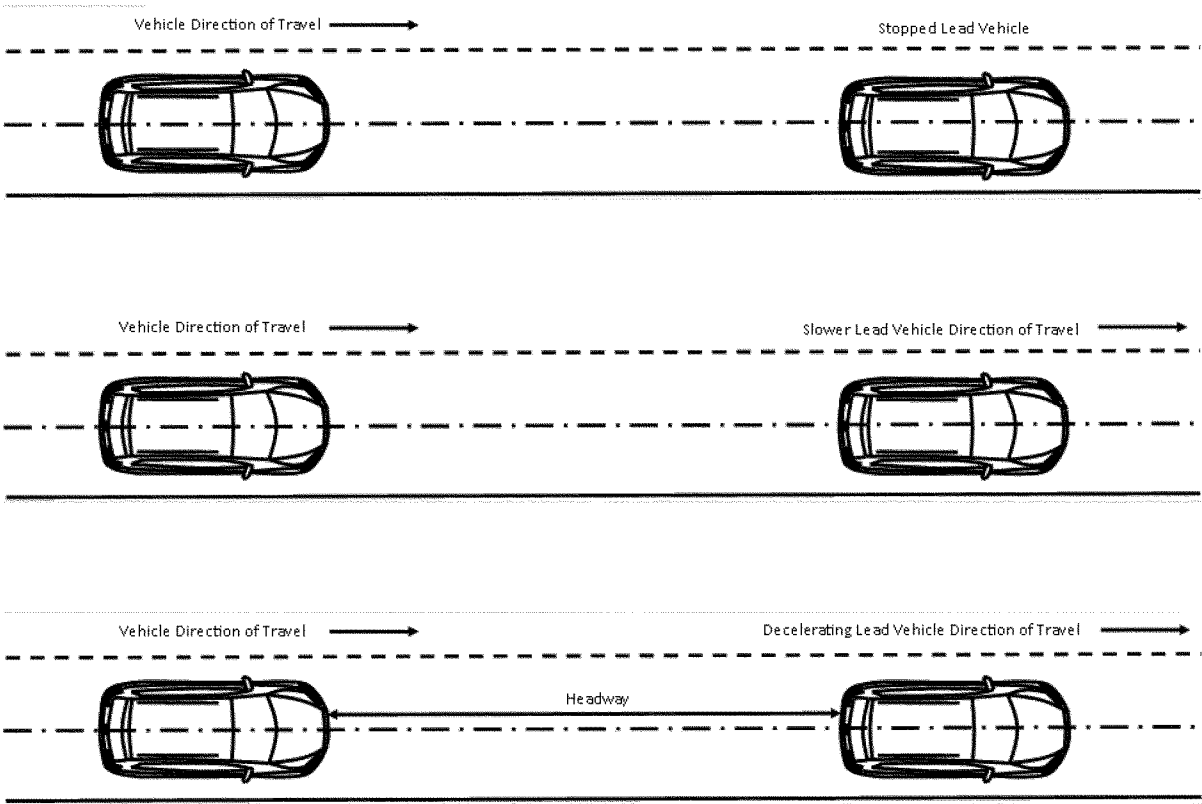


Figure 3 to § 571.127—Setup for Pedestrian, Crossing Path, Right

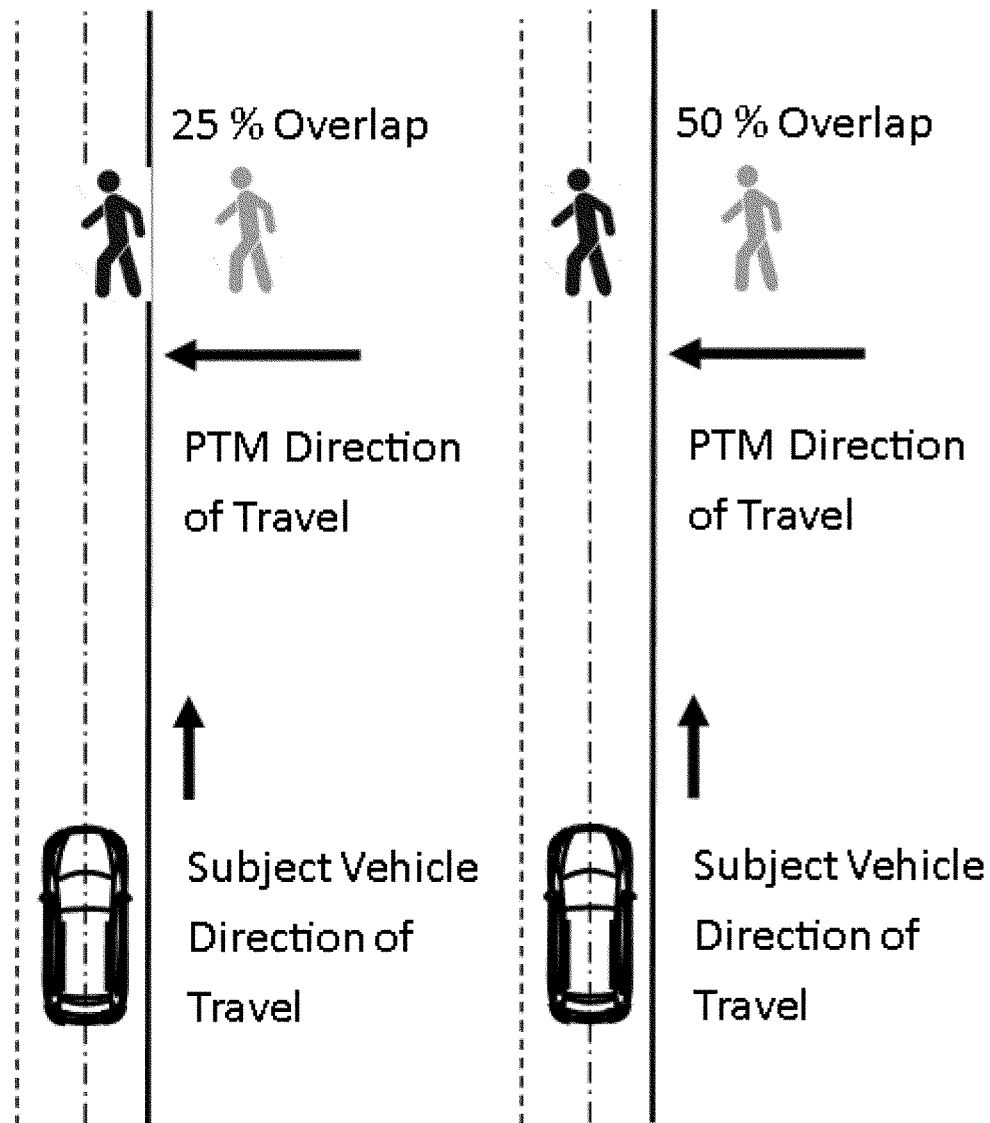


Figure 4 to § 571.127—Setup for Pedestrian, Crossing Path, Left

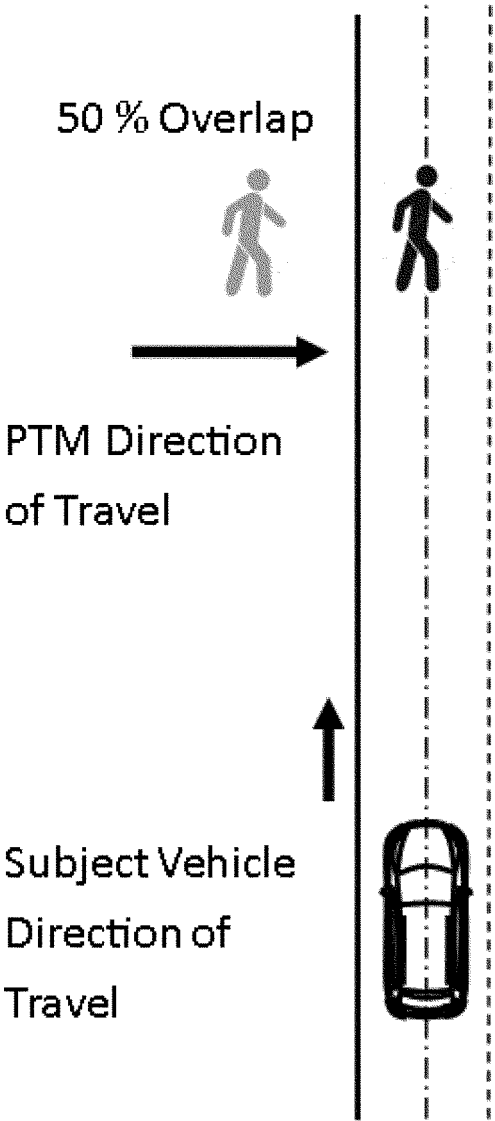


Figure 5 to § 571.127—Setup for Pedestrian, Obstructed

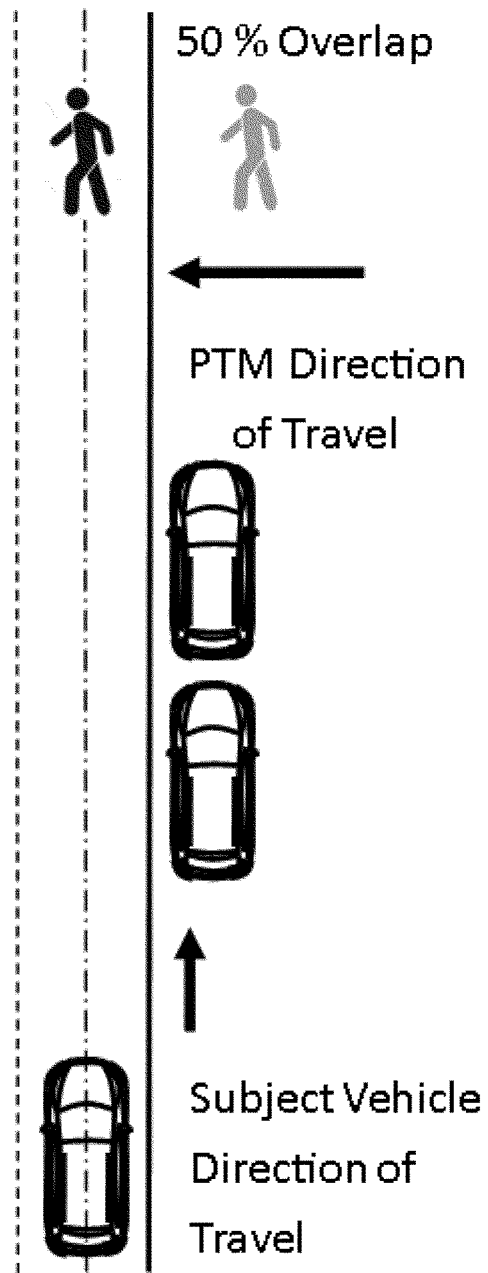


Figure 6 to § 571.127—Setup for Pedestrian Along-Path Stationary

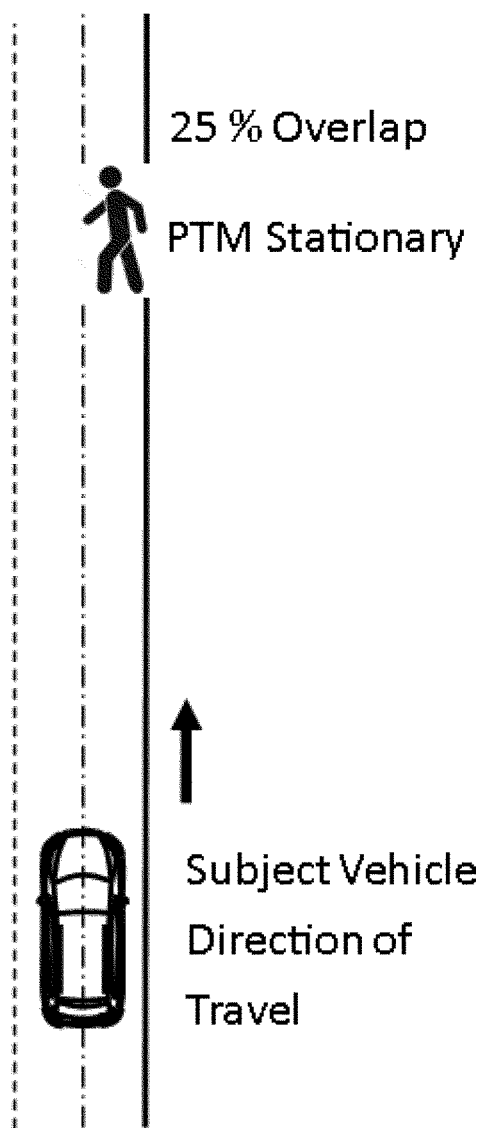


Figure 7 to § 571.127—Setup for Pedestrian Along-Path Moving

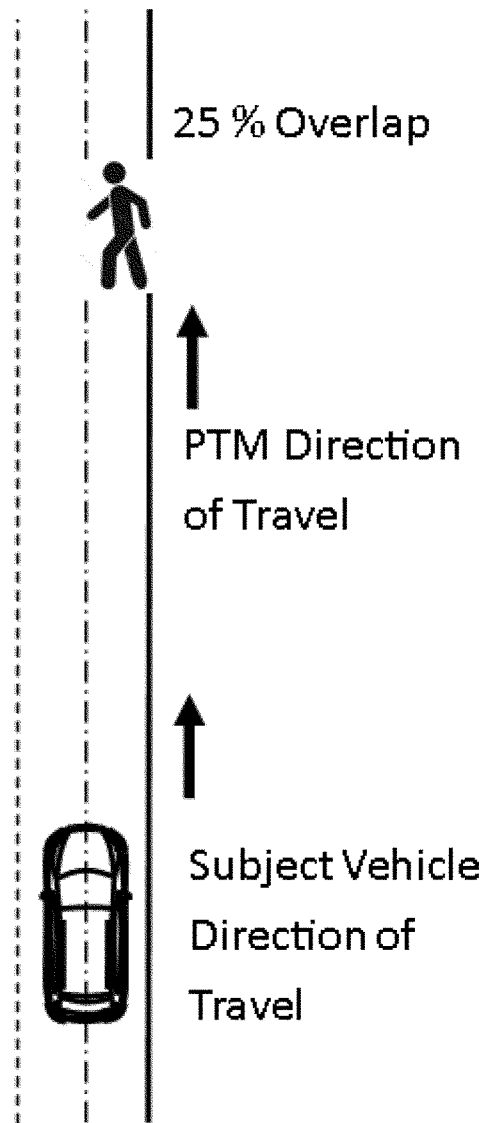


Figure 8 to § 571.127—Steel Trench Plate

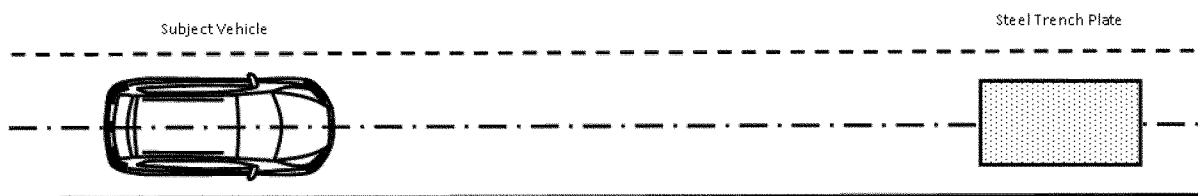
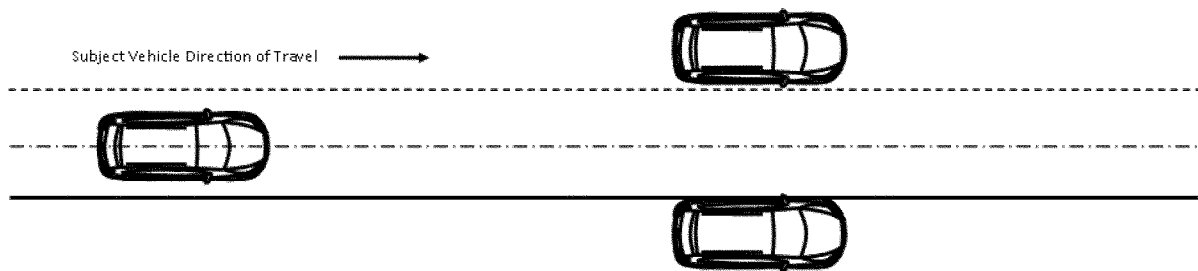


Figure 9 to § 571.127—Pass-Through



- 4. Add part 596 to read as follows.

PART 596—AUTOMATIC EMERGENCY BRAKING TEST DEVICES

- 1. The authority citation for part 596 reads as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.95.
Sec.

Subpart A—General

- 596.1 Scope.
- 596.2 Purpose.
- 596.3 Application.
- 596.4 Definitions.
- 596.5 Matter incorporated by reference.

Subpart B—Pedestrian Test Devices

- 596.7 Specifications for pedestrian test devices.
- 596.8 [Reserved]

Subpart C—Vehicle Test Device

- 596.9 General Description
- 596.10 Specifications for the Vehicle Test Device

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.95.

Subpart A—General

§ 596.1 Scope.

This part describes the test devices that are to be used for compliance testing of motor vehicles with motor vehicle safety standards for automatic emergency braking.

§ 596.2 Purpose.

The design and performance criteria specified in this part are intended to describe devices with sufficient precision such that testing performed with these test devices will produce repetitive and correlative results under similar test conditions to reflect adequately the automatic emergency braking performance of a motor vehicle.

§ 596.3 Application.

This part does not in itself impose duties or liabilities on any person. It is a description of tools that are used in compliance tests to measure the performance of automatic emergency braking systems required by the safety standards that refer to these tools. This

part is designed to be referenced by, and become part of, the test procedures specified in motor vehicle safety standards, such as 49 CFR 571.127 (Standard No. 127, *Automatic emergency braking systems for light vehicles*).

§ 596.4 Definitions.

All terms defined in section 30102 of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. chapter 301, *et seq.*) are used in their statutory meaning.

Adult Pedestrian Test Mannequin (APTM) means a test device with the appearance and radar cross section that simulates an adult pedestrian for the purpose of testing automatic emergency brake system performance.

Child Pedestrian Test Mannequin (CPTM) means a test device with the appearance and radar cross section that simulates a child pedestrian for the purpose of testing automatic emergency brake system performance.

Vehicle Test Device means a test device that simulates a passenger vehicle for the purpose of testing automatic emergency brake system performance.

Vehicle Test Device Carrier means a movable platform on which a Lead Vehicle Test Device may be attached during compliance testing.

Pedestrian Test Device(s) means an Adult Pedestrian Test Mannequin and/or a Child Pedestrian Test Mannequin.

Pedestrian Test Mannequin Carrier means a movable platform on which an Adult Pedestrian Test Mannequin or Child Pedestrian Test Mannequin may be attached during compliance testing.

§ 596.5 Matter incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the National Highway Traffic Safety Administration (NHTSA) must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at NHTSA at the

National Archives and Records Administration (NARA). Contact NHTSA at: NHTSA Office of Technical Information Services, 1200 New Jersey Avenue SE, Washington, DC 20590; (202) 366-2588 and For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html or email fr.inspection@nara.gov. The material may be obtained from the source(s) in the following paragraph of this section.

(b) International Organization for Standardization (ISO), 1, ch. de la Voie-Creuse, CP 56, CH-1211 Geneva 20, Switzerland; phone: + 41 22 749 01 11 fax: + 41 22 733 34 30; website: www.iso.org/.

(1) ISO 3668:2017, “Paints and varnishes—Visual comparison of colour of paints,” Third edition, 2017–05; into § 596.7.

(2) ISO 19206-2:2018(E), “Road vehicles—Test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 2: Requirements for pedestrian targets,” First edition, 2018–12; into § 596.7.

(3) ISO 19206-3:2021(E), “Test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 3: Requirements for passenger vehicle 3D targets,” First edition, 2021–05; into § 596.10.

(4) ISO 19206-4:2020(E), “Test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 4: Requirements for bicyclist targets,” First edition, 2020–11; into § 596.7.

Subpart B—Pedestrian Test Devices

§ 596.7 Specifications for Pedestrian Test Devices.

(a) The words “recommended,” “should,” “can be,” or “should be” appearing in sections of ISO 19206-2:2018(E) (incorporated by reference, see § 596.5), referenced in this section, are read as setting forth specifications that are used.

(b) The words “may be,” or “either” used in connection with a set of items

appearing in sections of ISO 19206–2:2018(E) (incorporated by reference, see § 596.5), referenced in this section, are read as setting forth the totality of items, any one of which may be selected by NHTSA for testing.

(c) *Specifications for the Pedestrian Test Devices*—(1) *General description*. The Adult Pedestrian Test Mannequin (APTM) provides a sensor representation of a 50th percentile adult male and consist of a head, torso, two arms and hands, and two legs and feet. The Child Pedestrian Test Mannequin (CPTM) provides a sensor representation of a 6–7-year-old child and consists of a head, torso, two arms and hands, and two legs and feet. The arms of the APTM and CPTM are posable, but do not move during testing. The legs of the APTM and CPTM articulate and are synchronized to the forward motion of the mannequin.

(2) *Dimensions and posture*. The APTM has basic body dimensions and proportions specified in Annex A, table A.1 in ISO 19206–2:2018 (incorporated by reference, see § 596.5). The CPTM has basic body dimensions and proportions specified in Annex A, table A.1 in ISO 19206–2:2018 (incorporated by reference, see § 596.5).

(3) *Visual Properties*—(i) *Head*. The head has a visible hairline silhouette by printed graphic. The hair is black as defined in Annex B table B.2 of ISO 19206–4:2020, as tested in accordance with ISO 3668:2017 (both incorporated by reference, see § 596.5).

(ii) *Face*. The head does not have any facial features (*i.e.*, eyes, nose, mouth, and ears).

(iii) *Skin*. The face, neck and hands have a skin colored as defined Annex B, table B.2 of ISO 19206–4: 2020 (incorporated by reference, see § 596.5).

(iv) *Torso and Arms*. The torso and arms are black as defined in Annex B table B.2 of ISO 19206–4:2020, as tested in accordance with ISO 3668:2017 (both incorporated by reference, see § 596.5).

(v) *Legs*. The legs are blue as defined in Annex B table B.2 of ISO 19206–4:2020, as tested in accordance with ISO 3668:2017 (both incorporated by reference, see § 596.5).

(vi) *Feet*. The feet are black as defined in Annex B table B.2 of ISO 19206–4:2020, as tested in accordance with ISO 3668:2017 (both incorporated by reference, see § 596.5).

(4) *Infrared properties*. The surface of the entire APTM or CPTM are within the reflectivity ranges specified in Annex B section B.2.2 of ISO 19206–2:2018, as illustrated in Annex B, figure B.2 (incorporated by reference, see § 596.5).

(5) *Radar properties*. The radar reflectivity characteristics of the pedestrian test device approximates that of a pedestrian of the same size when approached from the side or from behind.

(6) *Radar cross section measurements*. The radar cross section measurements of the APTM and the CPTM is within the upper and lower boundaries shown in Annex B, section B.3, figure B.6 of ISO 19206–2:2018 when tested in accordance with the measure procedure in Annex C, section C.3 of ISO 19206–2:2018 (incorporated by reference, see § 596.5).

(7) *Posture*. The pedestrian test device has arms that are posable and remain posed during testing. The pedestrian test device is equipped with moving legs consistent with standard gait phases specified in Section 5.6 of ISO 19206–2:2018 (incorporated by reference, see § 596.5).

(8) *Articulation Properties*. The legs of the pedestrian test device are in accordance with, and as described in, Annex D, section D.2 and illustrated in Figures D.1, D.2, and D.3 of ISO 19206–2:2018 (incorporated by reference, see § 596.6).

§ 596.8 [Reserved]

Subpart C—Vehicle Test Device

§ 596.9 General Description

(a) The Vehicle Test Device provides a sensor representation of a passenger motor vehicle.

(b) The rear view of the Vehicle Test Device contains representations of the vehicle silhouette, a rear window, a high-mounted stop lamp, two taillamps, a rear license plate, two rear reflex reflectors, and two tires.

§ 596.10 Specifications for the Vehicle Test Device.

(a) The words “recommended,” “should,” “can be,” or “should be” appearing in sections of ISO 19206–3:2021(E) (incorporated by reference, see § 596.5), referenced in this section, are read as setting forth specifications that are used.

(b) The words “may be,” or “either,” used in connection with a set of items appearing in sections of ISO 19206–3:2021(E) (incorporated by reference, see § 596.5), referenced in this section, are read as setting forth the totality of items, any one of which may be selected by NHTSA for testing.

(c) *Dimensional specifications*. (1) The rear silhouette and the rear window are symmetrical about a shared vertical centerline.

(2) Representations of the taillamps, rear reflex reflectors, and tires are

symmetrical about the surrogate’s centerline.

(3) The license plate representation has a width of 300 ±15 mm and a height of 150 ±15 mm and mounted with a license plate holder angle within the range described in 49 CFR 571.108 S6.6.3.1.

(4) The Vehicle Test Device representations are located within the minimum and maximum measurement values specified in columns 3 and 4 of Tables A.4 of ISO 19206–3:2021(E) Annex A (incorporated by reference, see § 596.5). The tire representations are located within the minimum and maximum measurement values specified in columns 3 and 4 of Tables A.3 of ISO 19206–3:2021(E) Annex A (incorporated by reference, see § 596.5). The terms “rear light” means “taillamp,” “retroreflector” means “reflex reflector,” and “high centre taillight” means “high-mounted stop lamp.”

(d) *Visual and near infrared specification*. (1) The Vehicle Test Device rear representation colors are within the ranges specified in Tables B.2 and B.3 of ISO 19206–3:2021(E) Annex B (incorporated by reference, see § 596.5).

(2) The rear representation infrared properties of the Vehicle Test Device are within the ranges specified in Table B.1 of ISO 19206–3:2021(E) Annex B (incorporated by reference, see § 596.5) for wavelengths of 850 to 950 nm when measured according to the calibration and measurement setup specified in paragraph B.3 of ISO 19206–3:2021(E) Annex B (incorporated by reference, see § 596.5).

(3) The Vehicle Test Device rear reflex reflectors, and at least 50 cm² of the taillamp representations are grade DOT–C2 reflective sheeting as specified in 49 CFR 571.108 S8.2.

(e) *Radar reflectivity specifications*.

(1) The radar cross section of the Vehicle Test Device is measured with it attached to the carrier (robotic platform). The radar reflectivity of the carrier platform is less than 0 dBm² for a viewing angle of 180 degrees and over a range of 5 to 100 m when measured according to the radar measurement procedure specified in C.3 of ISO 19206–3:2021(E) Annex C (incorporated by reference, see § 596.5) for fixed-angle scans.

(2) The rear bumper area as shown in Table C.1 of ISO 19206–3:2021(E) Annex C (incorporated by reference, see § 596.5) contributes to the target radar cross section.

(3) The radar cross section is assessed using radar sensor that operates at 76 to 81 GHz and has a range of at least 5 to

100 m, a range gate length smaller than 0.6m, a horizontal field of view of 10 degrees or more (– 3dB amplitude limit), and an elevation field of view of 5 degrees or more (– 3dB amplitude).

(4) At least 92 percent of the filtered data points of the surrogate radar cross section for the fixed vehicle angle, variable range measurements are within the radar cross section boundaries defined in Sections C.2.2.4 of ISO 19206–3:2021(E) Annex C (incorporated by reference, see § 596.5) for a viewing

angle of 180 degrees when measured according to the radar measurement procedure specified in C.3 of ISO 19206–3:2021(E) Annex C (incorporated by reference, see § 596.5) for fixed-angle scans.

(5) Between 86 to 95 percent of the Vehicle Test Device spatial radar cross section reflective power is with the primary reflection region defined in Section C.2.2.5 of ISO 19206–3:2021(E) Annex C (incorporated by reference, see § 596.5) when measured according to

the radar measurement procedure specified in C.3 of ISO 19206–3:2021(E) Annex C (incorporated by reference, see § 596.5) using the angle-penetration method.

Issued under authority delegated in 49 CFR part 1.95 and 49 CFR 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

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