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Presidential Documents

Title 3—

The President

Proclamation 10595 of June 9, 2023

Flag Day and National Flag Week, 2023

By the President of the United States of America

A Proclamation

On Flag Day and during National Flag Week, we celebrate the enduring strength and promise that the stars and stripes on our flag have always embodied as they fly proudly across our country and around the world.

Our flag tells America's story—the story of an ever-evolving Nation. Thirteen colonies joining together and winning independence, forming a great Union of States that has grown bigger and more just across generations—a place where everyone is entitled to certain unalienable rights, among them life, liberty, and the pursuit of happiness. It is an emblem of our strength at home and abroad, synonymous with America as a force for good in the world. It has flown on battlefields since the Revolution and reminded allies and adversaries throughout the last century that the darkness of autocracy is no match for the flame of liberty. It flies over grand celebratory monuments, and it accompanies headstones at sacred places like Arlington National Cemetery, where Jill and I recently paid tribute to the hundreds of thousands of brave Americans who made the ultimate sacrifice for our freedom and future, giving their lives so our Nation might live. We honor their unbending sense of duty and courage and remember their faith that we would be worthy of their sacrifice.

Old Glory stands for hope, pride, and progress. It is stamped on our exports, hung from booming factories, and painted on spacecraft that travel high above our skies—a symbol of the American spirit that keeps innovating, building, and breaking boundaries. It waves for justice and equality. It adorns courtrooms and classrooms. And it presides over free and fair elections at polling places across the Nation, reinforcing the promise of our democracy.

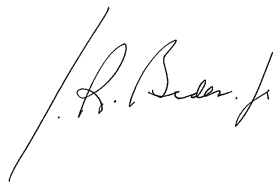
Our flag embodies the very soul of America—a soul that has endured because of sacrifices made by generations of Americans, whose mission we must keep alive to ensure democracy endures. The Stars and Stripes belongs to all Americans and reminds us that much more unites us than divides us. It flies proudly in small town squares, on downtown skyscrapers, in high school gyms, in our biggest sports stadiums, and on our military bases. Wherever our flag is, it stands for freedom, justice, and opportunity; it is a beacon of democracy and the fundamental American promise that everyone is created equal and united in pursuit of a more perfect Union.

To commemorate the adoption of our flag in 1777, the Congress, by joint resolution approved on August 3, 1949, as amended (63 Stat. 492), designated June 14 of each year as ''Flag Day'' and requested the President issue an annual proclamation calling for its observance and for the display of the flag of the United States on all Federal Government buildings. The Congress also requested, by joint resolution approved June 9, 1966, as amended (80 Stat. 194), that the President issue annually a proclamation designating the week in which June 14 occurs as ''National Flag Week'' and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim June 14, 2023, as Flag Day, and the week starting June 11, 2023, as National Flag Week. I direct the appropriate officials to display the flag on all Federal Government buildings during

this week, and I urge all Americans to observe Flag Day and National Flag Week by displaying the flag and honoring all of our brave service members and revering those who gave their last full measure of devotion defending our freedoms. I encourage the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, set aside by the Congress (89 Stat. 211), as a time to honor the American spirit, to celebrate our history and the foundational values we strive to uphold, and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

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



[FR Doc. 2023–12818
Filed 6–13–23; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 230608–0146]

RIN 0694–AJ24

Additions of Entities to the Entity List and Removal of Entity From the Entity List

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is amending the Export Administration Regulations (EAR) by adding 43 entities under 50 entries to the Entity List. These entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These entries are listed on the Entity List under the destinations of China (31), Kenya (1), Laos (1), Malaysia (1), Pakistan (4), Singapore (1), South Africa (3), Thailand (1), the United Arab Emirates (5), and the United Kingdom (2). This rule also removes one entity from the Entity List under the destination of Latvia.

DATES: This rule is effective June 12, 2023.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Entity List (supplement no. 4 to part 744 of the EAR (15 CFR parts 730–774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11(b). The EAR impose additional license requirements on, and limit the availability of, most license exceptions for exports, reexports, and transfers (in-country) when a listed entity is a party to the transaction. The license review policy for each listed entity is identified in the ''License Review Policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document that added the entity to the Entity List. The Bureau of Industry and Security (BIS) places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

Additions to the Entity List

The ERC determined to add the following entities to the Entity List: Under the destination of China, Aviation Industry Corporation of China International Simulation Technology Service Co., Ltd.; Beijing China Aviation Technology Co., Ltd.; Chengdu Poyotencon Technology; China Taly Aviation Technologies Corporation; Chinese Flight Test Establishment; and Enhance International Trade Limited; under the destinations of China, Kenya, Laos, and the United Arab Emirates, Frontier Services Group Limited; under the destinations of China and South Africa, the Test Flying Academy of South Africa; under the destinations of Malaysia, Singapore, Thailand, and the United Kingdom, International Aerospace Asia; under the destination of South Africa, AVIC International Flight Training Academy; and Pearl Coral 1173CC; under the destination of the United Arab Emirates, TFASA Group FZCO; TFASA Group Training; TFASA Services FZCO; and TFASA Training Limited; and under the destination of the United Kingdom, TFASA Group Limited. These entities are added for providing training to Chinese military pilots using Western and NATO sources. This activity is contrary to U.S. national security and foreign policy interests under § 744.11 of the EAR. Licenses are required for all items subject to the EAR. License applications will be reviewed under a presumption of denial.

The ERC determined to add Aviation Industry Corporation of China 612 Institute; Beijing Iwintall Technology Co. Ltd.; Beijing Transemic Technology Co., Ltd.; Beijing Transemic Information Technology Co., Ltd.; China Aviation Development Harbin Bearing Co., Ltd.; Luoyang Institute of Science and Technology, Opturn Co., Ltd.; and Pera Global to the Entity List for acquiring and attempting to acquire U.S.-origin items in support of China's military modernization. This activity is contrary to U.S. national security and foreign policy interests under § 744.11 of the EAR. These entities have demonstrable ties to activities of concern, including hypersonic weapons development, design and manufacture of air-to-air missiles, hypersonic flight modeling, and weapon lifecycle management using Western software. Licenses are required for all items subject the EAR. License applications will be reviewed under a presumption of denial.

Pursuant to § 744.11 of the EAR, the ERC determined to add Belt Consulting Co., Ltd.; New Faith Enterprise Investment Limited; Shanghai Breeze Technology Co., Ltd.; Shanghai Breeze Technology Jiangsu Co, Ltd.; Shanghai Shark Sprite Technology Co., Ltd.; and United Vision Limited, all under the destination of China, to the Entity List. This addition is based on their engaging in or enabling activities contrary to U.S. national security and foreign policy interests. Specifically, these entities have been implicated in a conspiracy to violate U.S. export laws and regulations, including a scheme to supply the Chinese People's Liberation Army—Navy with U.S. military grade vessels and equipment. This activity is contrary to U.S. national security and foreign policy interests under § 744.11 of the EAR. Licenses are required for all items subject the EAR. License applications

will be reviewed under a presumption of denial.

The ERC determined to add Shanghai Supercomputing Technology Co., Ltd. to the Entity List for acquiring and attempting to acquire U.S.-origin items in support of China's military modernization. This entity has supported the operation of supercomputers located in the PRC, specifically by offering cloud-based supercomputing capabilities to support hypersonics research. This activity is contrary to U.S. national security and foreign policy interests under § 744.11 of the EAR. Licenses are required for all items subject to the EAR, which will be reviewed under a presumption of denial. This entity is also given a footnote 4 designation, which means that ''items subject to the EAR'' for the purpose of these license requirements include foreign-produced items that are subject to the EAR pursuant to § 734.9(e)(2) of the EAR.

The ERC determined to add Beijing Ryan Wende Science and Technology Co., Ltd. (Beijing Ryan) and Xinjiang Kehua Hechang Biological Science and Technology Co., Ltd. (Xinjiang Kehua) to the Entity List, all under the destination of China, for procuring and supplying items subject to the EAR that enable the Chinese government to carry out human rights abuses against individuals in China. Specifically, Beijing Ryan procures and distributes items subject to the EAR, including mobile phone inspection software, fingerprint analysis technology, biostatistics software, and DNA testing items to Public Security Bureaus (PSBs) throughout China. Xinjiang Kehua procures and distributes biotechnology items subject to the EAR to the Xinjiang Production and Construction Corps (XPCC), an entity designated on the Entity List and on the Office of Foreign Assets Control's List of Specially Designated Nationals and Blocked Persons, and to PSBs in Xinjiang. The distribution of these items to XPCC and the PSBs enables China to carry out human rights abuses against individuals in China, including as part of its campaign of repression against Uyghur Muslims and members of other minority groups in Xinjiang. This activity is contrary to U.S. national security and foreign policy interests under § 744.11 of the EAR. Licenses are required for all items subject the EAR. License applications will be reviewed under a presumption of denial.

The ERC determined to add Akhtar and Sons Private Limited to the Entity List under the destination of Pakistan. This addition is based on its contributions to Pakistan's ballistic missile program. A license is required for all items subject to the EAR. License applications will be reviewed under the policy set out in § 744.3(d).

The ERC determined to add Affiliates International, under the destination of Pakistan, and Changzhou Utek Composite Co., Ltd., under the destination of China, to the Entity List. This addition is based on their contributions to Pakistan's ballistic missile program. A license is required for all items subject to the EAR. License applications will be reviewed under the policy set out in § 744.3(d).

The ERC determined to add Beijing Luo Luo Technology Development Co., Ltd.; General Technology Limited; Tiger Force Electronics Limited; and Universal Enterprise Limited to the Entity List, all under the destination of China. This addition is based on their contributions to Pakistan's ballistic missile program. A license is required for all items subject to the EAR. License applications will be reviewed under the policy set out in §§ 744.2(d) and 744.3(d).

The ERC determined to add Qianpu Technology Co., Ltd., under the destination of China, and Quantum Logix (Private) Limited and Imminent Engineering Co., Ltd., both under the destination of Pakistan, to the Entity List. This addition is based on information that these entities significantly contribute to Pakistan's advanced conventional weapons and strategic weapons capabilities, contrary to U.S. national security and foreign policy interests under § 744.11 of the EAR. Licenses are required for all items subject the EAR. License applications will be reviewed under a presumption of denial.

For the reasons described above, this final rule adds the following 43 entities under 50 entries to the Entity List and includes, where appropriate, aliases:

China

- Aviation Industry Corporation of China 612 Institute,
- Aviation International Corporation of China International Simulation Technology Service Co., Ltd.,
- Beijing China Aviation Technology Co., Ltd.,
- Beijing Iwintall Technology Co. Ltd.,
- Beijing Luo Luo Technology Development Co., Ltd.,
- Beijing Ryan Wende Science and Technology Co., Ltd.,
- Beijing Transemic Information Technology Ltd.,
- Beijing Transemic Technology Ltd.,
- Belt Consulting Co., Ltd.,
- Changzhou Utek Composite Co., Ltd.,
- Chengdu Poyotencon Technology,
- China Taly Aviation Technologies Corporation,
- Chinese Flight Test Establishment,
- Enhance International Trade Limited,
- Frontier Services Group Limited,
- General Technology Limited,
- Luoyang Institute of Science and Technology,
- New Faith Enterprise Investment Limited,
- Opturn Co., Ltd.,
- Pera Global
- Qianpu Technology Co., Ltd.,
- Shanghai Aerospace Science and Technology Development Co., Ltd.
- Shanghai Breeze Technology Co., Ltd.,
- Shanghai Breeze Technology Jiangsu Co., Ltd.,
- Shanghai Shark Sprite Technology Co., Ltd.,
- Shanghai Supercomputing Technology Co., Ltd.,
- The Test Flying Academy of South Africa,
- Tiger Force Electronics Limited,
- United Vision Limited,
- Universal Enterprise Limited, *and*
- Xinjiang Kehua Hechang Biological Science and Technology Co., Ltd.

Kenya

- Frontier Services Group Limited.

Laos

- Frontier Services Group Limited.

Malaysia

- International Aerospace Asia.

Pakistan

- Affiliates International,
- Akhtar and Sons Private Limited,
- Imminent Engineering Co., Ltd., *and*
- Quantum Logix (Private) Limited.

Singapore

- International Aerospace Asia.

South Africa

- AVIC International Flight Training Academy,
- Pearl Coral 1173 CC, *and*
- The Test Flying Academy of South Africa.

Thailand

- International Aerospace Asia.

United Arab Emirates

- Frontier Services Group Limited,
- TFASA Group FZCO,
- TFASA Group Training,
- TFASA Services FZCO, *and*

- TFASA Training Limited.

United Kingdom

- International Aerospace Asia, *and*
- TFASA Group Limited.

Removal From the Entity List

The ERC determined to remove Fiber Optic Solutions from the Entity List. This is based on information that BIS received pursuant to § 744.16(e) of the EAR and the review that the ERC conducted in accordance with procedures described in supplement no. 5 to part 744 of the EAR. Prior to removal from the Entity List by this rule, Fiber Optic Solutions was listed under Latvia.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on June 12, 2023, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) before July 12, 2023. Any such items not actually exported, reexported, or transferred (in-country) before midnight, on July 12, 2023, require a license in accordance with this final rule.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and commodity classifications, and carries a burden estimate of 29.4 minutes for a manual or electronic submission for a total burden estimate of 33,133 hours. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

■ 1. The authority citation for 15 CFR part 744 is continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2022, 87 FR 57569 (September 21, 2022); Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. Under CHINA, PEOPLE'S REPUBLIC OF, by adding, in alphabetical order, entries for ''Aviation Industry Corporation of China 612 Institute;'' ''Aviation International Corporation of China International Simulation Technology Service Co., Ltd.;'' ''Beijing China Aviation Technology Co., Ltd.;'' ''Beijing Iwintall Technology Co. Ltd.;'' ''Beijing Luo Luo Technology Development Co., Limited;'' ''Beijing Ryan Wende Science and Technology Co., Ltd.;'' ''Beijing Transemic Information Technology Ltd.;'' ''Beijing Transemic Technology Ltd.;'' ''Belt Consulting Co., Limited;'' ''Changzhou Utek Composite Co., Limited;'' ''Chengdu Poyotencon Technology;'' ''China Taly Aviation Technologies Corporation;'' ''Chinese Flight Test Establishment;'' ''Enhance International Trade Limited;'' ''Frontier Services Group Limited;'' ''General Technology Limited;'' ''Luoyang Institute of Science and Technology;'' ''New Faith Enterprise Investment Limited;'' ''Opturn Co., Ltd.;'' ''Pera Global;'' ''Qianpu Technology Co., Ltd.;'' ''Shanghai Aerospace Science and Technology Development Co., Ltd.;'' ''Shanghai Breeze Technology Co., Ltd.;'' ''Shanghai Breeze Technology Jiangsu Co., Ltd.;'' ''Shanghai Shark Sprite Technology Co., Ltd.;'' ''Shanghai Supercomputing Technology Co., Ltd.;'' ''The Test Flying Academy of South Africa;'' ''Tiger Force Electronics Limited;'' ''United Vision Limited;'' ''Universal Enterprise Limited;'' *and* ''Xinjiang Kehua Hechang Biological Science and Technology Co., Ltd.;''

■ b. By adding in alphabetical order a heading for KENYA and under KENYA, by adding, in alphabetical order, an entry for ''Frontier Services Group Limited;''

■ c. Under LATVIA, by removing the entry for ''Fiber Optic Solutions;''

■ d. By adding in alphabetical order a heading for LAOS and under LAOS, by adding, in alphabetical order, an entry for ''Frontier Services Group Limited;''

■ e. Under MALAYSIA, by adding, in alphabetical order, an entry for ''International Aerospace Asia;''

■ f. Under PAKISTAN, by adding in alphabetical order, entries for ''Affiliates International;'' ''Akhtar and Sons Private Limited;'' ''Imminent Engineering Co., Ltd.;'' *and* ''Quantum Logix (Private) Limited''; *and*

■ g. Under SINGAPORE, by adding, in alphabetical order, an entry for ''International Aerospace Asia;''

■ h. Under SOUTH AFRICA, by adding, in alphabetical order, entries for ''AVIC International Flight Training Academy;'' ''Pearl Coral 1173 CC;'' *and* ''The Test Flying Academy of South Africa;''

■ i. Under THAILAND, by adding, in alphabetical order, an entry for ''International Aerospace Asia;''

■ j. Under UNITED ARAB EMIRATES, by adding, in alphabetical order, entries for ''Frontier Services Group Limited;'' ''TFASA Group FZCO;'' ''TFASA Group Training;'' ''TFASA Services FZCO;'' *and* ''TFASA Training Limited;'' and

■ k. Under United Kingdom, by adding, in alphabetical order, entries for ''International Aerospace Asia;'' *and* ''TFASA Group Limited.''

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* * *	*	* *	*
CHINA, PEOPLE'S REPUBLIC OF.	* *	*	* *	*
	Aviation Industry Corporation of China 612 Institute, a.k.a. the following three aliases: —Base 014; —China Air-to-Air Missile Research Institute; *and* —China Airborne Missile Academy. No. 166 Jiefang Road, Xigong District, Luoyang City, Henan Province, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	Aviation International Corporation of China International Simulation Technology Service Co., Ltd., a.k.a. the following one alias: —AVIC International Simulation Technology and Service Co., Ltd. 1001, Building 2, No. 510, Gutai Road, Baoshan District, Shanghai, China; *and* 5th Floor, Hangfei Building, No. 333, Longteng Road, Songjiang District, Shanghai, China; *and* Gate 3, No. 3–2, Linxing Street, Nangang District, Harbin, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Beijing China Aviation Technology Co., Ltd., a.k.a. the following four aliases: —BCAT Aviation; —B–CAT; —BCAT; *and* —Beijing Zhongxun Technology Co., Ltd. No. 18, Kaixuan Street, Liangxiang District, Fangshan District, Beijing–D3768, China; *and* No. 18, Cailida Road, Liang Tang Street, Liangxiang District, Fangshan District, Beijing, China; *and* Beijing Yizhuang Economic and Technological Development Zone No. 29 Council of Hai Second Road Zhongxing Science and Technology Park, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Beijing Iwintall Technology Co. Ltd., a.k.a. the following one alias: —Beijing Yiweixun Tongchuang Technology Co., Ltd. Building CN08, No. 1 Balizhuang Dongli, Chaoyang District, Beijing, China; *and* Building 6A, No. 3 Yanjing Middle Street, Chaoyang District, Beijing, China; *and* Room 2108, Floor 21, Building 6A, No. 3 Yanjingli Middle Street, Chaoyang District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Beijing Luo Luo Technology Development Co., Limited, Room 903, Building 1, No. 4 Wangjing Road, Chaoyang District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d) and 744.3(d) of this part.	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Beijing Ryan Wende Science and Technology Co., Ltd., a.k.a. the following one alias: —Beijing Reiyuan Wende Science and Technology Company Limited.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.

Country	Entity	License requirement	License review policy	Federal Register citation
	Room 1001, 10th Floor, Building 2 (Longsheng Building B), No. 5, Rongchang East Street, Economic and Technological Development Zone, Beijing, China; *and* Attachment 7, No. 45 Fang Cao Street, High-tech Zone, Chengdu, China; *and* Unit 6, Floor 21, Guangdong Asia International Hotel, No. 326, Huanshi East Road, Yuexiu District, Guangzhou, China; *and* Room 203, Building 10, No. 6251 Shangchuan Road, Pudong New Area, Shanghai, China; *and* Room 200, No. 97, Zhongshan Road, Heping District, Shenyang, China; *and* Room 20, 30th Floor, Unit A, Genesis Plaza, No. 549 Jiefang Avenue, Jianghan District, Wuhan, China.			
	* *	*	* *	*
	Beijing Transemic Information Technology Ltd., a.k.a. the following one alias: —Beijing Tianshenghua Information Technology Co., Ltd. Room 433, Section C, 4th Floor, Building 1, 3rd Street, Shangdi Information Industry Base, Haidian District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	Beijing Transemic Technology Ltd., a.k.a. the following one alias: —Beijing Tianshenghua Technology Co., Ltd. Room 2306, Building C, Jinchangan, No. 82, Middle East Fourth Ring Road, Chaoyang District, Beijing, China; *and* Room 801, Building C11, No. 219, Tianhua 2nd Road, High-tech Zone, Chengdu, China; *and* 1st Floor, Building 2, No. 136, Tonghuai Street, Jiangning District, Nanjing, China; *and* Room 5, 2/F, Phase 2, Xinbao Industrial and Commercial Centre, 116 Ma Tau Kok Road, To Kwa Wan, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Belt Consulting Co., Limited., Unit E&F, 13/F Wang Cheong, Commercial Building, No. 249–253 Reclamation St., Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Changzhou Utek Composite Co., Limited, a.k.a., the following one alias: —CUC. Fuhanyuan 1–812, New North District, Changzhou, 213022, Jiangsu, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.3(d) of the EAR	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Chengdu Poyotencon Technology, No. 175, Shanbanqiao Road, Chenghua District, Chengdu City, Sichuan Province, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	China Taly Aviation Technologies Corporation, a.k.a. the following two aliases: —China Taly; *and* —China Tianli Aviation Technology Industrial Co., Ltd. 7 Da Cheng Road Feng Tai District, Beijing, China; *and* No. 7 Dacheng Road, Fengtai District, Beijing, China; *and* No. 56 Zhi Chun Road, Haidian District, Beijing China Haidian District, Beijing, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Chinese Flight Test Establishment, a.k.a. the following six aliases: —630 Institute of China Aeronautical Research Institute; —Aviation Industry Test Flight Center; —AVIC Flight Test Center; —CFTE; —China CFTE; *and* —Yanliang Test Flight Institute. 8th Testing Flying Courtyard Road, Yanliang District, Xi'an City, Shaanxi Province, China; *and* CFTE Rd Yanliang District, Xi'an, China; *and* Renmin Road, Yanliang District, Xi'an City, Shaanxi Province, China; *and* Hong91 Building 357 Unit 39, Xi'an City, China; *and* No. 8 Shifeiyuan Road, Yanliang District, Xi'an, China.	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	Enhance International Trade Limited, Room 803 8/F Easey Commercial Building 253–261, Hennessy Road, Wanchai, Hong Kong.	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Frontier Services Group Limited, Suite 3902, 39/F, Far East Finance Center, 16 Harcourt Road, Admiralty, Hong Kong; *and* 2201, Wing 1 Kunsha Center, 16 Xinyuanli, Chaoyang District, Beijing, China. (See alternate addresses under Kenya, Laos, and United Arab Emirates.)	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	General Technology Limited, Level 13, 68 Yee Wo Street, Causeway Bay, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d) and 744.3(d) of this part.	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Luoyang Institute of Science and Technology, a.k.a. the following one alias: —Luoyang Institute of Technology. No. 90, Wangcheng Avenue, Luolong District, Luoyang City, Henan Province, China; *and* Mudan Blvd., Near Peony Ave, Luoyang, Luolong District, Henan, China 471025; *and* No. 71 Jiudu W Rd., Jianxi District, Luo Yang Shi, Henan, China, 471000; *and* No. 8 Xuezi St., Luolong District, 8, Henan, China, 471023.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	New Faith Enterprise Investment Limited, 11/F, Catic Plaza, 8 Causeway Road, Causeway Bay, Hong Kong; *and* Unit E&F, 13/F Wang Cheong, Commercial Building, No. 249–253 Reclamation St., Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Opturn Co., Ltd., a.k.a. the following one alias: —Beijing Outang Technology Co., Ltd. Yingzhi Building, No., 49–3, Suzhoujie Street, Beijing, China; *and* Room 301, Building 3, Northwest District, Suzhou Nano City, Suzhou Industrial Park, Suzhou, China; *and* Room 102, Block B, Oriental Hope Building, No. 3 Gaopeng Avenue, High-tech Zone, Chengdu, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Pera Global, a.k.a. the following three aliases: —Anshi Asia Pacific; —Anshi Asia-Pacific Technology Co., Ltd.; *and* —Pera Corporation Ltd.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.

Country	Entity	License requirement	License review policy	Federal Register citation
	Building CN08, No. 1, Balizhuang Dongli, Chaoyang District, Beijing, China; *and* Room 901, Building 5, Jingyao Qiantan, No. 36, Pingjiaqiao Road, Pudong New Area, Shanghai; *and* Room 313, Neusoft Software Park, No. 1000 Ziyue Road, Minhang District, Shanghai, China; *and* Room 02, 03, 7th Floor, No. 201, Century Avenue, (Shanghai) Pilot Free Trade Zone, China; *and* Unit 2602–2607, Building 2, International Finance Center, No. 1, Section 3, Hongxing Road, Jinjiang District, Chengdu, China; *and* A730, Lidu Plaza, No. 8, Dakejia Lane, Jinjiang District, Chengdu City, Sichuan Province, China; *and* Unit 01, Building 1, Block 16, Helenbergh Creative Park, No. 329, Yushan West Road, Panyu District, Guangzhou, China; *and* 18th Floor, Building D1, Science and Technology City, No. 32, Dazhou Road, Yuhuatai District, Nanjing, China; *and* Room 605, Office Building, Wanda Center, No. 96, Linjiang Avenue, Jiyu Bridge, Wuchang District, Wuhan City, China; *and* Room 2210, Guomao Building, No. 38 Qingnian Road, Yuzhong District, Chongqing, China; *and* Room 1508/1509, Block A, Haixing City Plaza, No. 37 Keji Road, Hi-tech Industrial Development Zone, Xi'an City, China; *and* Room 505, Building B01, International Software Park, Hunnan District, Shenyang City, China; *and* Room 1301, 13/F, Baofa Commercial Building, 20 Austin Road, Tsim Sha Tsui, Kowloon, Hong Kong.			
	* *	*	* *	*
	Qianpu Technology Co., Ltd., a.k.a., the following eleven aliases: —Beijing JDK Electrical Equipment Business Center; —Beijing JingDaKaiYue Electrical Equipment Business Center; —Forward Enterprise; —Forward Enterprises (Hong Kong) Ltd.; —Forward Group Ltd.; —JDK Electrical & Mechanical Equipment Business Center; —Qianpu (Beijing) Technology Co., Ltd.; —Qianpu Enterprise (Hong Kong) Co., Ltd.; —Speedy Enterprise Ltd.; —Speedy Enterprises; *and* —Step Forward Group Ltd. 1807, Floor 15, Office Building 2, No. 6 Courtyard, Futong East St., Chaoyang District Beijing, Beijing, 100000 China *and* Room 1807, Site B, Focus Square International Center, No. 6 Futong East Ave., Chaoyang District, Beijing, China; *and* Unit 1021, 10th Floor, Ocean Center, Harbor City, 5 Carton Road, TST, Kowloon, Hong Kong; *and* Room 508, Site D, Xinyuan Xingyuan International Plaza, Chaoyang District, Beijing, China; *and* Unit D, 10th Floor, China Overseas Building, 139 Hennessy Road, Wanchai Hong Kong; *and* Room 1705, Site E, Xingyuan International Plaza Chaoyang District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Shanghai Aerospace Science and Technology Development Co., Ltd., a.k.a. the following two aliases: —Shanghai Astronautical Science-Technology Development Company; *and* —Shencom. Room A–522, No. 188, Yesheng Road, Lingang New Area, (Shanghai) Pilot Free Trade Zone, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Shanghai Breeze Technology Co., Ltd., a.k.a., the following one alias: —Shanghai Qingfeng Technology Co., Ltd.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Unit B–04 Huashen Road, Shanghai, China; *and* Room 1008, Building 6, Lingkong Soho, No. 968 Jinzhong Rd., Changning District, Shanghai, China.			
	Shanghai Breeze Technology Jiangsu Co., Ltd., a.k.a., the following one alias: —Shanghai Qingfeng Technology Jiangsu Co., Ltd. North of Lingxiao Road, Xitong Science and Technology Industrial Park, Tongzhou District, Nantong, Jiangsu, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Shanghai Shark Sprite Technology Co., Ltd., Room 1008, Building 6, No. 968, Jinzhong Road, Changning District, Shanghai, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	Shanghai Supercomputing Technology Co., Ltd., Room 105A36, Main Building, No. 99, Huanhu West Road, Lingang New Area, (Shanghai) Pilot Free Trade Zone, China.	For all items subject to the EAR. (See § 734.9(e) and § 744.11 of the EAR).[4]	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	The Test Flying Academy of South Africa, No. 1 Lingyun Road, Yanliang District, Xi'an City, Shaanxi Province, China. (See alternate address under South Africa.)	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Tiger Force Electronics Limited, 4th Floor, Building C Intl Career Parking, 2 Xinxi Road, Shangdi, Beijing, China; *and* Unit 615, 6/F, 11 Hoi Shing Road, Tsuen Wan, N.T., Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d) and 744.3(d) of this part.	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	United Vision Limited, Unit 417, 4th Floor, Lippo Centre, Tower Two, No. 89 Queensway, Admiralty, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	Universal Enterprise Limited, 88 Tokwawan Road, Kowloon, Hong Kong; *and* Rm 1102A, 11/F New Lee Wah Center, Kowloon, Hong Kong; *and* Unit 2222–23 22/F, Siu Lek Yuen, Shatin, Hong Kong; *and* 4 Wangjing Road, Chaoyang District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	See §§ 744.2(d) and 744.3(d) of this part.	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Xinjiang Kehua Hechang Biological Science and Technology Co., Ltd., Room 1110, Block B, Building 1, High-rise Commercial and Residential Building, Qiyi Jiangyuan, No. 396, Huanghe Road, Saybag District, Urumqi, Xinjiang, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER AND DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].
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KENYA	Frontier Services Group Limited, Allianz Building, 96 Riverside Drive, 6th Floor, P.O. Box 54–00517, Nairobi, Kenya. (See alternate addresses under Laos, and United Arab Emirates.)	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
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LAOS	Frontier Services Group Limited, Asem Villa No.5 Had Don Chan Road, Beyngkhayong Village, Sisattanak District, Vientiane Capital, Laos P.D.R. (See alternate addresses under People's Republic of China, Kenya, and United Arab Emirates.)	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
*	* * *	*	* *	*
MALAYSIA	* *	*	* *	*
	International Aerospace Asia, a.k.a. the following two aliases: —IAA; *and* —IntAero. Level 44, Tower 2, Kuala Lumpur, Malaysia. (See alternate addresses under Singapore, Thailand and United Kingdom.)	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
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PAKISTAN	* *	*	* *	*

Country	Entity	License requirement	License review policy	Federal Register citation
	Affiliates International, 9 Timber Pond, Keamari P.O. Box 13139, Karachi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.3(d) of the EAR	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Akhtar and Sons Private Limited, 10th Floor Emerald Tower, Main Clifton Road, Karachi, Pakistan, 74000.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.3(d) of this part	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Imminent Engineering Co., Ltd., Office No 35, Third Floor, Farhan Arcade, G–11 Markaz, Islamabad, 44000, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Quantum Logix (Private) Limited, a.k.a., the following one alias: —Quantum Logix (Pvt) Ltd. Plot No 22, Sector H–9, Islamabad, 46000, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
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SINGAPORE	* *	*	* *	*
	International Aerospace Asia, a.k.a. the following two aliases: —IAA —IntAero 14 Ann Siang Road, Singapore, 069694. (See alternate addresses under Malaysia, Thailand and United Kingdom.)	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
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SOUTH AFRICA	* *	*	* *	*
	AVIC International Flight Training Academy, 144 St. John St., James King and Badenhorst Office Western Cape, Oudtshoorn, Western Cape, 6620 South Africa; *and* P.O. Box 1, Oudtshoorn, 6620 South Africa; *and* AIFA Building, General Aviation Area, George Airport, 6529 George, Western Cape, South Africa; *and* Karoo Gateway Lodge, N1 Highway, Beaufort West Airport, 6790.	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	Pearl Coral 1173 CC, Unit B3 Centurion Business Park, Democracy Way, Western Cape Town, Western Cape, 7441 South Africa.	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
	The Test Flying Academy of South Africa, Hangar 3, Air Field, Anderson St, Oudtshoorn, 6620, South Africa. (See alternate address under People's Republic of China.)	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	* *	*	* *	*
THAILAND	* *	*	* *	*
	International Aerospace Asia, a.k.a. the following two aliases: —IAA; *and* —IntAero. 280, Moo 9, Luang Nua, Doi Saket, Chiang Mai 50220 Thailand; *and* 188 Moo 1, San Klang San Kampheang, Chiang Mai 50130 Thailand. (See alternate addresses under Malaysia, Singapore, and United Kingdom.)	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
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UNITED ARAB EMIRATES.	* *	*	* *	*
	Frontier Services Group Limited, FLC & FRONTIER SERVICES GROUPL MENA DMCC, Office 2005–2008, Platinum Tower, Cluster I, Jumeirah Lakes Tower, P.O. Box 336826, Dubai, United Arab Emirates. (See alternate addresses under People's Republic of China, Kenya, and Laos.)	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	TFASA Group FZCO, Suite 1702, Level 17, Boulevard Plaza Tower 1, Sheikh Mohammed Bin Rashid Boulevard, Dubai, United Arab Emirates.	For all items subject to the EAR (See §744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	TFASA Group Training, Suite 1702, Level 17, Boulevard Plaza Tower 1, Sheikh Mohammed Bin Rashid Boulevard, Dubai, United Arab Emirates.	For all items subject to the EAR (See §744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	TFASA Services FZCO, Dubai Silicon Oasis, DDP Building A2, Dubai, United Arab Emirates.	For all items subject to the EAR (See §744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
	TFASA Training Limited, Suite 904–09, Boulevard Plaza Tower 1, Sheikh Mohammed Bin Rashid Boulevard, Downtown Burj Khalifa; and Suite 1702, Level 17, Boulevard Plaza Tower 1, Sheikh Mohammed Bin Rashid Boulevard, Dubai, United Arab Emirates.	For all items subject to the EAR (See §744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
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UNITED KINGDOM	* *	*	* *	*
	International Aerospace Asia, a.k.a. the following two aliases: —IAA; *and* —IntAero. 10 Cheyne Walk, Northhampton, NN1 5PT, United Kingdom. (See alternate addresses under Malaysia, Singapore, and Thailand.)	For all items subject to the EAR (See §744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
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	TFASA Group Limited, a.k.a. the following one alias: —TFASA Group ICC Limited 2nd Fl, O'Neal Marketing Associates Bldg, Road Town, British Virgin Islands; *and* P.O. Box 3174, Road Town, British Virgin Islands.	For all items subject to the EAR (See §744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER] June 14, 2023.
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Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2023–12726 Filed 6–12–23; 11:15 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0413]

Safety Zone; Annual Fireworks Displays and Other Events in the Eighth Coast Guard District Requiring Safety Zones—Go 4th New Orleans Independence Day Celebration

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a temporary safety zone for the Go 4th New Orleans Independence Day Celebration fireworks display located on the navigable waters of the Lower Mississippi River between mile marker (MM) 94.3 and MM 95.3. This action is needed to provide for the safety of life on these navigable waterways during this event. During the enforcement periods, entry into this zone is prohibited unless authorized by the Captain of the Port or a designated representative. Persons or vessels desiring to enter into or passage through the zone must request permission from the Captain of the Port or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative. Designated representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

DATES: The regulations in 33 CFR part 165.801, Table 5, line 3 will be enforced from 8:30 through 9:30 p.m. on July 4, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander William Stewart, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2246, email *William.A.Stewart@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a temporary safety zone in 33 CFR 165.801, Table 5, line 3, for the Go 4th New Orleans Independence Day Celebration fireworks display event. This regulation will be enforced from 8:30 through 9:30 p.m. on July 4, 2023. This action is being taken to provide for the safety of life on these navigable waterways during this event. Our regulation for annual fireworks displays and other events in the Eighth Coast Guard District requiring safety zones, 33 CFR 165.801, Table 5, line 3 specifies the location of the safety zone on the Lower Mississippi River, between mile marker (MM) 94.3 and MM 95.3. During the enforcement period, entry into this zone is prohibited unless authorized by the Captain of the Port or a designated representative. Persons or vessels desiring to enter into or passage through the zone must request permission from the Captain of the Port or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative. Designated representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide

notification of this enforcement period via a Marine Safety Information Bulletin and/or Broadcast Notice to Mariners.

Dated: May 25, 2023.

K.K. Denning,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2023–12652 Filed 6–13–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0467]

RIN 1625–AA87

Security Zone, Baltimore Harbor, MD.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for navigable waters within Baltimore Northwest Harbor, across the West channel, in the vicinity of North Locust Point Marine Terminal. The security zone is needed to protect distinguished guests and attendees during the commission of the USS CARL M. LEVIN (DDG 120). Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Maryland-National Capital Region.

DATES: This rule is effective from 8 a.m. until 1 p.m. on June 24, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0467 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 BM1 Michael Klopp, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2674, email *MDNCRWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The U.S. Navy informed the Coast Guard that the Commissioning of the USS CARL M. LEVIN (DDG 120) will be held on June 24, 2023, in Baltimore Harbor, MD. The commissioning will be in close proximity to navigable waterways within the Captain of the Port, Maryland-National Capital Region's Area of Responsibility, as set forth in 33 CFR 3.25–15. On May 30, 2023, the U. S. Navy requested that a security zone be established to be in effect before, during and after the commissioning ceremony.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to public interest to delay the effective date of this rule. Immediate action is needed to mitigate potential terrorist acts and to enhance public and maritime safety and security. The Coast Guard is unable to publish an NPRM in time to publish a final rule due to the short time period between May 30, 2023, when the event planners notified the Coast Guard of the security posture for the event, and June 24, 2023, when the security zone must be in effect Delaying the effective date to publish an NPRM would be contrary to the security zone's intended objectives of mitigating potential terrorist acts and enhancing public and maritime safety and security. It is therefore impracticable to publish an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action to restrict vessel traffic is needed to protect life, property and the environment, and delaying the effective date would frustrate the security zone's intended objectives of mitigating potential terrorist acts and enhancing public and maritime safety and security when the event takes place.

III. Legal Authority and Need for Rule

The Coast Guard may issue security zone regulations under authority in 46 U.S.C. 70051 and 70124. The Captain of the Port, Maryland-National Capital Region (COTP) has determined that the commissioning of a U.S. Naval Warship presents a potential target for terrorist attack, sabotage, or other subversive acts, accidents, or other causes of similar nature. This rule is needed to protect distinguished guests and attendants of the commissioning ceremony of the USS CARL M. LEVIN (DDG 120) as well as personnel in and around the commissioning site, navigable waterways, and waterfront facilities.

IV. Discussion of the Rule

This rule establishes a security zone from 8 a.m. until 1 p.m. on June 24, 2023. The security zone will cover all navigable waters from North Locust Point Marine Terminal across West Channel Harbor to the yacht basin Oasis Marina in Northwest Harbor, MD. The duration of the zone is intended to protect personnel in and around the commissioning site, navigable waterways, and waterfront facilities. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and limited duration of the security zone. This zone impacts a small, designated area of the Northwest Harbor for 5 hours.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone lasting only 5 hours that will prohibit entry within certain navigable waters of the Patapsco River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0467 to read as follows:

§ 165.T05–0467 Security Zone; Northwest Harbor, Baltimore, MD.

(a) *Location.* The following area is a security zone: All navigable waters of Northwest Harbor, encompassed by a line connecting the following points beginning at 39°16′21.32″ N, 076°35′4.81″ W, thence to 39°16′33.74″ N, 076°34′54.59″ W, thence to 39°16′26.98″ N, 076°34′43.79″ W, thence to 39°16′26.18″ N, 076°34′40.62″ W, thence to 39°16′11.42″ N, 076°34′46.56″ W, thence to 39°16′10.56″ N, 076°34′50.20″ W, and thence along the shore line back to the beginning point, located at Baltimore, MD. These coordinates are based on WGS 84.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the security zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the security zone must comply

with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, local agencies.

(e) *Enforcement period.* This section will be enforced from 8 a.m. until 1 p.m. on June 24, 2023.

Dated: June 8, 2023.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Sector Maryland-National Capital Region.

[FR Doc. 2023–12707 Filed 6–13–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0192]

RIN 1625–AA00

Safety Zone; Delaware Bay, Lower Township, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of the Delaware Bay, in Lower Township, NJ. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP), Sector Delaware Bay.

DATES: This rule is effective from 9:15 to 10 p.m. on July 3, 2023, or a rain date of July 5, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0192 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 Petty Officer Dylan Caikowski, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; telephone (215) 271–4814, email *SecDelBayWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On February 18, 2023, Lower Township, New Jersey, notified the Coast Guard that it will be conducting a fireworks display from 9:30 to 9:50 p.m. on July 3, 2023, or a rain date of July 5, 2023, to celebrate Independence Day. The fireworks are to be launched from a barge in the Delaware Bay approximately 350 yards west of North Cape May Beach, in Lower Township, NJ. In response, on April 5, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Delaware Bay, Lower Township, NJ. There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended May 5, 2023, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because there is insufficient time to allow for 30 days after publication. This rule needs to be in force by July 3, 2023, to ensure the safety of spectators and the general public from hazards associated with a barge-based fireworks display. Hazards include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

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 COTP has determined that potential hazards associated with barge-based fireworks display will be a safety concern for anyone within 300 yards of the fireworks barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after a barge-based fireworks display.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published April 5, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary safety zone from 9:15 to 10 p.m. on July 3, 2023, or a rain date of July 5, 2023. The safety zone will cover all navigable waters within 300 yards of a barge in the Delaware Bay located at approximate position latitude 38°59′7.08″ N, longitude 074°57′49.47″ W. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:30 p.m. to 9:50 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the following factors: (1) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP or a designated representative, they may operate in the surrounding area during the enforcement period; (2) persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the COTP; and (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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 received no comments from the Small Business Administration on this rulemaking. The Coast Guard

certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting 45 minutes that would prohibit entry within 300 yards of a fireworks barge. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0192 to read as follows:

§ 165.T05–0192 Safety Zone; Delaware Bay, Lower Township, NJ.

(a) *Location.* All navigable waters within 300 yards of a barge in the Delaware Bay located at approximate position latitude 38°59′7.08″ N, longitude 074°57′49.47″ W.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port (COTP), Sector Delaware Bay in the enforcement of the safety zone.

(c) *Regulations.*

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

(2) To seek permission to enter or remain in the zone, contact the COTP or the COTP's representative via VHF–FM channel 16 or 215–271–4807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) No vessel may take on bunkers or conduct lightering operations within the safety zone during its enforcement period.

(4) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This zone will be enforced from approximately 9:15 to 10 p.m. on July 3, 2023, or a rain date of July 5, 2023.

Dated: June 8, 2023.

Jonathan D. Theel,

Captain, U.S. Coast Guard, Captain of the Port, Sector Delaware Bay.

[FR Doc. 2023–12716 Filed 6–13–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0412]

Safety Zone; Annual Fireworks Displays and Other Events in the Eighth Coast Guard District Requiring Safety Zones—St. John the Baptist Independence Day Celebration

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a temporary safety zone for the St. John the Baptist Independence Day Celebration fireworks display located on the navigable waters of the Lower Mississippi River between mile marker (MM) 137.5 and MM 138.5 in vicinity of Reserve, Louisiana. This action is needed to provide for the safety of life on these navigable waterways during the event. During the enforcement periods, entry into this zone is prohibited unless authorized by the Captain of the Port or a designated representative. Persons or vessels desiring to enter into or passage through the zone must request permission from the Captain of the Port or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative. Designated representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

DATES: The regulations in 33 CFR part 165.801, Table 5, line 2 will be enforced from 8:30 through 9:30 p.m. on July 3, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander William Stewart, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2246, email *William.A.Stewart@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a temporary safety zone in 33 CFR 165.801, Table 5, line 2 for the St. John the Baptist Independence Day Celebration event. This regulation will be enforced from 8:30 p.m. through 9:30 p.m. on July 3, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for annual fireworks displays and other events in the Eighth Coast Guard District requiring safety zones, 33 CFR 165.801, Table 5, line 2, specifies the location of the safety zone between mile marker (MM) 137.5 and MM 138.5 on the Lower Mississippi River near Reserve, Louisiana. During the enforcement period, entry into this zone is prohibited unless authorized by the Captain of the Port or a designated representative. Persons or vessels desiring to enter into or passage through the zone must request permission from the Captain of the Port or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative. Designated representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via a Marine Safety Information Bulletin and/or Broadcast Notice to Mariners.

Dated: May 25, 2023.

K.K. Denning,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2023–12653 Filed 6–13–23; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 20

International Mailing Services: Price Changes

AGENCY: Postal Service™.

ACTION: Final action.

SUMMARY: On April 10, 2023, the Postal Service published notice of price adjustments with the Postal Regulatory Commission (PRC). The PRC concluded that price adjustments contained in the Postal Service's notification may go into effect on July 9, 2023. The Postal Service will revise Notice 123, *Price List* to reflect the new prices.

DATES: *Effective* July 9, 2023.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy at 202–268–6592 or Kathy Frigo at 202–268–4178.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule and Response

On April 10, 2023, the Postal Service filed a notice with the PRC in Docket No. R2023–2 of mailing services price adjustments to be effective on July 9, 2023. On April 17, 2023, the Postal Service published a notification of proposed price changes in the **Federal Register** entitled ''International Mailing Services: Proposed Price Changes'' (88 FR 23386). The notification included price changes that the Postal Service would adopt for certain services covered by *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®) and publish in Notice 123, *Price List,* on Postal Explorer® at *pe.usps.com.* The Postal Service received no comments.

II. Order of the Postal Regulatory Commission

In PRC Order No. 6526, issued on May 31, 2023, in PRC Docket No. R2023–2, the PRC concluded that the prices in the Postal Service's notice in Docket No. R2023–2 may go into effect on July 9, 2023. The new prices will accordingly be posted in Notice 123, *Price List* on Postal Explorer at *pe.usps.com.*

III. Summary of Changes

First-Class Mail International®

The price for a single-piece postcard will be $1.50 worldwide. The First-Class Mail International (FCMI) letter nonmachinable surcharge will remain at $0.40. The FCMI single-piece letter and flat prices will be as follows:

LETTERS

Weight not over (oz.)	Price groups			
	1	2	3–5	6–9
1	$1.50	$1.50	$1.50	$1.50
2	1.50	2.27	2.80	2.60
3	2.15	3.00	4.10	3.69
3.5	2.75	3.76	5.40	4.78

FLATS

Weight not over (oz.)	Price Groups			
	1	2	3–5	6–9
1	$3.00	$3.00	$3.00	$3.00
2	3.29	3.90	4.23	4.17
3	3.57	4.78	5.45	5.33
4	3.82	5.67	6.71	6.49
5	4.10	6.56	7.93	7.65
6	4.37	7.44	9.16	8.82
7	4.65	8.34	10.39	9.97
8	4.92	9.22	11.61	11.13
12	6.29	11.13	14.08	13.54
15.994	7.65	13.05	16.54	15.93

International Extra Services and Fees

The Postal Service will increase prices for certain market dominant international extra services as noted:

- *Certificate of Mailing service:* Fees for certificate of mailing service for FCMI will increase as follows:

CERTIFICATE OF MAILING

	Fee
Individual Pieces:	
Individual article (PS Form 3817), First-Class Mail International only	$1.95
Duplicate copy of PS Form 3817 or PS Form 3665 (per page), First-Class Mail International only	1.95
Firm mailing sheet (PS Form 3665), per piece (minimum 3)	
First-Class Mail International only	0.57
Bulk Quantities:	
For first 1,000 pieces (or fraction thereof), First-Class Mail International only	10.90
Each additional 1,000 pieces (or fraction thereof), First-Class Mail International only	1.40
Duplicate copy of PS Form 3606, First-Class Mail International only	1.95

- *Registered Mail® service:* The price for international Registered Mail service for FCMI will increase to $20.25.
- *Return Receipt service:* The price for international return receipt service for FCMI will increase to $5.65.
- *Customs Clearance and Delivery Fee:* The Customs Clearance and Delivery Fee per dutiable item for Inbound Letter Post letters and flats will increase to $8.30.
- *International Business Reply™ service (IBRS):* The price for IBRS cards will increase to $2.10, and the price for IBRS envelopes (up to 2 ounces) will increase to $2.65.

New prices will be listed in the updated Notice 123, Price List.

Tram T. Pham,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–12668 Filed 6–13–23; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0239; FRL–10597–02–R9]

Air Plan Actions; Nevada; Clark County—Department of Environment and Sustainability; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing an approval, a partial approval and partial disapproval, and a limited approval and limited disapproval of certain revisions to the Clark County portion of the Nevada State Implementation Plan (SIP). These revisions primarily concern the Clark County Department of Environment and Sustainability's (''DES'' or ''Department'') general definitions rule and New Source Review (NSR) permitting program for new and modified sources of air pollution under the Clean Air Act (CAA or ''Act'').

DATES: This rule is effective on July 14, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2020–0239. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, Air–3–2, 75 Hawthorne St., San Francisco, CA 94105, (415) 972–3534, *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION:
Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Proposed Action

On February 2, 2023, the EPA proposed an approval, a partial approval and partial disapproval, and a limited approval and limited disapproval of four rules listed in Table 1 into the Clark County portion of the Nevada State Implementation Plan (SIP), and proposed to rescind from the Nevada SIP one rule listed in Table 1, as discussed below.[1]

TABLE 1—SUBMITTED RULES

Section	Section title	Adopted	Cover letter date	Submittal date
0	Definitions	7/20/21	1/31/22	1/31/22
10	Compliance Schedules (Request to rescind)	12/18/18	6/6/19	6/10/19
12.0	Applicability and General Requirements	1/21/20	3/13/20	3/16/20
12.1	Permit Requirements for Minor Sources	12/18/18	4/12/19	4/12/19
12.11	General Permits for Minor Stationary Sources	12/18/18	4/12/19	4/12/19

The submitted rules are intended to update the Nevada SIP with recent revisions to the Department's Air Quality Regulations. See our notice of proposed rulemaking and Technical Support Document (TSD) for additional information about the submitted rules and our evaluation of them.

In our proposed action, we proposed partial approval and partial disapproval of Section 0, because the revisions to the rule were approvable, except that the submitted rule removed a definition for ''Clearing and Grubbing'', a term still used in the SIP. Therefore, we proposed to retain in the SIP the definition of ''Clearing and Grubbing'' from the current SIP-approved version of Section 0. We also proposed approval of the request to rescind Section 10 from the SIP, because the rule has been repealed locally and is no longer relevant. In addition, we proposed full approval of Section 12.0 because we determined that the revisions to the rule satisfy the applicable statutory and regulatory provisions governing regulation of stationary sources under CAA section 110(a)(2)(C).

We also proposed a limited approval and limited disapproval of Sections 12.1 and 12.11, because we determined that these rules mostly satisfy the applicable statutory and regulatory provisions governing regulation of stationary sources under CAA section 110(a)(2)(A) and (C), but they do not satisfy all of these requirements. Specifically, we identified the following six deficiencies. First and second, the provisions in Sections 12.1.2(c)(7) and (8), which exempt ancillary parts washers and degreasers that use only certified clean air solvents from permitting requirements, are deficient because the term ''certified clean air solvents'' is not defined in any Section 12 series rule, which makes the provision unenforceable. Third, the provision in Section 12.1.2(c)(10) allowing the Control Officer to deem any other emission unit or activity to be insignificant on a case-by-case basis with no specific criteria for making this determination is deficient because it contains impermissible Director's discretion. Fourth, the provision in Section 12.1.4.1(z) contains impermissible Control Officer discretion to decide whether certain conditions should be added to portable minor source permits. Fifth, Section 12.11 contains an unenforceable cross-reference relating to certain emissions inventory report requirements, and sixth, Section 12.11 does not satisfy the requirement in 40 CFR 51.160(f) that the screening model used pursuant to Section 12.11.1(f) be based on the applicable models, databases, and other requirements specified in 40 CFR part 51, appendix W.

II. Public Comments

The EPA's proposed action provided a 30-day public comment period. During this period, no comments were submitted regarding our proposal.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) and 301(a) of the Act, the EPA is finalizing our action as proposed. Specifically, the EPA is finalizing an approval of the request to rescind Section 10 from the SIP, an approval of Section 12.0, a partial approval and partial disapproval of Section 0, and a limited approval and limited disapproval of Sections 12.1 and 12.11. This action incorporates the submitted rules (except Section 10) into the Clark County portion of the Nevada State Implementation Plan (SIP), including those provisions identified as deficient.

A portion of this approval is limited because EPA is simultaneously finalizing a limited disapproval of Sections 12.1 and 12.11 under section 110(k)(3). Our limited disapproval action triggers an obligation for the EPA to promulgate a Federal Implementation Plan (FIP) unless the State corrects the deficiencies, and the EPA approves the related plan revisions, within two years of this final action. The EPA intends to work with the Department to correct the deficiencies in a timely manner.

Note that Sections 12.1 and 12.11 have been adopted by the Department, and the EPA's final limited disapproval does not prevent the local agency from enforcing these rules. The limited disapproval would also not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP, as discussed in a July 9, 1992 EPA memo found at: *https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf.*

We note for clarity that, with this final action, the version of Section 0 listed in Table 1 will be approved into the SIP, and a separate entry for the definition of ''Clearing and Grubbing'' from the current SIP-approved version of Section 0, approved into the SIP on October 17, 2014, will be retained in the SIP. Therefore, our partial disapproval action for Section 0 will require no further action from the Department to remedy the identified deficiency. More generally, the incorporation of the submitted version of Section 0 into the SIP will replace the older version of

[1] 88 FR 7046. Table 1 lists the submitted rules addressed by this action, including the dates on which they were adopted by the Clark County Board of County Commissioners, and the dates on which they were submitted by the Nevada Division of Environmental Protection to the EPA.

Section 0 that had been in the SIP, except for the definition of ''Clearing and Grubbing''; that older version of Section 0 is being removed from the SIP (except for the specified definition). In addition, our approval of certain definitions in the submitted version of Section 0 will replace in the SIP the older versions of those same definitions that are currently included in SIP-approved Section 1; these older versions of the definitions are being removed from the SIP. Similarly, with our approval into the SIP of the versions of Sections 12.0 and 12.1 listed in Table 1, this action removes the older versions of these rules that had been in the SIP. Our proposed rule and TSD provide more information in this regard.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference the following Clark County DES rules: Sections 0, 12.0, 12.1 and 12.11, as described in Table 1 of this notice concerning definitions and New Source Review permit program requirements. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice for more information).

Also in this document, as described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions from the EPA-approved rules for the Clark County portion of the Nevada SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

V. Statutory and Executive Order Reviews

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

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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, 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.''

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 review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this final action addresses whether the relevant state rule submittals meet federal requirements and does not impose additional requirements beyond those imposed by state law.

Clark County DES 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 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 Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

M. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Administrative practice and procedure, Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: June 6, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

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

Subpart DD—Nevada

■ 2. In § 52.1470, paragraph (c), table 3 is amended by:

■ a. Removing the entry for ''Section 0'' and adding two new entries for ''Section 0'' in its place;

■ b. Removing the entries for ''Section 1 (''Definitions''): Subsection 1.1'', ''Section 1 (''Definitions''): Subsection 1.26'', ''Section 1 (''Definitions''): Subsection 1.29'', ''Section 1 (''Definitions''): Subsection 1.36'', ''Section 1 (''Definitions''): Subsection 1.51'', ''Section 1 (''Definitions''): Subsection 1.57'', ''Section 1 (''Definitions''): Subsection 1.95'' and ''Section 10''.

■ c. Revising the entries for ''Section 12.0'' and ''Section 12.1''; and

■ d. Adding an entry for ''Section 12.11'' after the entry for ''Section 12.9.1''.

The additions and revisions read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

TABLE 3—EPA-APPROVED CLARK COUNTY REGULATIONS

County citation	Title/subject	County effective date	EPA approval date	Additional explanation
Section 0	Definitions	8/3/21	[Insert **Federal Register** citation], 6/14/23.	Submitted electronically on January 31, 2022, as an attachment to a letter dated January 31, 2022.
Section 0	Definitions (''Clearing and Grubbing'' only).	4/1/14	79 FR 62351, 10/17/14	Amended by Clark County Board of County Commissioners on March 18, 2014 through Ordinance No. 4189. Submitted by NDEP on 4/1/14.
*	* *	*	*	* *
Section 12.0	Applicability and General Requirements.	2/4/20	[Insert **Federal Register** citation], 6/14/23.	Submitted electronically on March 16, 2020, as an attachment to a letter dated March 13, 2020.
Section 12.1	Permit Requirements for Minor Sources.	1/1/19	[Insert **Federal Register** citation], 6/14/23.	Submitted electronically on April 12, 2019, as an attachment to a letter dated April 12, 2019.
*	* *	*	*	* *
Section 12.11	General Permits for Minor Stationary Sources.	1/1/19	[Insert **Federal Register** citation], 6/14/23.	Submitted electronically on April 12, 2019, as an attachment to a letter dated April 12, 2019.
*	* *	*	*	* *

* * * * *

[FR Doc. 2023–12490 Filed 6–13–23; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 88, No. 114
Wednesday, June 14, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1401; Project Identifier AD–2022–01017–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA is withdrawing a notice of proposed rulemaking (NPRM) that proposed to adopt a new airworthiness directive (AD) for certain General Electric Company (GE) CF6–80E1A2, CF6–80E1A3, CF6–80E1A4, and CF6–80E1A4/B model turbofan engines. The NPRM was prompted by a manufacturer investigation that revealed that certain compressor discharge pressure seals (CDP seals) and forward outer seals were manufactured from powder metal material suspected to contain iron inclusion. The NPRM proposed to require the replacement of the affected CDP seals and forward outer seals. Since issuance of the NPRM, the FAA has reviewed subsequent information received from the manufacturer and determined that the unsafe condition is not likely to exist or develop in other products of the same type design. Accordingly, the NPRM is withdrawn.

DATES: As of June 14, 2023, the proposed rule, which published in the **Federal Register** on November 4, 2022 (87 FR 66625), is withdrawn.

ADDRESSES: *AD Docket:* You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1401; 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 AD action, any comments received, and other information. The street address for Docket Operations is Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7178; email: *alexei.t.marqueen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued an NPRM that proposed to amend 14 CFR part 39 by adding an AD that would apply to certain GE CF6–80E1A2, CF6–80E1A3, CF6–80E1A4, and CF6–80E1A4/B model turbofan engines. The NPRM published in the **Federal Register** on November 4, 2022 (87 FR 66625). The NPRM was prompted by notification from the manufacturer of the detection of iron inclusion in a turbine disk manufactured from the same powder metal material used to manufacture certain CDP seals and a certain forward outer seal. Further investigation by the manufacturer determined that certain CDP seals and a certain forward outer seal made from billets manufactured using the same process may have reduced material properties and a lower fatigue life capability due to iron inclusion, which may cause premature fracture and uncontained failure.

The NPRM proposed to require the removal of certain CDP seals and a certain forward outer seal from service and replacement with a part eligible for installation. The proposed actions were intended to prevent fracture and uncontained failure of certain CDP seals and a certain forward outer seal, which could result in uncontained debris release, damage to the engine, and damage to the aircraft.

Actions Since the NPRM Was Issued

Since issuance of the NPRM, the FAA and the manufacturer have determined that the affected CDP seals have met their full Chapter 5 life of 15,000 cycles and are not subject to the unsafe condition. Since there is only one affected forward outer seal, identified by part number and serial number, the FAA has determined that the unsafe condition is not likely to exist or develop in other products of the same type design. Therefore, the FAA has determined that this AD action is not appropriate. However, the FAA may publish a separate rulemaking to address the unsafe condition in the specified forward outer seal.

Withdrawal of the NPRM constitutes only such action and does not preclude the FAA from further rulemaking on this issue, nor does it commit the FAA to any course of action in the future.

Comments

The FAA received comments from three commenters. The commenters were Delta Air Lines, Inc. (DAL), GE, and an anonymous commenter. The anonymous commenter supported the NPRM without change. The following presents the comments received on the NPRM and the FAA's response.

Request To Remove CDP Seals From the Proposed AD

GE requested the removal of CDP seals with part number (P/N) 1669M73P02 and serial numbers (S/N) TMT1C0E1 or TMT1C0E2 entirely from the NPRM. GE stated that this P/N has been assessed to meet its full Chapter 5 life of 15,000 cycles and, therefore, will not result in premature fracture and uncontained failure and, accordingly, no unsafe condition exists for these CDP seals.

The FAA agrees and is withdrawing the AD in response to this comment.

Request To Expand Applicability To Include Additional Engine Models

DAL requested the FAA expand the applicability of the proposed AD by adding CF6–80C2B2F/B6F/B7F/B8F model turbofan engines because the CF6–80C2 Engine Illustrated Parts Catalog identifies affected forward outer seal P/N 1778M70P03 as a part installed on those model turbofan engines. DAL stated that it is possible that parts were intermixed across models during previous engine shop visits, necessitating a review of operator CF6–80C2 fleets for the affected serial number.

The FAA disagrees. Providing both the P/N (1778M70P03) and S/N (NCU65340) of the affected forward outer seal is sufficient information to identify which engine model is affected since it is a single tracked part.

Request To Clarify Disposition of Removed Parts

DAL requested that the FAA clarify the disposition of removed parts in

paragraph (g) of the proposed AD. The commenter stated that paragraph (g) of the proposed AD, Required Actions, states to remove the affected CDP seal or forward outer seal from service. DAL stated that there is no clear statement that the parts could not be returned to service, yet further commented that paragraph (i) of the proposed AD, Installation Prohibition, ensures that the parts may not be installed. DAL commented that requiring disposal of the affected parts will ensure the parts do not enter the materials market.

The FAA disagrees. The FAA does not have the authority to require operators to discard parts to address an unsafe condition. Within the scope of an AD, removing parts from service and prohibiting installation is within the FAA's authority.

Request To Revise Definition of ''Piece-Part Exposure''

DAL and GE requested that the FAA revise the definition of ''piece-part exposure'' in paragraph (h)(2) of the proposed AD. DAL stated that paragraph (h)(2) of the proposed AD defines piece-part exposure as when the affected part is removed from the engine. DAL suggested this be specified as removal of the affected part from the mating structures instead. The commenter reasoned that the current wording could indicate that if the module an affected part is installed in is removed from the engine, replacement of the affected part is required. GE stated that the current definition of ''piece-part exposure'' is unclear and suggested clarifying paragraph (h)(2) of the proposed AD to read, ''For the purpose of this AD, ''piece-part exposure'' is when the affected part is removed from the engine and completely disassembled.''

Because the FAA is withdrawing the NPRM, the clarification of paragraph (h)(2) of the proposed AD is no longer necessary.

Regulatory Findings

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule. This action therefore is not covered under Executive Order 12866 or the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Withdrawal

■ Accordingly, the notice of proposed rulemaking, Docket No. FAA–2022–1401; Project Identifier AD–2022–01017–E which published in the **Federal Register** on November 4, 2022 (87 FR 66625), is withdrawn.

Issued on June 8, 2023.

Michael Linegang,

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

[FR Doc. 2023–12695 Filed 6–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1212; Project Identifier MCAI–2022–00423–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 Trent 768–60, 772–60, and 772B–60 engines. This proposed AD was prompted by reports of cracks on affected intermediate-pressure compressor (IPC) rotor shaft balance lands. This proposed AD would require repetitive on-wing or in-shop borescope inspections (BSIs) of the affected IPC rotor shaft balance land for cracks, replacement of any IPC rotor shaft if necessary, and would prohibit the installation of an affected IPC rotor shaft on any engine, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by July 31, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1212; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA service information that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1212.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: 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–2023–1212; Project Identifier MCAI–2022–00423–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and

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

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0055, dated March 23, 2022 (EASA AD 2022–0055) (also referred to as the MCAI), to correct an unsafe condition for all RRD Model RB211 Trent 768–60, 772–60, 772B–60, and 772C–60 engines. The MCAI states that cracking on the IPC rotor shaft balance land has been historically observed on RRD Model Trent 700 engines. To address this unsafe condition, Roll-Royce (RR) originally developed Modification 72–AG402, which introduced a revised balancing method that removed the original balancing weights from the IPC rotor shaft balance land and published RR Service Bulletin (SB) RB.211–72–AG402 to provide instructions for an in-service modification. In addition, RR published Non-Modification Service Bulletin (NMSB) RB.211–72–AG085, Revision 3, dated August 27, 2021, to provide instructions for an in-shop eddy current inspection (ECI) of the IPC rotor shaft balance land. Consequently, EASA issued EASA AD 2018–0049R2, dated September 13, 2021 (EASA AD 2018–0049R2).

Since EASA issued EASA AD 2018–0049R2, RR determined that some RRD Model Trent 700 engines (post-RR SB RB.211–72–AG402) were not inspected in accordance with RR NMSB RB.211–72–AG085 during engine refurbishment due to the policy applied previously from RR NMSB RB.211–72–AG085, Revision 2. RR identified the affected batch of IPC rotor shaft balance lands and published RR NMSB RB.211–72–AK706, Initial Issue, dated November 24, 2021, which describes procedures to perform a BSI of the IPC rotor shaft balance land until the in-shop ECI is accomplished in accordance with RR NMSB RB.211–72–AG085. To address this, EASA issued the MCAI. This condition, if not addressed, could lead to IPC rotor shaft failure and consequent uncontained high-energy debris, possibly resulting in damage to the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1212.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0055, which specifies procedures for performing repetitive on-wing or in-shop BSIs of the IPC rotor shaft balance land and, if any discrepancies are detected, accomplishing the applicable corrective actions or replacing the IPC rotor shaft. The MCAI also specifies prohibiting the installation of an affected IPC rotor shaft on any engine and that accomplishing an in-shop ECI of the IPC rotor shaft balance land or replacing the IPC rotor shaft constitutes as terminating action for the repetitive BSIs.

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

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with 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 accomplishing the actions specified in the MCAI described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the MCAI.''

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 2022–0055 in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0055 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 within the compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0055. Service information required by the EASA AD for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–1212 after the FAA final rule is published.

Differences Between This Proposed AD and the MCAI

EASA AD 2022–0055 applies to RRD Model RB211 Trent 768–60, 772–60, 772B–60, and 772C–60 engines. This proposed AD would not apply to RRD Model RB211 Trent 772C–60 engines, as this model engine does not have an FAA type certificate.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 62 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
BSI of IPC rotor shaft balance land	4.5 work-hours × $85 per hour = $382.50	$0	$382.50	$23,715

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. The agency has no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace IPC rotor shaft	50 work-hours × $85 per hour = $4,250	$2,120,000	$2,124,250

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–2023–1212; Project Identifier MCAI–2022–00423–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 31, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd. & Co. KG Model RB211 Trent 768–60, 772–60, and 772B–60 engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracks on the intermediate-pressure compressor (IPC) rotor shaft balance land. The FAA is issuing this AD to detect cracks on the IPC rotor shaft balance land. The unsafe condition, if not addressed, could lead to IPC rotor shaft failure and consequent uncontained high-energy debris, possibly resulting in 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 paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0055, dated March 23, 2022 (EASA AD 2022–0055).

(h) Exceptions to EASA AD 2022–0055

(1) Where EASA AD 2022–0055 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the Remarks paragraph of EASA AD 2022–0055.

(3) Where the service information referenced in EASA AD 2022–0055 specifies to use certain tooling, equivalent tooling may be used.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0055 specifies to notify the manufacturer or supply pictures to the manufacturer of any cracks, dents, or nicks, this AD does not include that requirement.

(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 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 2022–0055, dated March 23, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0055, 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 8, 2023.

Michael Linegang,

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

[FR Doc. 2023–12698 Filed 6–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1211; Project Identifier MCAI–2022–01598–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 BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 engines. This proposed AD was prompted by reports of malformed scallop edge geometry and surface conditions at the front flange scallops of affected low-pressure compressor (LPC) booster rotors. This proposed AD would require repetitive fluorescent penetrant inspections (FPIs) of the front flange scallops of the LPC booster rotor for any cracks, replacement or repair of the LPC booster rotor if necessary and, as an optional terminating action to the repetitive FPIs, a visual inspection for malformed scallop edge geometry and malformed surface conditions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by July 31, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1211; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA service information that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1211.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: 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–2023–1211; Project Identifier MCAI–2022–01598–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

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

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0252, dated December 16, 2022 (EASA AD 2022–0252) (referred to after this as the MCAI), to correct an unsafe condition

for all RRD Model BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 engines. The MCAI states that occurrences have been reported of finding malformed scallop edge geometry and surface conditions at the front flange scallops of certain LPC booster rotors. To address this unsafe condition, the manufacturer published service information that specifies procedures for inspecting the front flange scallops of the LPC booster rotors with accept and reject criteria. This condition, if not addressed, could lead to failure of the LPC booster rotor, resulting in release of high-energy debris, with consequent engine in-flight shutdown, and reduced control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1211.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0252, which specifies procedures for accomplishing repetitive FPIs (on-wing or in-shop) of the front flange scallops of the affected part and, if any cracks are detected, removing the engine from service and contacting the manufacturer for approved corrective actions. EASA AD 2022–0252 also specifies procedures for performing a visual inspection, taking photographs, and submitting photograph documentation of the LPC booster rotor front flange scallops for malformed scallop edge geometry and malformed surface conditions, including validation of the results from the manufacturer, as terminating action for the repetitive FPIs.

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 accomplishing the actions specified in the MCAI, except as discussed under ''Differences Between this Proposed AD and the MCAI,'' and under Exceptions to EASA AD 2022–0252.

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 2022–0252 in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0252 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 within the compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0252. Service information required by the EASA AD for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–1211 after the FAA final rule is published.

Differences Between This Proposed AD and the MCAI

Where paragraph (2) of EASA AD 2022–0252 specifies to contact RRD for approved corrective action(s) and accomplish those actions accordingly, this proposed AD would require replacement or repair of the LPC booster rotor.

Where paragraph (3) of EASA AD 2022–0252 specifies to contact RRD for approved corrective action(s) and accomplish those actions accordingly, this proposed AD would require replacement or repair of the LPC booster rotor.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 148 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
FPI front flange scallops of the LPC booster rotor.	5 work-hours × $85 per hour = $425	$0	$425	$62,900

The FAA estimates the following costs to do any necessary replacement, repair, or visual inspection that would be required based on the results of the proposed inspection. Operators have the option of performing a visual inspection of the affected LPC booster rotor as an optional terminating action for the repetitive FPIs. The agency has no way of determining the number of aircraft that might need this replacement, repair, or visual inspection:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the LPC booster rotor	10 work-hours × $85 per hour = $850	$461,897	$462,747
Repair the LPC booster rotor	10 work-hours × $85 per hour = $850	185,000	185,850
Visual inspection and photograph documentation of the LPC booster rotor front flange scallops.	7 work-hours × $85 per hour = $595	0	595

ON-CONDITION COSTS—Continued

Action	Labor cost	Parts cost	Cost per product
Send Accomplishment Form (Part C) and photographs to RRD.	1 hour × $85 per hour = $85	0	85

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour 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. All responses to this collection of information are mandatory if operators elect to perform the optional terminating action. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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–2023–1211; Project Identifier MCAI–2022–01598–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 31, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Model BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of malformed scallop edge geometry and surface conditions at the front flange scallops of affected low-pressure compressor (LPC) booster rotors. The FAA is issuing this AD to prevent failure of the LPC booster rotor. The unsafe condition, if not addressed, could result in release of high-energy debris, with consequent engine in-flight shutdown, and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0252, dated December 16, 2022 (EASA AD 2022–0252).

(h) Exceptions to EASA AD 2022–0252

(1) Where EASA AD 2022–0252 requires compliance from its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (2) of EASA AD 2022–0252 specifies to contact RRD for approved corrective action(s) and accomplish those actions accordingly, this AD requires replacement of the LPC booster rotor. In lieu of replacement of the affected LPC booster rotor, operators may repair the affected LPC booster rotor using a method approved by the Manager, International Validation Branch, FAA; or EASA; or RRD's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Where paragraph (3) of EASA AD 2022–0252 specifies to contact RRD for approved corrective action(s) and accomplish those actions accordingly, this AD requires replacement of the LPC booster rotor. In lieu of replacement of the affected LPC booster rotor, operators may repair the affected LPC booster rotor using a method approved by the Manager, International Validation Branch, FAA; or EASA; or RRD's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(4) This AD does not adopt the Remarks paragraph of EASA AD 2022–0252.

(5) Where the service information referenced in EASA AD 2022–0252 specifies to reject the engine if a crack is found, this AD requires replacement or repair of the LPC booster rotor.

(i) Reporting Requirement

Although the service information referenced in EASA AD 2022–0252 specifies to submit the Accomplishment Forms, Parts A and B, to the manufacturer, this AD does not include that requirement. If operators elect to perform the optional terminating action specified in Part C of the service information referenced in EASA AD 2022–0252, this AD requires submission of the Part C Accomplishment Form and photographic information to the manufacturer.

(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 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 2022–0252, dated December 16, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0252, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find EASA AD 2022–0252 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 8, 2023.

Michael Linegang,

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

[FR Doc. 2023–12697 Filed 6–13–23; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

[File No. R307003]

16 CFR Part 1

Petition for Rulemaking of Matt Liistro and 124 Other Individuals

AGENCY: Federal Trade Commission.

ACTION: Receipt of petition; request for comment.

SUMMARY: Please take notice that the Federal Trade Commission (''Commission'') received a petition for rulemaking from Matt Liistro and 124 other individuals and has published that petition online at *https://www.regulations.gov.* The Commission invites written comments concerning the petition. Publication of this petition is pursuant to the Commission's Rules of Practice and Procedure and does not affect the legal status of the petition or its final disposition.

DATES: Comments must identify the petition docket number and be filed by July 14, 2023.

ADDRESSES: You may view the petition, identified by docket number FTC–2023–0036, and submit written comments concerning its merits by using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit sensitive or confidential information. You may read background documents or comments received at *https://www.regulations.gov* at any time.

FOR FURTHER INFORMATION CONTACT: Daniel Freer, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, *dfreer@ftc.gov,* (202) 326–2663.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18(a)(1)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(1)(B), and FTC Rule 1.31(f), 16 CFR 1.31(f), notice is hereby given that the above-captioned petition has been filed with the Secretary of the Commission and has been placed on the public record for a period of thirty (30) days. Any person may submit comments in support of or in opposition to the petition. All timely and responsive comments submitted in connection with this petition will become part of the public record. The Commission will not consider the petition's merits until after the comment period closes.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure 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 responsible for making sure 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).

Authority: 15 U.S.C. 46; 15 U.S.C. 57a; 5 U.S.C. 601 note.

April J. Tabor,

Secretary.

[FR Doc. 2023–12694 Filed 6–13–23; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 140 and 146

46 CFR Parts 4 and 109

[Docket No. USCG–2013–1057]

RIN 1625–AB99

Marine Casualty Reporting on the Outer Continental Shelf

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changing the reporting criteria for certain casualties that occur on foreign floating outer continental shelf (OCS) facilities (FOFs), mobile offshore drilling units (MODUs), and vessels engaged in OCS activities. In this supplemental notice of proposed rulemaking (SNPRM), the Coast Guard revises the approach described in the notice of proposed rulemaking (NPRM) published in 2014 and responds to

public comments about the NPRM. The Coast Guard proposes this action to harmonize the casualty-reporting regimes that apply to foreign and U.S. FOFs, MODUs, and vessels engaged in OCS activities and to account for the changes in technology on the OCS, since the casualty-reporting regulations were originally published in 1982. In addition, in response to public comment on the 2014 NPRM, the Coast Guard proposes to raise the property damage dollar threshold that triggers a casualty report from $25,000 to $75,000 for fixed facilities on the OCS because the original regulation setting the property damage threshold amount was issued in the 1980s and has not since been updated. Through this SNRPM, the Coast Guard would update Coast Guard regulations to keep up with technology, improve awareness of accident trends on the OCS, improve safety on the OCS, and reduce the regulatory burden on operators of fixed OCS platforms.

DATES: Comments and related material must be received before September 12, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2013–1057 using the Federal eRulemaking Portal at *www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Collection of information. Submit comments on the collection of information discussed in section IX.D. of this preamble both to the Coast Guard's online docket and to the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget (OMB) using their website *www.reginfo.gov/public/do/PRAMain.* Comments sent to OIRA on the collection of information must reach OMB on or before the comment due date listed on their website.

FOR FURTHER INFORMATION CONTACT: If you have questions on this supplemental proposed rule, call or email CDR Amanda Fahrig, Office of Investigations and Casualty Analysis (CG–INV), telephone 202–372–1035, email, *Amanda.L.Fahrig@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Public Participation and Request for Comments

The Coast Guard views 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 eRulemaking Portal at *www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2013–1057 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 *www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this SNPRM for alternate instructions.

Viewing material in docket. To view documents mentioned in this SNPRM 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 *www.regulations.gov* Frequently Asked Questions (FAQ) web page. That FAQ page also explains how to subscribe for email alerts that will notify you when comments are posted or if a final rule is published. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket, see the Department of Homeland Security's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Public meeting. We do not plan to hold a public meeting but we will consider doing so if public comments indicate that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

II. Abbreviations

BLS U.S. Bureau of Labor Statistics
BSEE Bureau of Safety and Environmental Enforcement
CFR Code of Federal Regulations
COI Collection of information
DHS Department of Homeland Security
FOF Floating OCS facility
FR Federal Register
IADC International Association of Drilling Contractors
ICR Information Collection Request
MCR Marine casualty reports
MISLE Marine Information for Safety and Law Enforcement
MODU Mobile offshore drilling unit
NAICS North American Industry Classification System
NMA National Mariners Association
NOSAC National Offshore Safety Advisory Committee
NPRM Notice of proposed rulemaking
OCS Outer continental shelf
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
OOC Offshore Operators Committee
SNPRM Supplemental notice of proposed rulemaking
§ Section
U.S.C. United States Code

III. Basis and Purpose

Through Title 43 of the United States Code (U.S.C.), Section 1333(d)(1), Congress authorizes the Secretary of the Department in which the Coast Guard is operating to promulgate and enforce reasonable regulations to promote safety of life and property on the outer continental shelf (OCS), artificial islands, installations, and other devices permanently or temporarily attached to the seabed, and in waters adjacent to such artificial islands, installations, or devices. The Secretary delegates this authority to the Commandant of the Coast Guard through the Department of Homeland Security (DHS) Delegation No. 00170.1 (90), Revision No. 01.2.

In this supplemental notice of proposed rulemaking (SNPRM), the Coast Guard revises the proposals detailed in the notice of proposed rulemaking (NPRM) published on January 10, 2014 (79 FR 1780) to account for public comment as well as to simplify our explanation of the

proposed regulatory changes. Through this SNPRM, we would collect more comprehensive casualty data to help protect the safety of life and property on the OCS, account for changes in technology, and improve the Coast Guard's maritime domain awareness.

In addition, through this SNPRM, the Coast Guard seeks to reduce the regulatory burden on fixed OCS facilities by raising the monetary property damage threshold amount for reporting a marine casualty from $25,000 to $75,000.

IV. Regulatory History

The Coast Guard published an NPRM titled ''Marine Casualty Reporting on the Outer Continental Shelf'' on January 10, 2014 (79 FR 1780). In the NPRM, we explained our rationale for changing the criteria under which foreign floating OCS facilities (FOFs), mobile offshore drilling units (MODUs), and vessels engaged in OCS activities report marine casualties. While we propose most of the same criteria changes in this SNPRM, we utilize a different regulatory approach and offer additional proposals in response to public comment. This SNPRM completely replaces the 2014 NPRM and reference to the NPRM should not be necessary to review and comment on the Coast Guard's proposed supplemental changes.

In section VII of this SNPRM, we also address the comments received in response to the NPRM.

V. Background

The Coast Guard's regulations for OCS activities appear in Title 33 of the Code of Federal Regulations (CFR) subchapter N, parts 140 through 147. Regulations for reporting casualties on the OCS reside in 33 CFR part 146—Operations. The terms ''OCS facility,'' ''floating OCS facility,'' ''mobile offshore drilling unit,'' and ''fixed OCS facility'' are defined in 33 CFR part 140—General.

The owner, operator, or person in charge of a U.S. or foreign FOF, fixed OCS facility, MODU, or vessel must submit marine casualty reports (MCRs) in accordance with the applicable regulations. 33 CFR 146.30—Notice of casualties, applies to U.S. and foreign OCS facilities including MODUs affixed to the seabed. 33 CFR 146.301 and 33 CFR 146.303—Subpart D—Vessels—Notice of Casualty, apply to U.S. and foreign vessels, including MODUs not affixed to the seabed, engaged in OCS activities other than U.S. vessels already required to report marine casualties under 46 CFR subpart 4.05—Notice of Marine Casualties and Voyage Records. In 1987 (52 FR 47526, 47536, December 14, 1987), the Coast Guard amended 46 CFR 109.411—Notice and reporting of casualty, to require the owner, operator, or person in charge of a U.S. MODU must report accidents in accordance with 46 CFR part 4.

The criteria for reporting casualties are not identical between titles 33 and 46 of the CFR. The differences in these regulations result from the fact that the original title 33 CFR casualty reporting regulations published in 1956 (21 FR 900, February 9, 1956) applied to stationary artificial islands and fixed structures. In 1982 (47 FR 9366, March 4, 1982), the Coast Guard extended application of these regulations to floating facilities and vessels engaged in OCS activities to implement amendments to the Outer Continental Lands Act (Pub. L. 95–372) and did not align the reporting criteria with 46 CFR part 4. Table 1 shows the significant reporting differences between titles 33 and 46 of the CFR. In particular, table 1 shows that, because of the evolution of the casualty reporting requirements on the OCS, U.S. MODUs are regulated by two different reporting regimes and that the casualty reporting requirements for foreign MODUs are less stringent than those for U.S. MODUs.

TABLE 1—COAST GUARD MARINE CASUALTY REPORTING REQUIREMENTS

Topic	33 CFR part 146	46 CFR part 4
Statutory authority	43 U.S.C. 1333	43 U.S.C. 1333; 46 U.S.C. 2103, 2303a, 2306, 6101, 6301.
Applies to	U.S. and foreign FOFs, fixed OCS facilities, MODUs when in contact with the seabed, and vessels engaged in OCS activities.	U.S. vessels and MODUs in any waters. Foreign vessels in U.S. waters.
Reportable casualties	No similar requirement for vessel in distress	Vessel in distress or loss of communication with vessel.
	Death	Death.
	Injuries to 5+ persons	Injury.
	Incapacitation >72 hours	No similar incapacitation requirement.
	Property damage >$25,000	Property damage >$75,000.
	Damage affecting the usefulness of primary lifesaving or firefighting equipment.	Grounding. Allision: Loss of— • Main propulsion. • Primary steering. • Associated systems or components affecting maneuverability. Impairment of— • Vessel operation. • Vessel components. • Cargo. Material or adverse impact to vessel's— • Seaworthiness. • Fitness for service. • Fitness for route. • Examples—fire, flooding, failure of or damage to fire extinguishing, lifesaving, auxiliary power, and bilge pumping systems. Significant harm to the environment.
When to report	As soon as possible	Immediately after addressing resultant safety concerns.
Subsequent reports	Within 10 days, describe possible contributing factors	Within 5 days, written casualty report required.
Alcohol/drug testing	Required	Required.

Under 33 CFR 146.30 (facilities) and 146.303 (vessels), the owner, operator, or person in charge of an FOF, a fixed OCS facility, a MODU (when in contact with the seabed of the OCS for exploration or exploitation of subsea resources), or a vessel when engaged in OCS activities, must report to the Coast Guard as soon as possible any casualties involving:

- Death;
- Injury to five or more persons in a single incident;
- Injury causing any person to be incapacitated for more than 72 hours;
- Damage affecting the usefulness of primary lifesaving or firefighting equipment; and
- Certain other property damage in excess of $25,000.

The reporting party must follow the initial report in writing with a description of the factors that may have contributed to the casualty, including whether there is any evidence of alcohol or drug use by individuals directly involved in the casualty. The written report must be submitted on Coast Guard Form CG–2692 ''Report of Marine Casualty, Commercial Diving Casualty, or OCS-Related Casualty'' or in a narrative that supplies the same information as in the form. The CG–2692 form or narrative can be supplemented, as necessary by appended Forms CG–2692 A ''Barge Addendum,'' CG–2692B ''Report of Mandatory Chemical Testing Following a Serious Marine Incident Involving Vessels in Commercial Service,'' CG–2693C ''Personnel Casualty Addendum,'' and/or CG–2692D ''Involved Persons and Witnesses Addendum.'' [1]

U.S. vessels operating anywhere and foreign vessels operating within the navigable waters of the United States are subject to the marine casualty reporting requirements found in 46 CFR part 4. The regulations in 46 CFR part 4 also apply to U.S. MODUs operating on the OCS because 46 CFR 109.411 requires U.S. MODUs to report casualties in accordance with 46 CFR part 4. U.S. FOFs also report casualties under 46 CFR part 4. Title 46 CFR part 4 does not apply to foreign vessels, FOFs, or MODUs operating on waters beyond the navigable waters of the United States, except for certain foreign tank vessels operating in the Exclusive Economic Zone. See 46 CFR 4.05–2(b).

Under 46 CFR part 4, a vessel's owner, agent, master, operator, or person-in-charge must report to the Coast Guard, casualties involving:

- Allision;
- Collision;
- Explosion;
- Failures or occurrences, regardless of cause, which impair any aspect of a vessel's operation, components, or cargo;
- Fire;
- Flooding;
- Foundering;
- Grounding;
- Impacts to vessel seaworthiness or fitness for service or route;
- Loss of life, or injury requiring professional medical treatment;
- Loss of main propulsion or vessel maneuverability;
- Property damage in excess of $75,000;
- Reduction or loss of electrical power, propulsion, or steering capability;
- Significant harm to the environment;
- Stranding; or
- Vessel in distress or loss of communication with vessel.

The initial MCR required under 46 CFR 4.05–1 must be followed within 5 days by a written report on the CG–2692 form. See 46 CFR 4.05–10. Additionally, under 46 CFR 4.05–12, the Coast Guard requires the marine employer to determine whether there is any evidence of alcohol or drug use by individuals directly involved in the casualty. This information can be included on the CG–2692 form or, as necessary, on a CG–2692B form. Reports for closed investigations of reportable marine casualties investigated by the US Coast Guard from 2002 to present are publicly available at the USCG Maritime Information Exchange.[2]

During their casualty analysis, the members of the marine board of investigation for the foreign MODU *Deepwater Horizon* casualty [3] noted the inconsistencies between 33 CFR part 146 and 46 CFR part 4. In their accident report, the board members emphasized the disparate casualty reporting and chemical testing requirements between U.S. MODUs and foreign MODUs operating beyond navigable waterways of the United States. U.S. FOFs, MODUs, and vessels engaged in OCS activities report casualties under 46 CFR part 4, whereas foreign FOFs, MODUs, and vessels engaged in OCS activities report casualties under 33 CFR part 146. The reporting criteria in 33 CFR part 146 includes fewer types of casualties than the reporting criteria in 46 CFR part 4. Thus, foreign FOFs, foreign MODUs, and foreign vessels engaged in OCS activity have a less comprehensive casualty-reporting regime than their U.S. counterparts. These differences are important in the offshore oil and gas exploration, development, and production industry because a lack of casualty data could hamper early detection of risks. As the coastal State with jurisdiction, we propose that it is the same casualty reporting standards of foreign vessels, MODUs, and floating facilities that engage in OCS activities as their U.S. counterparts. Additionally, having a uniform reporting standard for both U.S. and foreign FOFs, MODUs, and vessels that engage in OCS activities equalizes the regulatory burden.

Further, the Coast Guard believes the casualty reporting regulations in 33 CFR parts 140 and 146 lag both technological developments and present-day operations in the OCS industry, because the Coast Guard has not updated marine casualty reporting requirements on the OCS since 1982. At that time, MODUs affixed to the seabed, such as jack-up units, conducted most of the oil and natural gas exploration on the OCS in waters to about 500 feet deep. Similarly, oil and gas companies erected fixed facilities to produce oil and natural gas because these types of facilities are feasible to the same 500-foot water depth.

In the past 30 years, the use of floating MODUs and facilities has become commonplace as exploration and production activities moved into deeper waters of the OCS. Today, FOFs and MODUs operate in waters up to 8,000 feet deep, much further offshore, and distant from emergency assistance. These floating facilities and MODUs are more like ocean-going vessels than fixed OCS facilities and MODUs grounded to the seabed.

Therefore, in this SNPRM, as in the NPRM, the Coast Guard proposes changing the criteria by which foreign FOFs, MODUs, and vessels engaged in OCS activities report casualties. This action would improve collection and analysis of casualty information on the OCS to help the Coast Guard and industry develop policies and procedures that prevent future marine casualties.

In this SNPRM, the Coast Guard also proposes raising the dollar threshold for reporting property damage under 33

[1] The CG–2692 form and other CG–2692 addendum forms are accessible at *https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Office-of-Investigations-Casualty-Analysis/2692-Reporting-Forms-NVIC-01-15/*.

[2] *https://cgmix.uscg.mil/IIR/Default.aspx*. Users should select ''Search IIR'' in the top left corner.

[3] Report of Investigation into the Circumstances Surrounding the Explosion, Fire, Sinking and Loss of Eleven Crew Members Aboard the MOBILE OFFSHORE DRILLING UNIT *DEEPWATER HORIZON*—In the GULF OF MEXICO April 20–22, 2010. See docket USCG–2013–1057.

CFR part 146. The Coast Guard established the property damage threshold of $25,000 in 33 CFR part 146 through a final rule that published on March 4, 1982 (47 FR 9366). The $25,000 threshold has not been changed in over 30 years and has not kept pace with inflation. Over time, this has resulted in reports of a greater number of casualties involving relatively minor property damage.

Until recently, a similar situation existed with reporting property damage under 46 CFR part 4. In that case, to account for inflation, the Coast Guard published a final rule titled ''Marine Casualty Reporting Property Damage Thresholds'' on March 19, 2018 (83 FR 11889) (hereafter the 2018 Final Rule). In that final rule, the Coast Guard raised the property damage reporting criteria in 46 CFR part 4 from $25,000 per incident to $75,000 based on the CPI–U increase between 1980 (82.408) and 2016 (240.007).[4] The Coast Guard sees no reason why the property damage threshold in 33 CFR part 146 should be different than the threshold in 46 CFR part 4. Accordingly, through this supplemental proposed rule, we would raise the reportable monetary property damage threshold amount to $75,000 in 33 CFR part 146. Raising the threshold to $75,000 would only apply to fixed OCS facilities because, through this supplemental proposed rule, FOFs, MODUs, and vessels operating on the OCS would be required to report casualties under the criteria in 46 CFR part 4, which has already been raised to $75,000 for property damage.

VI. Discussion of the Supplemental Proposed Rule

Based on the comments we received to our 2014 NPRM, we are proposing changes to that proposal requiring foreign FOFs, MODUs, and vessels engaged in an OCS activity to report casualties under 46 CFR part 4.

The comments we received about the 2014 NPRM led us to decide on two substantive changes to the proposals in the 2014 NPRM. First, we decided not to propose changing the casualty reporting requirement for fixed OCS facilities. Second, we decided to propose increasing the property damage dollar threshold to $75,000 and align title 33 of the CFR with title 46 of the CFR. These changes are fully discussed in sections V, VI, and VIII of this SNPRM.

[4] 2016 was the most recent full year of data available at the time of the analysis for the final rule (83 FR 11889). See CPI Detailed Report, Data for December 2016, Table 24, *https://www.bls.gov/cpi/cpid1512.pdf.*

These substantive changes to our proposals in the 2014 NPRM necessitate we re-propose our regulatory changes through this SNPRM. As discussed above, this SNPRM completely replaces the 2014 NPRM and reference to the NPRM should not be necessary to review and comment on the Coast Guard's proposed supplemental changes. Consequently, the Coast Guard proposes the following amendments to the CFR through this SNPRM.

33 CFR 140.10—Definitions

We propose adding dynamically positioned floating facilities to the definition of *floating OCS facility.* The dynamic positioning systems in use on the OCS today did not exist when the current regulations were published in 1982. At that time, secure anchoring was the only reliable method of maintaining station. With modern controls, computers, and Global Positioning Systems, FOFs can safely remain on station without the need for complex anchoring systems. We did not propose this change in the 2014 NPRM because, at that time, the Coast Guard was developing two related rulemakings that addressed standards for dynamic positioning systems. These were titled ''Outer Continental Shelf Activities'' (USCG–1998–3868) (withdrawn on September 19, 2019, *see* 83 FR 47324) and ''Requirements for MODUs and Other Vessels Conducting Outer Continental Shelf Activities with Dynamic Positioning Systems'' (USCG–2014–0063) (withdrawn on May 20, 2022, *see* 87 FR 30849).

33 CFR 140.201—General

We propose removing the specific types of casualties listed in paragraphs (a) through (c) and, instead, referencing 33 CFR 146.30 and 46 CFR part 4, which apply to all fixed OCS facilities and floating OCS facilities, MODUs, and vessels, respectively. We retain the requirements of paragraphs (d) and (e) and re-designate them as (c) and (d).

33 CFR 140.203—Investigations Procedures

We propose updating *U.S. Geological Survey* to *U.S. Bureau of Safety and Environmental Enforcement.* This proposed change is an administrative correction because the U.S. Geological Survey no longer conducts investigations of casualties on the OCS.

33 CFR 146.30—Notice of Casualties

We propose applying the casualty reporting criteria listed in this section to FOFs only. See the discussion of proposed 46 CFR 4.03–1 below, in which we propose to require the owner, operator, or person in charge of FOFs, MODUs, and vessels engaged in an OCS activity to report casualties under 46 CFR part 4. We also propose to raise the dollar threshold for reporting property damage from $25,000 per incident to $75,000. In addition, we propose removing the phrase ''. . . drydocking or demurrage . . .'' in paragraph (d), as these terms do not apply to a fixed OCS facility.

Finally, in 33 CFR 146.30, we propose to require the owner, operator, or person in charge of foreign FOFs, MODUs, and vessels engaged in an OCS activity to include in the written casualty report required under 46 CFR 4.05–12 information relating to alcohol or drug involvement. This is not a new requirement as it is currently included in 33 CFR 146.35 that applies collectively to FOFs and fixed OCS facilities. We repeat it in the proposed 33 CFR 146.30 because this section would now distinguish between reporting requirements for fixed and floating facilities and to ensure FOFs reporting under 46 CFR part 4 are aware of their continued responsibility to include drug and alcohol information.

33 CFR 146 Subpart D, Vessels—Notice of Casualty

We propose removing subpart D, Vessels—Notice of Casualty, in 33 CFR part 146 because, through this proposed change, the vessels currently reporting under subpart D requirements would report casualties under the provisions of 46 CFR part 4. Accordingly, we also propose re-designating the current subpart E, Vessels—Safety and Security Notice of Arrival as the new subpart D.

46 CFR 4.01–1—Scope of Regulation

We propose revising the existing text for clarity.

46 CFR 4.01–3—Reporting Exclusion

We propose exempting the owner, operator, or person in charge of FOFs, and MODUs from casualty reporting requirements for deaths or injuries of shipyard or harbor workers when the casualty does not result from either a reportable casualty or a reportable equipment failure and the incident is reportable to the Occupational Safety and Health Administration (OSHA) under 29 CFR part 1904.

Subpart 46 CFR 4.03—Definitions

We propose adding § 4.03–0, Definitions in this subpart, to explain that subpart 4.03 contains terms defined for purposes of part 4.

46 CFR 4.03–1—Marine Casualty or Accident

We propose amending the definition of *Marine casualty or accident* to include casualties on an FOF, MODU, or vessel when they are engaged in an OCS activity. We would also revise the existing list of events included in the definition of *Marine casualty or accident* for clarity.

46 CFR 4.03–2—Serious Marine Incident

We propose amending the definition of *Serious marine incident* to include incidents on an FOF, MODU, or vessel when they are engaged in an OCS activity.

46 CFR 4.03–65—Significant Harm to the Environment

We propose amending the definition of *Significant harm to the environment* to include incidents on an FOF, MODU, or vessel when they are engaged in an OCS activity.

46 CFR 4.03–80—Outer Continental Shelf (OCS)

In this new section, we propose adding the definition for *Outer continental shelf (OCS)* from 33 CFR 140.10.

46 CFR 4.03–85—OCS Activity

In this new section, we propose adding the definition for *OCS activity* from 33 CFR 140.10.

46 CFR 4.03–90—Floating OCS Facility

In this new section, we propose adding the revised definition for *Floating OCS facility* from 33 CFR 140.10.

46 CFR 4.03–95—Mobile Offshore Drilling Unit (MODU)

In this new section, we propose adding the definition for *Mobile offshore drilling unit (MODU)* from 33 CFR 140.10.

46 CFR Subpart 4.04—Notice of Potential Vessel Casualty

We propose broadening the applicability of reporting requirements to include all FOFs, MODUs, and vessels engaged in an OCS activity.

46 CFR Subpart 4.05—Notice of Marine Casualty and Voyage Records

We propose broadening the notice and record retention requirements to include all FOFs, MODUs, and vessels engaged in an OCS activity.

46 CFR Subpart 4.06—Mandatory Chemical Testing Following Serious Marine Incidents Involving Vessels in Commercial Service

We propose broadening the post-casualty chemical testing requirements to include all FOFs and MODUs when engaged in an OCS activity. We also propose adding a new paragraph 4.06–15(b)(3) allowing the owner, operator, or person in charge of an FOF, MODU, or vessel to request an alternative drug testing process in lieu of the drug testing requirements in 49 CFR part 40—Procedures for Transportation Workplace Drug and Alcohol Testing Programs, referenced in 46 CFR 4.06–15.

46 CFR 4.07–45—Foreign Units of Coast Guard, Investigation by

We propose broadening the applicability to all FOFs and MODUs when engaged in an OCS activity.

46 CFR 109.411—Notice and Reporting of Casualty

We propose amending the existing text to provide clarity regarding the persons responsible for providing notice and the reporting of marine casualties involving U.S. MODUs. This proposed change is also consistent with the language in subpart 4.05 regarding the persons responsible for the notice and reporting of marine casualties.

VII. Discussion of Comments on the 2014 NPRM

In the 2014 NPRM, the Coast Guard proposed requiring that the owners, operators, or person-in-charge of all U.S. and foreign fixed OCS facilities, FOFs, MODUs, and vessels engaged in an OCS activity report casualties under the criteria of 46 CFR part 4 instead of 33 CFR part 146.

We received seven responses with comments about the NPRM including one response from a Federal agency, one response from a Federal advisory committee, four responses from industry organizations, and one response from the general public. We summarize the comments and our responses in the paragraphs that follow.

The Department of the Interior Bureau of Safety and Environmental Enforcement (BSEE) and the Coast Guard share jurisdiction on the OCS. After reviewing the NPRM, BSEE recommended we retain casualty reporting for fixed OCS platforms in 33 CFR subchapter N. The Coast Guard concurs and does not propose to change the reporting procedures for fixed OCS facilities in this SNPRM except to raise the dollar threshold for reporting property damage.

We received five comments from the National Offshore Safety Advisory Committee (NOSAC). NOSAC is a Federal Advisory Committee, subject to the Federal Advisory Committee Act (Title 5 U.S.C. Appendix). The Coast Guard regularly consults NOSAC on ''matters relating to activities directly involved with, or in support of, the exploration of offshore mineral and energy resources, to the extent that such matters are within the jurisdiction of the Coast Guard.'' The Coast Guard approved a task statement for NOSAC to address the NPRM and NOSAC completed their report on September 24, 2014. A copy of the NOSAC report is included in the rulemaking docket.[5]

The members of NOSAC asserted that some of the vessel populations we used in the NPRM's cost and benefit analysis were underestimated, but not to a degree that would significantly affect the outcomes of our cost and benefit estimates. The Coast Guard notes NOSAC's comment, however, we do not plan to revise our estimate methodology because vessel and facility populations fluctuate on the OCS depending on industry dynamics and the number and frequency of new leases. The data used in this SNPRM reflects changes in the population since 2014 that make the data provided in NOSAC's comment out of date. In addition, we added detail on the affected population to address concerns that the population of industrial vessels in the Marine Information for Safety and Law Enforcement (MISLE) database undercounts the affected population. We believe the numbers in our analyses represent the affected vessel and OCS facility populations because they are taken from the most current information about FOFs, MODUs, and vessels working on the OCS.

The members of NOSAC also asserted that we underestimated collection of information costs by not including the effort of a company's internal review of an accident report prior to submission. NOSAC submitted a similar comment to the NPRM we published on raising the property damage dollar threshold amount in 46 CFR part 4, which we discussed in the subsequent 2018 Final Rule. The Coast Guard agrees with this comment and, in this SNPRM, we increased our estimated collection of information costs by 10 percent of the casualty reports to account for internal company review required by some of the more complex reports, as was done in the 2018 Final Rule.

[5] A copy of NOSAC's report is included in the rulemaking docket, *www.regulations.gov/document/USCG-2013-1057-0009.*

The members of NOSAC also urged us to raise the property damage reporting threshold from $25,000 per incident to at least $100,000. We partially agree and propose in this SNPRM to raise the dollar threshold amount in 33 CFR 146.30 to $75,000. As previously mentioned, through our 2018 Final Rule, we raised the property damage reporting criteria in 46 CFR part 4 from $25,000 per incident to $75,000 to account for inflation. We do not see any reason why the property damage threshold in 33 CFR part 146 should be different than the threshold in 46 CFR part 4. Accordingly, for the same reasons that we increased the property damage threshold amount in 46 CFR part 4, for consistency in accident reporting, and in response to comments, we propose to make the same increase to the dollar threshold amount in 33 CFR part 146.

In addition to the comments we received from BSEE and NOSAC, we received six public comments on the NPRM. These comments came from two industry groups, one company, one mariner's association, one student, and one unaffiliated person.

The National Mariners Association (NMA) [6] expressed its longstanding concerns about the failures of employers to submit accident reports in a timely manner. We understand the association's concern as timely intervention is only possible when casualty reports are promptly reported. It is for this reason that Coast Guard regulations prescribe when casualty reports must be submitted. Violations of the Coast Guard's casualty reporting regulations, whether in 46 CFR part 4 or 33 CFR part 146, are subject to civil penalties, as set forth in 46 U.S.C. 6103 and 43 U.S.C. 1350, respectively.

The Offshore Operators Committee (OOC),[7] generally supported the proposed rule and noted that the Coast Guard did not seek to harmonize accident reporting requirements between the Coast Guard and BSEE through the NPRM.

The Coast Guard and BSEE are aware that some accidents lead to dual investigations. These investigations are based on accident information collected through separate Office of Management and Budget (OMB) approved Information Collection Requests (ICRs) that are not identical. In this SNPRM, the Coast Guard would update the ICR governing accident information collection under 46 CFR part 4 to apply to foreign FOFs, MODUs, and vessels operating on the OCS. However, this action would not eliminate the possibility of dual investigations or address the differences between the Coast Guard and BSEE's ICRs.

In a joint publication titled, ''United States Coast Guard & Bureau of Safety and Environmental Enforcement Joint Activity Summary 2017–2018,'' [8] the Coast Guard and BSEE describe how they collaborate on OCS inspections and investigations. In 2017, the Coast Guard and BSEE established a memorandum of agreement titled ''BSEE/USCG MOA: OCS–05'' regarding incident notification and investigations.[9] This memorandum details jurisdiction, responsibilities, enforcement, training, regulatory coordination, and information sharing. While sharing accident information is hampered by differences in information technology infrastructure, software, and security requirements, the memorandum explains how the Coast Guard and BSEE have agreed to collaborate as much as possible. The BSEE and Coast Guard Prevention Working Group also continues to seek solutions that would lead to closer cooperation and reciprocity.

In its comments, the OOC also criticized the Coast Guard for continued reliance on a burdensome paper-based accident reporting system. The Coast Guard agrees that we do not have a fully online accident reporting system. However, the fillable Coast Guard accident report forms (CG–2692 series) are available online at *www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/CG-5PC/INV/docs/CG_2692.pdf?ver=2019-07-24-113027-740* and can be submitted via email to the appropriate Coast Guard office. BSEE regulations in 30 CFR 250.190(b) also allow submission of a CG–2692 form to fulfill its reporting requirements if the narrative contains the required information.

The OOC, NMA, and International Association of Drilling Contractors (IADC),[10] also expressed concerns, from a resource standpoint, about the Coast Guard's ability to adequately investigate marine casualties on the OCS. These three organizations remarked that additional casualty reports will overwhelm the Coast Guard's investigative resources. In addition, they believe the Coast Guard's assignment practices lead to frequent turnover and the lack of experienced personnel often results in inconsistencies in enforcement actions.

We believe this SNPRM would not significantly affect our inspection and investigation resources because we estimate the number of additional casualty reports submitted for foreign FOFs, MODUs, and vessels under 46 CFR part 4 would be small, as shown in the regulatory analysis below. Additionally, we estimate this increase in the number of casualty reports would be offset partially by a decrease in reports from fixed OCS facilities resulting from our proposed increase from $25,000 to $75,000 as the threshold for reporting property damage. While we note the commenters' concerns about Coast Guard training and assignment practices, those issues are beyond the scope of this rulemaking, and we do not propose to address them in this SNPRM. The Coast Guard addresses the potential for inconsistencies in enforcement actions through our current employment policies and procedures. We hold general training programs, maintain an extensive portfolio of guidance and policy preferences, and conduct ongoing oversight. We also assign qualified civilian personnel in lieu of uniformed members, who are subject to transfers, as investigating officers to help maintain consistency in accident investigation actions and analyses.

In addition to the comments discussed above, the IADC expressed support for the 2014 proposed rule and commended the Coast Guard for its continuing collaboration with BSEE to alleviate duplicate reporting. The IADC also recommended the Coast Guard confirm that same or similar Department of Labor exemption, which applies to health information in ''Occupational Safety and Health Administration form 300, Log of Work-Related Injuries and Illnesses,'' should apply to marine casualty reporting as well. The Coast Guard notes this concern and confirms that we safeguard personal health information in accordance with Coast Guard policy and the Department of Health and Human Service's Health Insurance Portability and Accountability Act Privacy regulations.[11] In this SNPRM we are not proposing any changes to the regulations related to this topic.

The IADC also asked for clarification of the proposed 46 CFR 4.03–1(b) in the NPRM because it implied that a marine casualty can occur only when an event is caused by or involves a vessel and, in

[6] *https://www.nationalmariners.us.*

[7] *https://www.theooc.org.*

[8] *https://www.bsee.gov/sites/bsee.gov/files/bsee-uscg-joint-summary-final-5-1-2018.pdf.*

[9] *https://www.bsee.gov/sites/bsee.gov/files/interagency-agreements-mous-moas/bsee-uscg-moa-ocs-05-18jan2017.pdf.*

[10] *https://www.iadc.org.*

[11] 45 CFR part 160 and subparts A and E of 45 CFR part 164.

that case, conflicts with the proposed 46 CFR 4.03–1(a).

We agree that the NPRM's language for proposed 46 CFR 4.03–1(b) was confusing given our goal is to require FOFs and MODUs to report casualties under the more comprehensive reporting criteria contained in 46 CFR part 4. In the NPRM, we proposed including FOFs and MODUs in the definition of ''vessel'' for the purposes of that proposed rule. We decided that this approach could cause confusion and we seek to resolve that issue in this SNPRM by proposing revisions to 33 CFR 146.30 and 146.301 and 46 CFR 4.03–1 that distinctly delineate the regulation's applicability to vessels, FOFs, and MODUs.

One public commenter expressed support for the Coast Guard's goal of collecting better casualty information on the OCS. The Coast Guard appreciates this support. Another public commenter expressed the opinion that the proposed rule would have no significant use or benefit because it does not help other important national interests such as poverty or the national debt. The commenter stated that casualty reporting to help measure the kind of marine life that is being killed is important in certain respects, and the commenter further stated that the Coast Guard should not undertake rules that collect casualty data on marine life because the Coast Guard's mission is to provide reasonably free, safe, and unobstructed passage for waterborne traffic while considering the needs of land transportation. We believe the commenter may be under a misimpression that the phrase ''marine casualty'' in the NPRM refers to or includes the deaths of marine life. The Coast Guard acknowledges this comment and wishes to clarify that the definition of marine casualty does not include the death of marine life.

VIII. Differences Between the NPRM and SNPRM

In this SNPRM, we no longer propose that fixed OCS facilities would report casualties under the criteria of 46 CFR part 4 and instead we propose they continue to report casualties in accordance with 33 CFR parts 140 and 146. In the 2014 NPRM, we proposed to move all OCS facilities marine casualty reporting requirements from 33 CFR subchapter N to 46 CFR part 4. In this SNPRM, we have moved away from that approach and instead use the term ''Floating OCS Facility'' to differentiate between floating and fixed facilities.

The 46 CFR part 4 regulations are vessel casualty regulations for floating entities and provide appropriate regulations for floating OCS facilities but not necessarily for fixed OCS facilities for the following reasons. Floating OCS facilities experience similar types of accidents as other vessels, such as flooding, loss of stability, and inability to maintain station. Therefore, we believe it is appropriate to continue to propose that floating OCS facilities report casualties under 46 CFR part 4. However, fixed OCS facilities do not experience substantially similar casualties. In addition, as explained in Section VII of this supplemental proposed rule, BSEE recommended we do not change the reporting criteria for fixed OCS facilities because they are sufficient. In agreement with BSEE's recommendation, the fixed facilities marine casualty reporting requirements would remain in subchapter N because the current accident reporting regime for fixed OCS facilities is sufficient for collecting accident data and responding to trends in that population. The 33 CFR part 140 and 146 are more relevant and tailored to fixed platforms and facilities. We concur that the regulations in 33 CFR parts 140 and 146 are more appropriate for fixed OCS facilities. Therefore, we proposed that fixed OCS facilities would continue to report casualties under 33 CFR parts 140 and 146, and not 46 CFR part 4.

In this SNPRM, we propose revising the definition of *Floating OCS facility* in 33 CFR 140.10 by adding language to include dynamically positioned facilities. We propose this change to update our regulations with technology changes on the OCS since the regulations were published in 1982. At that time, complex anchoring systems were the only reliable means of keeping floating facilities on location. Modern controls, computers, and Global Positioning Systems have replaced anchoring systems for station keeping.

In this SNPRM, we propose revisions to 33 CFR 146.30 to raise the dollar amount threshold for reporting property damage from $25,000 to $75,000 to account for inflation over the past 30-plus years and to help reduce the regulatory burden on fixed OCS facilities.

In this SNPRM, we are not proposing to remove 33 CFR 146.30 through 146.45, because we are no longer proposing to combine them in 33 CFR 146.50.

In this SNPRM, we no longer seek to add a new 33 CFR 140.50, because our SNPRM proposal to have FOFs, MODUs, and vessels engaged in OCS activities report casualties under 46 CFR part 4 makes it unnecessary.

In the 2014 NPRM, we proposed adding to 46 CFR part 4 a new definition for *OCS unit* that included any OCS facility, vessel, rig, platform, or other vehicle or structure. We also proposed adding another new definition in 46 CFR part 4 for the term *vessel* that included *OCS unit.* We proposed this approach as a convenient device to avoid writing ''facility, vessel, rig, platform or other vehicle or structure'' each time they were needed in the regulatory text. However, after reviewing the comments on the NPRM, we ultimately abandoned this approach because the resulting definition of *vessel* in 46 CFR part 4 would conflict with the statutory definition found in 1 U.S.C. 3: of ''. . . every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.'' Therefore, in this SNPRM, we propose, instead, adding in 46 CFR part 4 the title 33 of the CFR definitions for *OCS activity, floating OCS facility,* and *MODU* and writing out how this SNPRM applies to each.

In this SNPRM, we propose to revise the language in 46 CFR 109.411 to provide clarity regarding the persons responsible for providing notice and reporting of marine casualties involving U.S. MODUs. We did not propose this change in the NPRM.

The differences between the NPRM and SNPRM are summarized in table 2.

TABLE 2—SUMMARY OF CHANGES FROM NPRM TO SNPRM

	NPRM	SNPRM
Affected Population	Fixed OCS facilities report under 46 CFR part 4 ...	Fixed OCS facilities remain under 33 CFR parts 140 and 146.
Affected Population Description	NPRM created a term ''OCS Units'' in an attempt to leverage a consolidated definition.	SNPRM separately defines ''vessel engaged in OCS activity,'' ''floating OCS facility,'' and ''MODU.''

TABLE 2—SUMMARY OF CHANGES FROM NPRM TO SNPRM—Continued

	NPRM	SNPRM
Property Damage Threshold	Threshold in title 33 of the CFR listed as $25,000	Threshold raised to $75,000 to be consistent with prior update to 46 CFR part 4.

IX. Regulatory Analyses

We developed this SNPRM after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This SNPRM is a significant regulatory action, although not economically significant, under section 3(f) of Executive Order 12866. The Office of Management and Budget (OMB) has reviewed it under that Executive order. Section 6(a)(3) of Executive Order 12866 requires an assessment of potential costs and benefits. We fully explain our assessment in the remaining paragraphs of this section.

In this SNPRM, as in the NPRM, the Coast Guard proposes to amend regulations in which marine casualties, under 33 CFR subchapter N, are reported for foreign vessels, MODUs, and floating facilities operating on the OCS. The proposed amendments would align casualty reporting requirements for U.S. and foreign FOFs, MODUs, and vessels engaged in an OCS activity under the 46 CFR part 4 reporting requirements. In addition to the change from the NPRM, the Coast Guard proposes in this SNPRM, to update the property damage threshold for reporting under 33 CFR part 146 to align with the threshold in 46 CFR part 4, which was raised in the 2018 Final Rule.[12]

The proposed threshold change addresses a concern raised by NOSAC in its comment on the 2014 NPRM, that the property damage threshold for casualty reporting should be increased from $25,000 to account for inflation.[13] Acting on that comment, the Coast Guard updated the threshold under 46 CFR part 4 to $75,000 in the 2018 Final Rule and would propose to do the same under title 33 of the CFR in this SNPRM.

The 2018 Final Rule also adjusted the burden hours of the ICR for MCRs in response to NOSAC's comment, to account for review of a draft MCR by company management and legal counsel. This SNPRM continues to use the updated burden implemented in the 2018 Final Rule to account for additional review of some casualty reports, this change was not initially included in the 2014 NPRM.[14] We added additional detail on the affected population since the NPRM to address NOSAC's concerns that the population of industrial vessels in the MISLE database undercounts the affected population, particularly FOFs.[15] The affected population numbers have also been reviewed by the floating OCS facilities working group to ensure accuracy. The impacts of the proposed changes of this SNPRM are summarized in table 3.

TABLE 3—SUMMARY OF THE IMPACTS OF THE SNPRM

Category	Summary
Applicability	Requires marine casualties, involving foreign FOFs, MODUs, and vessels engaged in OCS activities, to be reported under 46 CFR part 4 as consistent with U.S. FOFs, MODUs, and vessels. Raises the monetary reportable marine casualty dollar threshold in 33 CFR part 146 from $25,000 to $75,000 to align with 46 CFR part 4.
Affected Population	For marine casualties on FOFs, MODUs, and vessels currently required to be reported under 33 CFR part 146: • 588 foreign FOFs, MODUs, and vessels would shift reporting to 46 CFR part 4. • 1,754 fixed platforms would continue to report under 33 CFR part 146.
Costs (2019 dollars, 7% Discount Rate).	Cost for U.S. Government: 10-Year: $25,806. Annualized: $3,674. Cost for Foreign Industry: 10-Year: $95,039. Annualized: $13,531. On average, we anticipate an increase of 78 marine casualty reports annually.
Cost Saving to Industry (2019 dollars, 7% Discount Rate).	Savings for U.S. industry: 10-Year: ($8,389). Annualized: ($1,194). Savings for Foreign Industry: 10-Year: ($11,542). Annualized: ($1,643). Reduced reporting from raising the property damage threshold for a reportable marine casualty.

[12] "Marine Casualty Reporting Property Damage Thresholds" (83 FR 11889, March 19, 2018).

[13] NOSAC Approved Final Report—Marine Casualty Reporting, September 24, 2014, *www.regulations.gov/document?D=USCG-2013-1057-0009.*

[14] Ibid.

[15] Ibid.

TABLE 3—SUMMARY OF THE IMPACTS OF THE SNPRM—Continued

Category	Summary
Net Cost (2019 dollars, 7% Discount Rate).	Net Cost for U.S. Government and Industry: 10-Year: $17,417. Annualized: $2,480. Net Cost for Foreign Industry: 10-Year: $83,497. Annualized: $11,888.
Unquantified Benefits	Increases the Coast Guard's domain awareness through harmonization of marine casualty reporting requirements across CFR parts. Potential for risk mitigation if problems are mitigated before they develop into more serious accidents.

This SNPRM has been determined a significant regulatory action under Executive Order 12866. Therefore, in accordance with OMB Circular A–4, we have prepared an accounting statement showing the classification of impacts associated with this SNPRM.[16] The first A–4 in table 4 is the total U.S. cost, including the annualized cost to the US government, $3,674, and the annualized cost saving to US industry, $1,194 for a total annualized monetized cost of $2,480. The second A–4 shown in table 5 is the total cost of the rule including net annualized foreign costs $11,888, for an annualized monetized cost of $14,368.

TABLE 4—OMB A–4 ACCOUNTING STATEMENT FOR U.S. COSTS TO INDUSTRY AND GOVERNMENT 2021–2031 PERIOD OF ANALYSIS—2019 DOLLARS

Category	Primary estimate		Minimum estimate		High estimate		Source
Benefits:							
Annualized monetized benefits	None None	7% 3%	None None	7% 35	None None	7% 3%	RA.
Annualized quantified, but non-monetized, benefits	None						RA.
Unquantifiable Benefits	Increased domain awareness from additional MCRs. Potential for risk mitigation by increasing awareness of early accident indicators.						RA.
Cost:							
Annualized monetized cost	$2,480 $2,480	7% 3%	None None	7% 3%	None None	7% 3%	RA. RA.
Annualized quantified, but non-monetized, cost	None						RA.
Qualitative (unquantified) cost							RA.
Transfers:							
Annualized monetized transfers: "on budget"	Not calculated		Not calculated		Not calculated		RA.
From who to whom?							RA.
Annualized monetized transfers ("off-budget")	None		None		None		
From who to whom?	None		None		None		
Miscellaneous Analyses/Category:							
Effects on State, local, and tribal governments	None		None		None		
Effects on small businesses	Will not have a significant economic impact on a substantial number of small entities.						RA.
Effects on wages	None		None		None		
Effects on growth	No determination		No determination		No determination		

TABLE 5—OMB A–4 ACCOUNTING STATEMENT FOR ALL COSTS INCLUDING FOREIGN 2021–2031 PERIOD OF ANALYSIS—2019 DOLLARS

Category	Primary estimate		Minimum estimate		High estimate		Source
Benefits:							
Annualized monetized benefits	None None	7% 3%	None None	7% 3%	None None	7% 3%	RA.
Annualized quantified, but non-monetized, benefits	None						RA.
Unquantifiable Benefits	Increased domain awareness from additional MCRs. Potential for risk mitigation by increasing awareness of early accident indicators.						RA.

[16] *www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

TABLE 5—OMB A–4 ACCOUNTING STATEMENT FOR ALL COSTS INCLUDING FOREIGN 2021–2031 PERIOD OF ANALYSIS—2019 DOLLARS—Continued

Cost:							
Annualized monetized cost	$14,368	7%	None	7%	None	7%	RA.
	$14,368	3%	None	3%	None	3%	RA.
Annualized quantified, but non-monetized, cost	None						RA.
Qualitative (unquantified) cost							RA.
Transfers:							
Annualized monetized transfers: "on budget"	Not calculated		Not calculated		Not calculated		RA.
From who to whom?							RA.
Annualized monetized transfers ("off-budget")	None		None		None		
From who to whom?	None		None		None		
Miscellaneous Analyses/Category:							
Effects on State, local, and tribal governments	None		None		None		
Effects on small businesses	Will not have a significant economic impact on a substantial number of small entities.						RA.
Effects on wages	None		None		None		
Effects on growth	No determination		No determination		No determination		

Affected Population

As in the NPRM,[17] the affected population comprises all foreign FOFs identified in the MISLE database as floating production systems and floating production storage offloading vessels, as well as various types of industrial vessels,[18] MODUs, and lift boats. Table 6 shows detail on the affected population to address concerns that the population of industrial vessels in the MISLE database undercounts the affected population. Since the 2014 NPRM, MISLE now distinguishes FOFs, so we listed those separately from industrial vessels to show that the population is not undercounted. We excluded types that did not have an ocean-going route under the assumption that they would not operate on the OCS. In table 5, U.S. fixed OCS facilities are listed as an affected population only because of SNPRM proposal to update the property damage threshold for reporting a marine casualty, no other trigger for reporting a casualty would change under 33 CFR part 146.

TABLE 6—AFFECTED POPULATION

	NPRM (2014)	SNPRM (2020)
Moved to Report under 46 CFR part 4:		
Industrial Vessels (Foreign)	310	310
Oil Supply Vessels (Foreign)	9	0
MODUs (Foreign) *	73	257
Lift Boats (Foreign)	N/A	13
Floating OCS Facilities (Foreign)	28	8
Total Foreign Vessels	420	588
Updated Property Damage Threshold:		
Fixed Platforms (All U.S.)	N/A	1,754

* This number reflects active MODUs as reported by MISLE. It does not necessarily show how many are actively drilling, or in contact with the seabed.

Baseline Reporting

Table 7 describes the different events that prompt reporting of a marine casualty under 33 CFR part 146 and 46 CFR part 4. Title 46 CFR part 4 has more casualty reporting triggers than 33 CFR part 146. Therefore, an FOF, MODU, or vessel would report more casualties under 46 CFR part 4 than under 33 CFR part 146.

TABLE 7—CURRENT COAST GUARD MARINE CASUALTY REPORTING REQUIREMENTS

33 CFR part 146	46 CFR part 4
Death	Death.
Injuries to 5+ persons	Injury.
Incapacitation >72 hours; Property damage >$25,000 (fixed facilities only).	Property damage >$75,000.
	Grounding.

[17] "Marine Casualty Reporting on the Outer Continental Shelf" (79 FR 1780, January 10, 2014).

[18] The following vessel types are excluded: cable laying, dredger, dredger barge, factory ship, fishing support vessel, floating dry dock, orbital launch, offshore service vessel, pilot vessel, radio ship, and seabed mining vessel. Supply vessels not listed as offshore service vessels and operating on an ocean route are included.

TABLE 7—CURRENT COAST GUARD MARINE CASUALTY REPORTING REQUIREMENTS—Continued

33 CFR part 146	46 CFR part 4
(33 CFR 146.30 and 146.303.)	Allision. Vessel in distress or loss of communication with vessel. Loss of— • Main propulsion. • Primary steering. • Associated systems or components affecting maneuverability. Impairment of— • Vessel operation. • Vessel components. • Cargo. Material or adverse impact to vessels'— • Seaworthiness. • Fitness for service. • Fitness for route. • Examples—fire, flooding, failure of or damage to fire extinguishing, lifesaving, auxiliary power, bilge pumping systems. Significant harm to the environment (defined in 46 CFR 4.03–65). (46 CFR 4.04–1, 4.04–2, and 4.05–1.)

The transfer of marine casualty reporting of FOFs, MODUs, and vessels to 46 CFR part 4 would require an increase in the types of reportable casualties, including injury to fewer than five persons, grounding, stranding, foundering, flooding, collision, allision, explosion, fire, loss of propulsion, loss of steering, and impaired operations. There are already some voluntary submissions of MCRs for incidents on foreign FOFs, MODUs, and vessels involving the above criteria, although they are not required under 33 CFR part 146. Even with a count of active foreign FOFs, MODUs, and vessels each year, we are unable to determine the number of incidents that were non-reportable under 33 CFR part 146, but would have been reportable under 46 CFR part 4. Without aligned reporting, we are unable to compare how often one type of incident occurs on foreign FOFs, MODUs, and vessels compared to their U.S. counterparts, while accounting for differences in the total population sizes, how much of those populations actively report, and general risk levels between the two populations.

The reports for non-fatal types of incidents described as voluntary for foreign FOFs, MODUs, and vessels are mandatory for U.S. FOFs, MODUs, and vessels and would become mandatory for all flags with this SNPRM. We show the number of voluntary and mandatory MCR by flag type in table 8. From 2015 to 2019, MISLE recorded 188 total voluntary reports of casualties that met the reporting criteria under 46 CFR part 4 from a total of 114 uniquely identified foreign FOFs, MODUs, and vessels reporting under title 33 of the CFR.[19] Table 8 shows the number of MCRs from foreign FOFs, MODUs, and vessels that met the criteria for a reportable casualty under title 46 of the CFR but not under title 33 of the CFR, meaning those reports were submitted voluntarily. Table 9 shows the number of unique foreign FOFs, MODUs, and vessels that submitted voluntary reports in each year. These reports are unique only within each year; across the entire range from 2015 to 2019, there were 78 unique entities meaning 36 foreign FOFs, MODUs, or vessels submitted reports in multiple years.

TABLE 8—CASUALTY REPORTS BY TYPE FROM FOREIGN FOFS, MODUS, AND VESSELS

	2015	2016	2017	2018	2019	Grand total	Annual average
Reportable Under Title 46 of the CFR but Not Under Title 33							
Injury <5 & >0	47	23	24	43	21	.....	.....
Grounding	0	4	6	0	0	.....	.....
Allision	0	2	3	1	0	.....	.....
Stranding	0	0	0	0	0	.....	.....
Loss of Propulsion	1	1	0	0	0	.....	.....
Loss of Steering	0	0	0	0	0	.....	.....
Impaired Operation	0	0	0	0	0	.....	.....
Foundering	0	0	0	0	0	.....	.....
Flooding	0	0	3	0	0	.....	.....
Collision	1	0	0	0	0	.....	.....
Explosion	0	0	0	0	0	.....	.....
Fire	5	1	1	1	0	.....	.....
Total	54	31	37	45	21	188	37.6

[19] Voluntary reports are identified by keywords included in the activity title that match a reporting criterion, such as ''grounding'' or ''ground.'' Subjectivity or error in the entry of a casualty into MISLE or overlapping reporting criteria may cause error in identifying the cause of a report.

TABLE 8—CASUALTY REPORTS BY TYPE FROM FOREIGN FOFS, MODUS, AND VESSELS—Continued

	2015	2016	2017	2018	2019	Grand total	Annual average
Reportable Under Title 33 of the CFR							
Fatality	3	0	1	1	0	5	1.0
Injury >5	0	0	0	0	0	0	0

TABLE 9—NUMBER OF UNIQUE REPORTING FOREIGN FOFS, MODUS, AND VESSELS

2015	2016	2017	2018	2019	Total	Annual average
32	19	20	23	20	114	22.8

Similarly, from 2015 to 2019, MISLE recorded 803 total reports from 498 identified U.S. FOFs, MODUs, and vessels that matched the reporting criteria for voluntary reports from foreign FOFs, MODUs, and vessels, although those types of reports are mandatory for U.S. FOFs, MODUs, and vessels. Table 10 shows the number of MCRs from U.S. FOFs, MODUs, and vessels that met the criteria for a reportable casualty under title 46 of the CFR but not under title 33 of the CFR. Table 11 shows the number of unique U.S. FOFs, MODUs, and vessels that submitted reports in each year. These are unique only within each year, across the entire range from 2015 to 2019, there were 382 unique entities meaning 116 U.S. FOFs, MODUs, or vessels submitted reports in multiple years.

TABLE 10—CASUALTY REPORTS BY TYPE FROM U.S. FOFS, MODUS, AND VESSELS

	2015	2016	2017	2018	2019	Grand total	Annual average
Reportable Under Title 46 of the CFR							
Injury <5 & >0	118	94	116	115	99	.....	.....
Grounding	8	20	16	6	10	.....	.....
Allision	23	15	16	12	13	.....	.....
Stranding	0	0	0	0	0	.....	.....
Loss of Propulsion	4	3	12	5	3	.....	.....
Loss of Steering	1	1	0	0	0	.....	.....
Impaired Operation	0	0	0	0	0	.....	.....
Foundering	0	0	0	0	0	.....	.....
Flooding	14	12	10	6	10	.....	.....
Collision	8	5	9	3	3	.....	.....
Explosion	0	0	0	0	0	.....	.....
Fire	5	3	1	2	2	.....	.....
Total	181	153	180	149	140	803	160.6
Reportable Under Title 33 of the CFR							
Fatality	3	1	1	2	0	7	1.4
Injury >5	0	0	0	0	0	0	0

TABLE 11—NUMBER OF UNIQUE REPORTING U.S. FOFS, MODUS, AND VESSELS

2015	2016	2017	2018	2019	Total	Annual average
107	95	114	102	80	498	99.6

For MCRs involving fatalities, which are mandatory for everyone, an average 0.04 fatality reports from 2015 to 2019 were submitted for foreign FOFs, MODUs, and vessels, compared to an average of 0.01 fatality reports submitted for U.S. FOFs, MODUs, and vessels.[20] Table 13 shows the 5-year average number of MCRs per unique FOF, MODU, and vessel. The averages presented were rounded to two decimal places for presentation, but were not rounded in the calculations for the estimates in this analysis.

[20] The 5-year average of fatality reports per reporting foreign FOFs, MODUs, and vessels is 0.04 ((3 + 0 + 1 + 1 + 0) ÷ (32 + 19 + 20 + 23 + 20)) or ((0.09 + 0.00 + 0.05 + 0.04 + 0.00)/5) as shown above. The 5-year average of fatality reports per reporting U.S. FOF, MODU, and vessel is 0.01 ((3 + 1 + 1 + 2 + 0) ÷ (107 + 95 + 114 + 102 + 80)) or ((0.03 + 0.01 + 0.01 + 0.02 + 0.00)/5).

TABLE 13—5-YEAR AVERAGE CASUALTY REPORTS PER UNIQUE FOF, MODU, AND VESSEL, FROM 2014–2019

	Foreign	U.S.
Average number of FOF, MODU, and vessels reporting annually	22.80	99.60
Average number of non-fatality reports	37.60	160.60
Average number of fatality reports	1.00	1.40

* Ratios are sensitive to rounding and were not rounded in the calculations for the analysis.

Currently, fatal MCRs are mandatory for both populations while, in this sample, non-fatal MCRs are voluntary for foreign FOFs, MODUs, and vessels.

Costs From Increased Reporting

Under this SNPRM, the Coast Guard would require that owners and operators of foreign FOFs, MODUs, and vessels engaged in an OCS activity report marine casualties using the CG–2692 form under the reporting requirements of 46 CFR part 4 instead of the requirements under 33 CFR part 146. All U.S. entities already comply with these requirements. To estimate the potential increase in non-fatal MCRs generated by foreign FOFs, MODUs, and vessels, the Coast Guard estimates how many MCRs would be generated if the average number of non-fatality MCRs for the foreign population matched those of the U.S. population. Coast Guard estimates this by taking the proportion of US non-fatality reports to fatality reports and foreign non-fatality reports to fatality reports and solving for foreign non-fatality reports as shown in equation (A). Coast Guard believes that this is the best approximation available, given uncertainty about differences in the total population sizes, differences in the percentage of the active populations that report MCRs, and differences in general risk levels of operations between the two populations. The Coast Guard welcomes any suggestions or data that may better account for these uncertainties.

$$(A)\ \frac{US\ nonfatality\ reports}{US\ fatality\ reports} = \frac{Foreign\ nonfatality\ reports}{Foreign\ fatality\ reports}$$

Using the figures for average annual reports from Table 12, we then apply the formula shown in (A), assuming that the total value of foreign non-fatality reports is unknown and that the 37.60 non-fatality reports from foreign FOFs, MODUs, and vessels are voluntary but not equal to the total number of reports that would be realized under this proposed rule. The result is 114.71 foreign non-fatality reports, the total number of non-fatality reports that would have been reported, if the proportion of foreign fatality reports was the same as US fatality reports. The calculation of this 114.7 is shown in the equations (B), (C), and (D).

$$(B)\ \frac{160.60}{1.40} = \frac{x}{1.00}$$

$$(C)\ 160.60 * 1.00 = 1.40 * x \rightarrow\ 160.60 = 1.40x$$

$$(D)\ \frac{160.60}{1.40} = x \rightarrow x = 114.71$$

In (B), we assume that the U.S. non-fatality reports is equal to 160.60 as shown in Table 12, that U.S. fatality reports is equal to 1.40, and that foreign fatality reports is equal to 1.0. In (C), we begin solving the proportion for x by multiplying 160.60 by 1.0 and multiplying 1.40 by x, which results in 160.67 = 1.40x. Finally, in (D), we divide 160.60 by 1.40, which equals 114.71, the total number of foreign non-fatality reports.

Then, we subtract the number of voluntary reports already received from the foreign population to get the marginal increase in MCRs. This is the total of 114.71 foreign non- fatality reports minus the 37.60 voluntary foreign non-fatality reports, for an increase of 77.11 reports. Therefore, Coast Guard assumes that by making the requirements for reporting non-fatal casualties by foreign FOFs, MODUs, and vessels the same as for US FOFs, MODUs, and vessels, that foreign FOFs, MODUs, and vessels would report an average of 78 more non-fatality reports per year, rounding 77.11 up to the nearest whole number.

Table 14 summarizes the annual cost of additional MCRs submitted for foreign FOFs, MODUs, and vessels. The time burden and wage cost of generating MCRs comes from the collection of information (COI) ''OMB Control No. 1625–0001, Report of Marine Casualty and Chemical Testing of Commercial Vessel Personnel.'' It lists the burden hour per response for an MCR as 1 hour, with a corresponding loaded hourly wage of $30, which is equivalent to the 2019 GS–3 Outside Government Wage.[21] In this SNPRM, we use the 2019 U.S. Bureau of Labor Statistics (BLS) wage for captains, mates, and pilots of water vessels, which is a loaded hourly wage of $64.14,[22] instead of the 2019

[21] *www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201903-1625-001.*

[22] The 2019 mean wage for captains, mates, and pilots of water vessels is $42.03 (*www.bls.gov/oes/2019/may/oes535021.htm*). The load factor is equal to the ratio of total compensation (CMU2010000520000D) over wages and salaries (CMU2020000520000D) from 2019 or $33.20 divided by $21.76, or 1.526. The loaded wage is the mean wage multiplied by the load factor. The loaded wage, $64.14, equals $42.03 multiplied by 1.526. Series are from the Bureau of Labor Statistics, Employer Cost for Employee Compensation for Private Industry Workers, Transportation and Material Moving.

Commandant Instruction 7310.1T, Reimbursable Standard Rates [23] wage used in the NPRM because we believe it is a closer match to the occupation of the submitter and, therefore, more accurate. In the 2018 Final Rule updating the property damage threshold for 46 CFR part 4, the Coast Guard acknowledged industry comments that some particularly complex reports require additional review before submission to the Coast Guard. Thus, the Coast Guard uses the same adjustment for MCRs under 33 CFR and assumes that 10 percent of MCRs have an additional burden-hour response of 10 hours, to account for internal company review conducted by lawyers or upper management. This assumption does not increase the number of MCRs but increases the burden time for each MCR, the total increase in reports is 78 and 8 of those reports will take 11 hours to prepare instead of 1 hour. The current collection lists a corresponding wage rate of $110, equivalent to the 2019 GS–14 Outside Government Wage.[24] As above, for this SNPRM, we use the BLS wage for lawyers, which is a loaded hourly wage of $106.61,[25] instead of the Commandant Instruction wage, because we believe it more accurately reflects who is performing this review of the more complex report.

TABLE 14—ANNUAL COST OF ADDITIONAL CASUALTY REPORTS FROM FOREIGN FOFS, MODUS, AND VESSELS

	Annual responses (A)	Burden hours per response (B)	Annual hour burden (C) = (A) × (B)	Wage rate (D)	Annual cost burden (E) = (C) × (D)
Marine Casualty Report	78	1	78	$64.14	$5,003
Additional Burden for 10% of Respondents *	8	10	80	106.61	8,529
Total Annual Cost					$13,531

* Note that these increased review times do not constitute separate MCRs. Rather, they increase the total burden time of a single report. We have only 78 new reports, 8 of which will require 11 total hours to prepare.

Table 15 shows the annual costs across a 10-year period of analysis. This annual cost of $13,531 generates a total cost of $95,039 over 10 years in 2019 dollars discounted at 7 percent, or $13,531 annualized.

TABLE 15—COST TO INDUSTRY OVER 10 YEARS

Year	Annual undiscounted cost	Total, discounted	
		7%	3%
1	$13,531	$12,646	$13,137
2	13,531	11,819	12,755
3	13,531	11,046	12,383
4	13,531	10,323	12,023
5	13,531	9,648	11,672
6	13,531	9,017	11,332
7	13,531	8,427	11,002
8	13,531	7,875	10,682
9	13,531	7,360	10,371
10	13,531	6,879	10,069
Total	135,315	95,039	115,426
Annualized		13,531	13,531

Benefits

Through this SNPRM, the Coast Guard would update our casualty reporting regulations under 33 CFR part 146, issued in 1955, to keep up with technology and recognize that floating OCS facilities and MODUs are more like ocean-going vessels than the fixed OCS facilities the regulations were originally written to address. We would also harmonize reporting requirements for all foreign FOFs, MODUs, and vessels to the same reporting standards as their U.S. counterparts. These proposed changes would help provide consistency on the OCS and increase our maritime domain awareness by creating the mechanism for more complete casualty data that leads to planning contingencies, evaluating risks, and identifying trends.

Coast Guard District, Area, Headquarters, Area, District, and local offices, and the OCS National Center of Expertise analyze and share accident information. In addition, the Coast Guard ''Marine Safety Manual'' [26] contains guidance about broad distribution of accident and inspection information when potentially hazardous or systemic problems are found with a vessel, operator, or type of equipment. This data helps the Coast Guard identify and address safety issues proactively while improving the accuracy of Coast Guard's decision making and policy

[23] *www.uscg.mil/Portals/0/NPFC/docs/7310/Cl_7310_1T.pdf?ver=2019-01-28-080829-207.*

[24] Ibid.

[25] The 2019 mean wage for lawyers is $69.86 (*www.bls.gov/oes/2019/may/oes231011.htm*). The load factor is equal to the ratio of total compensation (CMU2010000520000D) over wages and salaries (CMU2020000520000D) from 2019 or $33.20 divided by $21.7676, or 1.526. The loaded wage is the mean wage multiplied by the load factor. The loaded wage, $106.61, equals $69.86 multiplied by 1.526. Series are from the Bureau of Labor Statistics, Employer Cost for Employee Compensation for Private Industry Workers, Transportation and Material Moving.

[26] *www.uscg.mil/guidance.*

development. Therefore, we believe a qualitative benefit of this proposed supplemental rule would come from the Coast Guard receiving reports of casualties that we would not otherwise receive.

Cost Savings From Property Damage Threshold Update

As a supplement to the reporting change for foreign FOFs, MODUs, and vessels in this SNPRM, the Coast Guard would also align reporting by updating the property damage threshold for reporting a marine casualty under 33 CFR 146.30 from $25,000 to $75,000 to align with the threshold listed in 46 CFR 4.05–1. The threshold in 46 CFR part 4 was previously updated to $75,000 in the 2018 Final Rule.[27] Raising the threshold for reportable property damage would decrease the number of marine casualties reported, since more damage would have to be incurred to meet the reportable threshold. The decrease in reports from the threshold update would mitigate the increase in reports generated by the cost section of this supplemental proposed rulemaking. In the following analysis, we apply the updated damage threshold of $75,000 to reports submitted for fixed OCS facilities under 33 CFR part 146 as well as to the estimated increase of 66 MCRs, which used the $25,000 threshold when reported. Fixed OCS facilities were not included in the analysis of the 2018 Final Rule. So, the reduction in reports from fixed OCS reporting facilities was never estimated.[28]

To estimate the decrease in reports, the Coast Guard identified MCRs submitted in the last 3 years that were generated because of property damage alone and would no longer meet the updated higher damage threshold for reporting. These are MCRs with property damage between the threshold of $25,000 and the proposed threshold of $75,000. We did not include fatality or injury, as these types of incidents are reportable regardless of property damage.

The Coast Guard identified 41 total reports submitted for FOFs, MODUs, and vessels currently reporting under 33 CFR part 146, generated because of property damage between $25,000 and $75,000 for a 5-year average of 9 reports annually. We then apply the same assumption that 10 percent of MCRs have an additional burden hour response of 10 hours to account for additional review time. We use the same assumed burden hour and wage used above for MCRs, with a corresponding loaded wage rate of $64.14. Table 16 shows how these assumptions generate a total annual saved cost of $1,643 that can be applied to the increased costs described in the Costs from Increased Reporting section to reduce net costs.

TABLE 16—DECREASED REPORTING COSTS FOR FOREIGN FOFS, MODUS, AND VESSELS MOVING TO TITLE 46 OF THE CFR

	Estimated responses that would no longer meet reporting threshold (A)	Burden hours per response (B)	Annual hour burden (C) = (A) × (B)	Wage rate (D)	Annual cost saved (E) = (C) × (D)
Decrease from Property Damage Threshold	−9	1	−9	$64.14	$577
Additional Burden for 10% of Respondents	−1	10	−10	106.61	1,066
Total Cost Saved					1,643

Table 17—shows how this annual savings of $1,643 generates $11,542 in cost savings over 10 years in 2019 dollars, discounted at 7 percent, or $1,643 annualized.

TABLE 17—COST SAVINGS TO FOREIGN FOFS, MODUS, AND VESSELS OVER 10 YEARS

Year	Annual undiscounted cost	Total, discounted	
		7%	3%
1	−1,643	−$1,536	−$1,595
2	−1,643	−1,435	−1,549
3	−1,643	−1,341	−1,504
4	−1,643	−1,254	−1,460
5	−1,643	−1,172	−1,418
6	−1,643	−1,095	−1,376
7	−1,643	−1,023	−1,336
8	−1,643	−956	−1,297
9	−1,643	−894	−1,259
10	−1,643	−835	−1,223
Total	−16,433	−11,542	−14,018
Annualized		−1,643	−1,643

[27] ''Marine Casualty Reporting Property Damage Thresholds'' (83 FR 11889, March 19, 2018).

[28] See page 11891 of 83 FR 11889 under ''E. Amending the Dollar Amount Thresholds for Outer Continental Shelf Casualty Reporting in Title 33 of the CFR.''

For fixed OCS facilities, we identified three reports generated because of property damage between $25,000 and $75,000, and applied the same assumption that 10 percent of MCRs have an additional burden hour response of 10 hours to account for additional review time. Since we assume any fraction of a report would be a whole report, we round the 5-year average of 0.15 up to one report. Table 18 shows how we use the same burden hour and wage assumptions as above to generate an annual cost savings of $1,194, which reduces the net cost of this rule.

TABLE 18—DECREASED REPORTING COSTS FOR FIXED OCS FACILITIES

	Estimated responses that would no longer meet reporting threshold	Rounding up to nearest whole number (A)	Burden hours per response (B)	Annual hour burden (C) = (A) × (B)	Wage rate (D)	Annual cost saved (E) = (C) × (D)
Decrease from Property Damage Threshold	−2	−2	1	−2	64.14	128
Additional Burden for 10% of Respondents	−0.15	−1	10	−10	106.61	1,066
Total Cost Saved						1,194

Table 19 shows how this annual savings of $1,194 generates $8,389 in cost savings over 10 years discounted at 7 percent, or $1,194 annualized.

TABLE 19—COST SAVINGS TO FIXED OCS FACILITIES OVER 10 YEARS

Year	Annual undiscounted cost	Total, discounted	
		7%	3%
1	−$1,194	−$1,116	−$1,160
2	−1,194	−1,043	−1,126
3	−1,194	−975	−1,093
4	−1,194	−911	−1,061
5	−1,194	−852	−1,030
6	−1,194	−796	−1,000
7	−1,194	−744	−971
8	−1,194	−695	−943
9	−1,194	−650	−915
10	−1,194	−607	−889
Total	−11,944	−8,389	−10,188
Annualized		−1,194	−1,194

Together, these cost savings to industry total $2,838 ($1,643 + $1,194) annually. Table 20 shows how these annual savings generate $19,931 in cost savings to industry over 10 years discounted at 7 percent, or $2,838 annualized.

TABLE 20—TOTAL COST SAVINGS

Year	Annual undiscounted savings	Total, discounted	
		7%	3%
1	−$2,838	−$2,652	−$2,755
2	−2,838	−2,479	−2,675
3	−2,838	−2,316	−2,597
4	−2,838	−2,165	−2,521
5	−2,838	−2,023	−2,448
6	−2,838	−1,891	−2,377
7	−2,838	−1,767	−2,307
8	−2,838	−1,652	−2,240
9	−2,838	−1,544	−2,175
10	−2,838	−1,443	−2,112
Total	−28,377	−19,931	−24,206
Annualized		−2,838	−2,838

Cost to Government

The increase of 78 MCRs would be mitigated by a total decrease of 11 reports; 9 from the increased property damage threshold for FOFs, MODUs, and vessels, and 2 from the update to fixed OCS facilities. Following the methodology in appendix B of the COI number 1625–0001, we do not assume that the 10 percent of reports that take longer to prepare for submission would take longer for the Coast Guard to review. The burden hour established in the COI already accounts for variance in the time to review MCRs of differing complexity and severity.

We assume that there is 1 hour of processing time at a GS–9 wage of $54.84 for each MCR.[29] For the 67 additional responses, there is a total annual cost of $3,674, as shown in table 21.

TABLE 21—COST TO GOVERNMENT

Cost category	Responses	Burden hours per response	Annual hours	Wage rate	Annual cost
Processing MCR	67	1	67	$54.84	$3,674
Total Annual Cost					3,674

Table 22 shows how the annual cost of $3,674 generates a total cost of $25,806 over 10 years in 2019 dollars, discounted at 7 percent, or $3,674 annualized.

TABLE 22—COST TO GOVERNMENT OVER 10 YEARS

Year	Annual undiscounted cost	Total, discounted	
		7%	3%
1	$3,674	$3,434	$3,567
2	3,674	3,209	3,463
3	3,674	2,999	3,362
4	3,674	2,803	3,264
5	3,674	2,620	3,169
6	3,674	2,448	3,077
7	3,674	2,288	2,987
8	3,674	2,138	2,900
9	3,674	1,999	2,816
10	3,674	1,868	2,734
Total	36,742	25,806	31,341
Annualized		3,674	3,674

Net Cost

The net annualized costs of this rule would be $14,368 [($13,531 + $3,674)—$2,838], discounted at 7-percent. Table 23 shows the sum of the net costs over 10 years for a total net cost of $100,914 in 2019 dollars discounted at 7 percent, or $14,368 annualized.

TABLE 23—TOTAL NET COSTS

Year	Cost to industry	Cost to government	Cost savings to industry	Net cost	Total, discounted	
					7%	3%
1	$13,531	$3,674	$(2,838)	$14,368	$13,428	$13,949
2	13,531	3,674	(2,838)	14,368	12,550	13,543
3	13,531	3,674	(2,838)	14,368	11,729	13,149
4	13,531	3,674	(2,838)	14,368	10,961	12,766
5	13,531	3,674	(2,838)	14,368	10,244	12,394
6	13,531	3,674	(2,838)	14,368	9,574	12,033
7	13,531	3,674	(2,838)	14,368	8,948	11,682
8	13,531	3,674	(2,838)	14,368	8,362	11,342
9	13,531	3,674	(2,838)	14,368	7,815	11,012
10	13,531	3,674	(2,838)	14,368	7,304	10,691
Total				143,680	100,914	122,562

[29] Casualty reports are reviewed at Coast Guard Headquarters and the 2020 Washington, DC locality wage of $32.33 for a GS–9, Step 5, employee is used (*www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB_h.pdf*). The load factor is 1.70 (rounded) estimated by dividing $67.00 average total compensation per hour by $39.50 average hourly wage from tables 4 and 2, respectively, of the 2017 Congressional Budget Office report, ''Comparing the Compensation of Federal and Private-Sector Employees 2011–2015'' (*www.cbo.gov/system/files/115th-congress-2017–2018/reports/52637-federalprivatepay.pdf*). The loaded wage is the mean wage multiplied by the load factor. The loaded wage, $54.84, equals $32.33 multiplied by 1.6962.

TABLE 23—TOTAL NET COSTS—Continued

Year	Cost to industry	Cost to government	Cost savings to industry	Net cost	Total, discounted	
					7%	3%
Annualized					14,368	14,368

Alternatives Considered

(1) No Action.

Keeping current reporting requirements would perpetuate reporting requirement inconsistencies between foreign and U.S. FOFs, MODUs, and vessels engaged in an OCS activity. The resulting information asymmetry prevents the Coast Guard from maintaining domain awareness on the OCS. Under the status quo, near misses on foreign FOFs, MODUs, and vessels would continue to not be reported to the Coast Guard, unlike they are on U.S. FOFs, MODUs, and vessels.

Although there is no increased reporting cost with this alternative, it perpetuates information asymmetry in the maritime domain. Therefore, the Coast Guard did not choose this alternative.

(2) Lower Reporting Requirements for U.S. FOFs, MODUs, and Vessels to Harmonize.

Rather than alter foreign reporting to harmonize with reporting in 46 CFR part 4, the Coast Guard could alter all U.S. reporting in 46 CFR part 4 to harmonize with 33 CFR part 146. This would reduce the types of triggers that generate a reportable marine casualty and likely decrease the number of reports submitted to the Coast Guard. While reduced reporting could be a cost saving to industry, it could also reduce the Coast Guard's maritime domain awareness and increase risk to maritime safety and the marine environment as suggested in the *Deepwater Horizon* accident report. For instance, under this alternative Coast Guard would not receive reports from vessels about casualties involving allision, collision, grounding, or significant harm to the environment, etc. These types of casualties are often associated with injury, fatality, and property damage and losing awareness of these incidents would likely decrease safety on the outer continental shelf. This alternative would also undermine the Coast Guard's efforts to keep up with technology as the energy development industry moved further offshore. In this environment, floating OCS facilities are typical and, as explained in section V. of this preamble, the current regulations in 33 CFR part 146 were originally developed and applied to fixed OCS facilities operating closer to land. Therefore, the Coast Guard did not choose this alternative.

(3) Alter Reporting Requirements on Foreign FOFs, MODUs, and Vessels to Harmonize with Reporting Requirements under 46 CFR part 4 (Proposed).

The impact of altering the reporting requirements on foreign FOFs, MODUs, and vessels engaged in an OCS activity to harmonize with 46 CFR part 4 is demonstrated in the analysis above. The Coast Guard chooses this alternative over no action or reducing reporting because it increases domain awareness at relatively little cost to industry while not losing situational awareness on particular casualty types as with alternative two.

B. Small Entities

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, we have considered whether this SNPRM would have a significant economic impact on a substantial number of small entities. This interim RFA updates the analysis done in the 2014 NPRM to account for changes in revenues during the intervening period. The Coast Guard did not receive comments on the previous small entity analysis. 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.

Operations on the OCS encompass many different North American Industry Classification System (NAICS) codes. In a random sample of 80 foreign entities taken from a population of 99 operators for this regulatory analysis, 15 different NAICS codes applied.[30] Therefore, the standard for a small business in this sample has a wide range, with revenue thresholds ranging from $16.5 million to $1,250 million, and employee thresholds ranging from 100 to 1,000 employees.

TABLE 24—APPLICABLE NAICS CODES OF OPERATORS

NAICS code	Description	Number of operators classified	Size standard
114111	Finfish Fishing	1	*1,000
212111	Oil & Gas Exploration and Services	1	*1,000
213111	Drilling Oil and Gas Wells	11	*1,000
213112	Support Activities for Oil and Gas Operations	4	$41,500,000
236115	New Single-Family Housing Construction (Excludes For-Sale Builders)	1	$39,500,000
237110	Water and Sewer Line and Related Structures Construction	8	$39,500,000
238910	Site Preparation Contractors	1	$16,500,000
333132	Oil and Gas Field Machinery and Equipment Manufacturing	2	$1,250,000,000
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	1	*100
424460	Fish & Seafood Merchant Wholesalers	1	*100
441222	Boat Dealers	2	$35,000,000
524298	All Other Insurance Related Activities	4	$16,500,000
541330	Engineering Services	2	$16,500,000

[30] Not all operators had an available NAICS code; those that did not were assumed to be small entities.

TABLE 24—APPLICABLE NAICS CODES OF OPERATORS—Continued

NAICS code	Description	Number of operators classified	Size standard
999990	Unclassified	1	N/A

* Employees.

In this sample of 80 foreign entities, 63 had a known revenue or employee count. Of these 63 foreign entities, 24 had annual revenues less than the threshold for a small business of that NAICS code. Five entities had fewer employees than the threshold for a small business of that NAICS code. In total, 29 entities of the 80 (36 percent) were small businesses.

The primary cost of this rule would be the additional MCR reports submitted by foreign businesses operating foreign FOFs, MODUs, and vessels on the OCS. The Coast Guard estimates the total annual cost would be $13,531 from an increase of 78 reports. While this cost would be distributed across the entire industry, we do not know the exact distribution, since the number of MCRs per operator depends on that operator's specific behavior, which can change over time. In the last 10 years, the average number of reports per owner was 1.03 (compared to the 5-year average of 1.64 from table 6). Assuming that trend continues, no single operator would generate more than two additional reports (rounding up) under the proposed change. For this small entity analysis, we show the possible impact of two reports per operator at $346.96. This assumes the total average cost per report is $173.48 ($13,531 divided by 78 reports) to account for variance in the complexity of a report. To have a significant impact on an individual company under SBA standards, the cost would need to represent more than 1 percent of an individual company's total revenue. In this scenario, the company's total revenue would have to be $35,500 or less. In the sample of 62 operators with known revenues, none had a revenue smaller than $34,696.

TABLE 25—ENTITIES WHERE COST REPRESENTS MORE THAN 1 PERCENT OF TOTAL REVENUES

	With revenue less than $34,696	Total
Number of Operators	0	80
% of small entities with known revenue	0	24
% of entities with known revenue	0	62

The primary cost savings of this SNPRM would be the reduced reporting by U.S. businesses operating fixed OCS facilities, who would report under the higher damage threshold of 33 CFR part 146. The Coast Guard estimates the total annual cost savings would be $2,838 in 2019 dollars, discounted at 7 percent for the entire industry. As this is a cost savings that helps mitigate the impact of the cost of this rule, we do not consider this SNPRM would have a significant negative impact on small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this SNPRM, if promulgated, would not have a significant economic impact on a substantial number of small entities. We are interested in the potential impacts from this SNPRM on small businesses and request public comment on these potential impacts. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the docket at the address listed in the **ADDRESSES** section of this preamble. In your comment, explain why you think it qualifies and how and to what degree this SNPRM would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this SNPRM so that they can better evaluate its potential effects on them and participate in the rulemaking. If the SNPRM 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 in the **FOR FURTHER INFORMATION CONTACT** section of this SNPRM. The Coast Guard will not retaliate against small entities that question or complain about this SNPRM or any policy or action of the Coast Guard.

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

D. Collection of Information

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520 requires that the Coast Guard consider the impact of paperwork and other information collection burdens imposed on the public. 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 OMB control number.

This action contains proposed amendments to the existing information collection requirements previously approved under OMB Control Number 1625–0001.[31] This amendment would increase the number of affected facilities and the burden for the existing COI number as described below.

Title: Report of Marine Casualty Information and Chemical Testing of Commercial Vessel Personnel.

[31] *www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=1625-0001.*

OMB Control Number: 1625–0001.

Summary of the Collection of Information: This collection requires responses such as the preparation of written notification by completing a CG–2692 (series) form and the processing of records. We use this information to identify pertinent safety lessons and to initiate appropriate steps for reducing the likelihood of similar accidents in the future. The collection of information will aid the regulated public in assuring safe practices.

Need for Information: These reporting requirements permit the Coast Guard to investigate marine casualties, as required by 46 U.S.C. 6301, to determine the causes of casualties and whether existing safety standards are adequate or new laws or regulations need to be developed. Receipt of a marine casualty report is often the only way in which the Coast Guard becomes aware of a marine casualty. It is, therefore, a necessary first step that provides the Coast Guard with the opportunity to determine the extent to which a casualty will be investigated.

Proposed Use of Information: In the short term, the information provided in the report may also trigger corrective safety actions addressing immediate hazards or defective conditions, further investigations of mariner conduct or professional competence, or civil or criminal enforcement actions by the Coast Guard, other Federal agencies, or State and local authorities. In the long term, the information contained in the report becomes part of the Coast Guard's MISLE database. The Coast Guard uses the information in the MISLE database to identify safety problems and long-term trends, publish casualty summaries and annual statistics for public use, establish whether additional safety oversight or regulation is needed, measure the effectiveness of existing regulatory programs, and better focus the Coast Guard's limited marine safety resources.

Description of the Respondents: The respondents are the owners, agents, masters, operators, or persons in charge that notify the nearest Sector Office, Marine Inspection Office, or Coast Guard's Group Office whenever a vessel or facility is involved in a marine casualty.

Number of Respondents: We estimate an increase of 55 respondents for a written report of marine casualty. This increases the total number of respondents for reporting marine casualties from 5,617 to 5,684.

Frequency of Response: The notification response is required only if a marine casualty occurs as defined in 46 CFR 4.03–2 and 46 CFR 4.05–1.

Burden of Response: For each response, we estimate that it takes 1 hour for a vessel crewmember to complete all of the necessary forms (CG–2692 series). In addition, some marine casualty forms may undergo additional processing by the respondents. To account for this additional time, 10 percent of the forms submitted have 10 hours of additional burden.[32]

Estimate of Total Annual Burden: We estimate an increase of 675 respondents for the 1-hour response of a written report of marine casualty. This increases the total burden hours for reporting marine casualties from 5,617 to 5,684.

As required by 44 U.S.C. 3507(d), we will submit a copy of this SNPRM to OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine, among other things—

- How useful the information is;
- Whether the information can help us perform our functions better;
- How we can improve the quality, usefulness, and clarity of the information;
- Whether the information is readily available elsewhere;
- How accurate our estimate is of the burden of collection;
- How valid our methods are for determining the burden of collection; and
- How we can minimize the burden of collection.

If you submit comments on the collection of information, submit them to both the OMB and to the docket where indicated under **ADDRESSES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this SNPRM, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

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

Congress specifically granted the authority to regulate artificial islands, installations, and other devices permanently or temporarily attached to the (OCS) and in the waters adjacent thereto as it relates to the safety of life to the Secretary of the Department in which the Coast Guard is operating. Title 43 U.S.C. 1333(d)(1) states that the Secretary ''shall have the authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices . . . as he may deem necessary.'' As this SNPRM would improve the Coast Guard's ability to collect and analyze casualty data for incidents on the OCS in order to maintain and improve safety of life on OCS installations, it falls within the scope of authority Congress granted exclusively to the Secretary. This authority has been delegated to the Coast Guard and is exercised in this rulemaking, and the States may not regulate within this category of marine casualty reporting. Therefore, the rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this SNPRM would have implications for federalism under Executive Order 13132, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

F. Unfunded Mandates

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

[32] The Coast Guard estimates that it takes up to 1 hour to complete the necessary CG–2692 (series) form. However, we received public comments in 2013 on COI number 1625–0001 stating that some submitters take more time—up to 8 to 12 hours—to complete the form. See *www.regulations.gov/docket?D=USCG-2011-0710.* The reason for this difference is that some entities have the form(s) reviewed by shore-side personnel, such as an attorney, prior to submission to the Coast Guard. The practice of having a form reviewed by an attorney is not required by Coast Guard regulation. While we believe that this does not typically occur, we have adjusted our burden estimate to account for the added review.

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 million (adjusted for inflation) or more in any one year. Although this SNPRM would not result in such an expenditure, we do discuss the potential effects of this SNPRM elsewhere in this preamble.

G. Taking of Private Property

This SNPRM would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This SNPRM meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this SNPRM under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This SNPRM is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This SNPRM 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.

K. Energy Effects

We have analyzed this SNPRM under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This SNPRM does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this SNPRM under Department of Homeland Security Management 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 (NEPA) (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. 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.

This SNPRM is likely to be categorically excluded under paragraphs L54 and L57 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.[33] Paragraph L54 pertains to regulations which are editorial or procedural. Paragraph L57 pertains to regulations concerning the manning, documentation, admeasurement, inspection, and equipping of vessels. This rule involves changing the reporting criteria for certain casualties that occur on the OCS for foreign floating facilities, MODUs, and vessels engaged in OCS activities, and better harmonizes the casualty reporting requirements with those in place for similar U.S. FOFs, MODUs, and vessels. These proposed changes would promote the Coast Guard's marine safety mission. We seek any comments or information that may lead to the discovery of a significant environmental impact from this SNPRM.

[33] *www.dhs.gov/sites/default/files/publications/DHS_InstructionManual023-01-001-01Rev01_508compliantversion.pdf.*

List of Subjects

33 CFR Part 140

Continental shelf, Investigations, Marine safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements.

33 CFR Part 146

Continental shelf, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 4

Administrative practice and procedure, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

46 CFR Part 109

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 140 and 146 and 46 CFR parts 4 and 109 as follows:

Title 33—Navigation and Navigable Waters

PART 140—GENERAL

■ 1. The authority citation for part 140 is revised to read as follows:

Authority: 43 U.S.C. 1333, 1348, 1350, 1356; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Amend § 140.10 by revising the definition of ''Floating OCS facility'' to read as follows:

§ 140.10 Definitions.

* * * * *

Floating OCS facility means a U.S. or foreign buoyant OCS facility that is dynamically positioned on location or securely and substantially moored so that it cannot be moved without a special effort. This term includes tension leg platforms and permanently moored semisubmersibles or shipshape hulls, but does not include mobile offshore drilling units and other vessels, as defined in this part.

* * * * *

■ 3. Revise § 140.201 to read as follows:

§ 140.201 General.

The Coast Guard investigates casualties occurring on the OCS including:

(a) Casualties on floating OCS facilities, MODUs, and vessels as described in 46 CFR part 4;

(b) Casualties on fixed OCS facilities as described in 33 CFR 146.30;

(c) Oil spillage exceeding 200 barrels of oil in one occurrence during a 30-day period; and

(d) Other injuries, casualties, accidents, complaints of unsafe working conditions, fires, pollution, and incidents occurring as a result of OCS activities as the Officer in Charge, Marine Inspection, deems necessary to promote the safety of life or property or protect the marine environment.

§ 140.203 [Amended]

■ 4. Amend § 140.203 as follows:

■ a. In paragraph (b) introductory text, remove the text ''Geological Survey'' and add, in its place, the text ''Bureau of Safety and Environmental Enforcement''.

■ b. In paragraph (b)(3), remove the text ''examing'' and add, in its place, the text ''examining''.

PART 146—OPERATIONS

■ 5. The authority citation for part 146 is revised to read as follows:

Authority: 43 U.S.C. 1333, 1348, 1350, 1356; Sec. 109, Pub. L. 109–347, 120 Stat. 1884; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 6. Revise § 146.30 to read as follows:

§ 146.30 Notice of casualties.

(a) The owner, operator, or person in charge of a fixed OCS facility must ensure that the Coast Guard is notified as soon as possible after a casualty occurs, and by the most rapid means available, of each casualty involving the facility which results in:

(1) Death;

(2) Injury to five or more persons in a single incident;

(3) Damage affecting the usefulness of primary lifesaving or firefighting equipment;

(4) Injury causing any person to be incapacitated for more than 72 hours;

(5) Damage to the facility exceeding $75,000 resulting from a collision by a vessel with the facility; or

(6) Damage to the facility exceeding $75,000.

(b) The notice required by paragraph (a) of this section must identify the person giving the notice and the facility involved and describe, insofar as practicable, the nature of the casualty and the extent of injury to personnel and damage to property.

(c) Damage costs referred to in paragraphs (a)(5) and (a)(6) of this section include the cost of labor and material to restore the facility to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, or gas freeing facility.

(d) The owner, operator, or person in charge of any floating OCS facility, mobile offshore drilling unit, or vessel engaged in an OCS activity must report casualties in accordance with 46 CFR part 4.

(e) The owner, operator, or person in charge of a foreign floating OCS facility, mobile offshore drilling unit, or vessel engaged in an OCS activity must include in the written casualty report required under 46 CFR 4.05–12 information relating to alcohol or drug involvement.

Subpart D [Removed]

■ 7. Remove subpart D, comprising §§ 146.301 and 146.303.

Subpart E [Redesignated as Subpart D]

■ 8. Redesignate subpart E, comprising §§ 146.401, 146.402 and 146.405, as subpart D.

Title 46—Shipping

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

■ 9. The authority citation for part 4 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 2303a, 2306, 6101, 6301, 6305, 56311, and 70034; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3. Subpart 4.40 issued under 49 U.S.C. 1903(a)(1)(E).

■ 10. Revise § 4.01–1 to read as follows:

§ 4.01–1 Scope of regulation.

The regulations in this part govern marine casualty reporting, investigations of marine casualties, and submission of reports designed to increase the likelihood of timely assistance to vessels in distress.

■ 11. Revise § 4.01–3(c) to read as follows:

§ 4.01–3 Reporting exclusion.

* * * * *

(c) Vessels, floating OCS facilities, and MODUs are excluded from the requirements of § 4.05–1(a)(5) and (6) with respect to the death or injury of shipyard or harbor workers when such accidents are not the result of either a reportable casualty (*e.g.,* collision) or a reportable equipment casualty (*e.g.,* cargo boom failure) and are subject to the reporting requirements of Occupational Safety and Health Administration (OSHA) under 29 CFR part 1904.

* * * * *

■ 12. Add § 4.03–0 to subpart 4.03 to read as follows:

§ 4.03–0 Definitions that apply to this subpart.

This subpart contains terms defined for purposes of this part.

■ 13. Revise § 4.03–1 to read as follows:

§ 4.03–1 Marine casualty or accident.

Marine casualty or accident means—

(a) Any casualty or accident involving any vessel other than a public vessel that—

(1) Occurs upon the navigable waters of the United States, its territories or possessions;

(2) Involves any U.S. vessel wherever such casualty or accident occurs; or

(3) With respect to a foreign tank vessel operating in waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ), involves significant harm to the environment or material damage affecting the seaworthiness or efficiency of the vessel.

(b) Any casualty or accident involving a vessel, floating OCS facility, or MODU as defined in 33 CFR part 140, when they are engaged in an OCS activity.

(c) The term ''marine casualty or accident'' applies to events including, but not limited to:

(1) Any fall overboard, injury, or loss of life of any person;

(2) Grounding;

(3) Stranding;

(4) Foundering;

(5) Flooding;

(6) Collision;

(7) Allision;

(8) Explosion;

(9) Fire;

(10) Reduction or loss of electrical power, propulsion, or steering capabilities;

(11) Failures or occurrences, regardless of cause, which impair any aspect of operation, components, or cargo;

(12) Any other circumstance that might affect or impair seaworthiness, efficiency, or fitness for service or route;

(13) Any incident involving significant harm to the environment;

(14) Any occurrences of injury or loss of life to any person while diving from a vessel, and using underwater breathing apparatus; or

(15) Any incident described in § 4.05–1(a).

§ 4.03–2 [Amended]

■ 14. Amend § 4.03–2 as follows:

■ a. In the introductory text, remove the text, ''in commercial service'', and add in its place, '', floating OCS facility, or MODU as described in § 4.03–1(a) and (b)''.

■ b. In paragraph (a) introductory text, add the text ''(c)'' following the text, ''§ 4.03–1''.

■ c. In paragraph (a)(2), remove the text ''a vessel in commercial service, which renders the individual unfit to perform routine vessel duties;'', and add, in its place the text, '', which renders the individual unfit to perform routine duties;''.
■ d. In paragraph (a)(4), add the text '', floating OCS facility, or MODU'' following the text ''vessel''.
■ 15. Revise § 4.03–65(c)(1), (6), and (7), to read as follows:

§ 4.03–65 Significant harm to the environment.

* * * * *

(c) * * *

(1) Vessel, floating OCS facility, or MODU location and proximity to land or other navigational hazards;

* * * * *

(6) The nature of damage to the vessel, floating OCS facility, or MODU; and

(7) Failure or breakdown aboard the vessel, floating OCS facility, or MODU, its machinery, or equipment.

■ 16. Add § 4.03–80 to read as follows:

§ 4.03–80 Outer Continental Shelf (OCS).

Outer Continental Shelf or *OCS* means all submerged lands lying seaward and outside of the area of ''lands beneath navigable waters'' as defined in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a)) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

■ 17. Add § 4.03–85 to read as follows:

§ 4.03–85 OCS Activity.

OCS activity means any offshore activity associated with exploration for, or development or production of, the minerals of the Outer Continental Shelf.

■ 18. Add § 4.03–90 to read as follows:

§ 4.03–90 Floating OCS facility.

Floating OCS facility means a U.S. or foreign buoyant OCS facility that is dynamically positioned on location or securely and substantially moored so that it cannot be moved without a special effort. This term includes tension leg platforms and permanently moored semisubmersibles or shipshape hulls, but does not include mobile offshore drilling units and other vessels, as defined in 33 CFR part 140.

■ 19. Add § 4.03–95 to read as follows:

§ 4.03–95 Mobile Offshore Drilling Unit (MODU).

Mobile offshore drilling unit or *MODU* means a vessel, other than a public vessel of the United States, capable of engaging in drilling operations for exploration or exploitation of subsea resources.

■ 20. Revise the heading of subpart 4.04 to read as follows:

Subpart 4.04—Notice of Potential Casualty

■ 21. Revise § 4.04–1 to read as follows:

§ 4.04–1 Reports of potential casualty.

(a) An owner, charterer, managing operator, or agent of a vessel, floating OCS facility, or MODU to which this part applies must immediately notify either of the following Coast Guard officers if there is reason to believe the vessel, floating OCS facility, or MODU is lost or imperiled:

(1) The Coast Guard district rescue coordination center (RCC) cognizant over the area the vessel, floating OCS facility, or MODU was last operating; or

(2) The Coast Guard search and rescue authority nearest to where the vessel, floating OCS facility, or MODU was last operating.

(b) Reasons for belief that a vessel, floating OCS facility, or MODU is in distress include, but are not limited to, lack of communication with or nonappearance of the vessel, floating OCS facility, or MODU.

■ 22. Revise § 4.04–3 to read as follows:

§ 4.04–3 Reports of lack of communication.

The owner, charterer, managing operator or agent that is required to report to the United States Flag Merchant Vessel Location Filing System under the authority of section 212(A) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1122a), must immediately notify the Coast Guard if more than 48 hours have passed since receiving communication. This notification must be given to the Coast Guard district RCC cognizant over the last known operating area.

■ 23. Amend § 4.04–5 by revising the introductory paragraph and paragraph (a) to read as follows:

§ 4.04–5 Substance of reports.

The owner, charterer, managing operator or agent, notifying the Coast Guard under § 4.04–1 or § 4.04–3, must:

(a) Provide the name and identification number of the vessel, floating OCS facility, or MODU, the names of the individuals on board, and other information that may be requested by the Coast Guard (when providing the names of the individuals on board for a passenger vessel, the list of passengers need only meet the requirements of 46 U.S.C. 3502); and

* * * * *

§ 4.05–1 [Amended]

■ 24. Amend § 4.05–1 by:
■ a. Revising the introductory text of paragraph (a);
■ b. In paragraphs (a)(2) and (a)(3), adding the text '', floating OCS facility, or MODU'' following the text, ''vessel'';
■ c. In paragraph (a)(4), after the text ''adversely affecting'', removing the text ''the vessel's''; and
■ d. Revising paragraph (a)(6).

The revisions read as follows:

§ 4.05–1 Notice of Marine Casualty.

(a) Immediately after addressing resultant safety concerns, the owner, agent, master, operator, or person in charge, shall notify any one of the nearest Coast Guard units, to include Sector, Marine Safety Office, Coast Guard District or Area Offices, whenever a vessel, floating OCS facility or MODU to which this part applies is involved in a marine casualty consisting in—

* * * * *

(6) An injury that requires professional medical treatment (treatment beyond first aid) and, if the person is engaged or employed on board a vessel, floating OCS facility, or MODU in commercial service, that renders the individual unfit to perform their routine duties; or

* * * * *

■ 25. Revise § 4.05–5 to read as follows:

§ 4.05–5 Substance of marine casualty notice.

The notice required in § 4.05–1 must include the name and official number of the vessel, floating OCS facility, or MODU involved, the name of the owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.

■ 26. Revise § 4.05–15(a) to read as follows:

§ 4.05–15 Voyage records, retention of.

(a) The owner, agent, master, or person in charge of any vessel, floating OCS facility, or MODU involved in a marine casualty must retain such voyage records as are normally maintained, such as both rough and smooth deck and engine room logs, bell books, navigation charts, navigation work books, compass deviation cards, gyro records, stowage plans, records of draft, aids to mariners, night order books, radiograms sent and received, radio logs, crew and passenger lists, articles of shipment, official logs and other material which might be of assistance in investigating and determining the cause of the casualty. The owner, agent, master, other officer or person responsible for the custody thereof, shall make these records available upon

request, to a duly authorized investigating officer, administrative law judge, officer or employee of the Coast Guard.

* * * * *

■ 27. Revise § 4.05–20 to read as follows:

§ 4.05–20 Report of accident to aid to navigation.

Whenever a vessel, floating OCS facility, or MODU collides with a buoy, or other aid to navigation under the jurisdiction of the Coast Guard, or is connected with any such collision, the person in charge must report the accident to the nearest Officer in Charge, Marine Inspection. No report on Form CG–2692 is required unless one or more of the results listed in § 4.05–1 occur.

■ 28. Revise the heading of subpart 4.06 to read as follows:

Subpart 4.06—Mandatory Chemical Testing Following Serious Marine Incidents Involving Vessels, Floating OCS Facilities, or MODUs in Commercial Service

■ 29. Amend § 4.06–1 by revising paragraphs (b) and (e) to read as follows:

§ 4.06–1 Responsibilities of the marine employer.

* * * * *

(b) When a marine employer determines that a casualty or incident is, or is likely to become, a serious marine incident, the marine employer must take all practicable steps to have each individual engaged or employed on board the vessel, floating OCS facility, or MODU who is directly involved in the incident chemically tested for evidence of drug and alcohol use as required in this part.

* * * * *

(e) The marine employer must ensure that all individuals engaged or employed on board a vessel, floating OCS facility, or MODU are fully indoctrinated in the requirements of this subpart, and that appropriate vessel personnel are trained as necessary in the practical applications of these requirements.

§ 4.06–3 [Amended]

■ 30. Amend § 4.06–3 in paragraphs (a)(1) introductory text and (b)(1) introductory text, by adding the text ‘‘, floating OCS facility, or MODU’’ following the text, ‘‘vessel’’.

■ 31. Amend § 4.06–5 by revising paragraphs (a) and (b) to read as follows:

§ 4.06–5 Responsibility of individuals directly involved in serious marine incidents.

(a) Any individual engaged or employed on board a vessel, floating OCS facility, or MODU who is determined to be directly involved in an SMI must provide a blood, breath, saliva, or urine specimen for chemical testing when directed to do so by the marine employer or a law enforcement officer.

(b) If the individual refuses to provide a blood, breath, saliva, or urine specimen, this refusal must be noted on Forms CG–2692 and CG–2692B and in the vessel's official log book, if a log book is required. The marine employer must remove the individual as soon as practical from duties that directly affect the safe operation of the vessel, floating OCS facility, or MODU.

* * * * *

■ 32. Amend § 4.06–15 by:

■ a. In paragraphs (a)(1), (a)(3), and (b)(2), adding the text ‘‘, floating OCS facility, or MODU’’ following the text, ‘‘vessel’’; and

■ b. Adding paragraph (b)(3).

The addition reads as follows:

§ 4.06–15 Accessibility of chemical testing devices.

* * * * *

(b) * * *

(3) The owner, operator, or person in charge of a foreign vessel, floating OCS facility, or MODU who is unable to meet the drug testing requirements of 49 CFR part 40 may request approval for an alternative drug testing process from the U.S. Coast Guard Drug and Alcohol Prevention and Investigation Program Manager via email at *DAPI@USCG.MIL.*

§ 4.06–30 [Amended]

■ 33. In § 4.06–30 amend paragraph (a) by adding the text ‘‘, floating OCS facility, or MODU’’ following the text, ‘‘vessel’’ in the first sentence.

■ 34. Revise § 4.06–60(a) to read as follows:

§ 4.06–60 Submission of reports and test results.

(a) Whenever an individual engaged or employed on a vessel, floating OCS facility, or MODU is identified as being directly involved in a serious marine incident, the marine employer must complete Form CG–2692B (Report of Mandatory Chemical Testing Following a Serious Marine Incident Involving Vessels in Commercial Service).

* * * * *

§ 4.07–45 [Amended]

■ 35. In § 4.07–45, add the text ‘‘, floating OCS facility (facilities), or MODU(s)’’ following the text, ‘‘vessel(s)’’.

PART 109—OPERATIONS

■ 36. The authority citation for part 109 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 6101, 10104; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 37. Revise § 109.411 to read as follows:

§ 109.411 Notice and reporting of casualty.

The owner, operator, or person in charge of a MODU regulated under this part must provide notice and report marine casualties in accordance with 46 CFR part 4.

Dated: June 4, 2023.

Linda Fagan,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 2023–12513 Filed 6–13–23; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL MARITIME COMMISSION

46 CFR Part 542

[Docket No. FMC–2023–0010]

RIN 3072–AC92

Definition of Unreasonable Refusal To Deal or Negotiate With Respect to Vessel Space Accommodations Provided by an Ocean Common Carrier

AGENCY: Federal Maritime Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission (Commission) issues this supplemental notice of proposed rulemaking (SNPRM) to address a statutory requirement arising from the Ocean Shipping Reform Act of 2022 that prohibits ocean common carriers from unreasonably refusing to deal or negotiate with respect to vessel space accommodations and a related prohibition against unreasonably refusing cargo space accommodations. This proposal revises certain aspects of the proposed rule issued on September 21, 2022, by modifying defined terms and discussing the relationship between the United States Code and the elements required to establish violations of those provisions. This SNPRM is issued in response to comments to the original proposal and to more directly provide a potential standard for unreasonable conduct by ocean common carriers that prevents shippers from obtaining space aboard vessels for their cargo. In this SNPRM, the Commission proposes to:

define unreasonable by stating a general principle and a non-exhaustive list of examples of unreasonable conduct; establish the elements for a refusal of cargo space accommodations; revise the definition of transportation factors to focus on vessel operation considerations; clarify that vessel space services were already included in the definition of vessel space accommodations and add a definition for cargo space accommodations; define documented export policy and add mandatory document export policy requirements; and remove the voluntary certification provision. The Commission seeks comments on these changes.

DATES: Submit comments before 11:59 p.m. EDT on July 31, 2023.

ADDRESSES: Since the publication of the NPRM, the Commission has transitioned from accepting comments via email and using its Electronic Reading Room for rulemaking activities to accepting rulemaking comments exclusively through the Federal eRulemaking Portal at *www.regulations.gov.* The docket of this SNPRM can be found at *https://www.regulations.gov/* under Docket No. FMC–2023–0010. The NPRM and related comments can be found in this new docket. Also, comments to this SNPRM may be submitted and viewed there. Please refer to the ''Public Participation'' heading under the **SUPPLEMENTARY INFORMATION** section of this notice for detailed instructions on how to submit comments, including instructions on how to request confidential treatment and additional information on the rulemaking process.

FOR FURTHER INFORMATION CONTACT: William Cody, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative Authority and Regulatory History

On September 21, 2022, the Commission proposed adding a new part 542 under title 46 of the Code of Federal Regulations (CFR) that would address prohibited acts by ocean common carriers under 46 U.S.C. 41104(a)(10). 87 FR 57674. The proposal was issued in response to certain obligations imposed on the Commission as a result of legislation signed by the President on June 16, 2022. That legislation, the Ocean Shipping Reform Act of 2022 (OSRA 2022), amended various statutory provisions contained in Part A of Subtitle IV of Title 46, United States Code, which collectively comprise the Shipping Act. Among these changes were amendments to 46 U.S.C. 41104(a)(3) and (a)(10) along with accompanying requirements for the Commission to initiate and complete specific rulemakings related to each amendment.

Although OSRA 2022's focus on export cargo is new, the Commission and the courts have considered similar Shipping Act prohibitions against unreasonable conduct and refusals to deal or negotiate in the past.

Section 7(d) of OSRA 2022 requires the Commission, in consultation with the United States Coast Guard, to initiate and complete a rulemaking to define the phrase ''unreasonable refusal to deal or negotiate with respect to vessel space accommodations'' and this rulemaking implements that requirement. This rulemaking now also addresses OSRA 2022's amendment to part of section 41104(a)(3), which prohibits a common carrier from unreasonably refusing cargo space accommodations when available. At a different time, the Commission will address the statutory requirement in section 7(c) of OSRA 2022 to complete a rulemaking defining unfair or unjustly discriminatory methods in a separate rulemaking.

B. Need for SNPRM

After receiving comments on its proposal and examining the feedback received in response, the Commission has decided to issue this SNPRM to further explore certain issues and to modify other aspects of the initial September 2022 proposal. The Commission proposes to make the following changes: (1) revise the definition of transportation factors to focus on vessel operation considerations; (2) revise the definition of the term unreasonable to include a general definition and a non-exhaustive list of unreasonable conduct scenarios; (3) clarify that vessel space services are already included in the definition of vessel space accommodations; (4) remove the voluntary export strategy documentation language; (5) propose a definition of documented export policy and that ocean common carriers submit a documented export policy to the Commission once per year; and (6) remove the voluntary certification provision. These modifications, along with the reasoning behind these changes, are discussed in the sections that follow.

In its September 2022 proposal, the Commission explained that OSRA 2022 amended 46 U.S.C. 41104(a) as a whole by replacing ''may not'' with ''shall not'' to highlight the mandatory nature of that section's list of common carrier prohibitions and sought comment on the treatment of these terms. *See* 87 FR 57674. The Commission sought comment on its initial proposal to apply the amended prohibitions under section 41104(a)(10) to ocean common carriers and its proposed definition of the phrase ''unreasonable refusal to deal or negotiate with respect to vessel space accommodations'' contained in that provision. The Commission also noted other key terms and phrases remained undefined, such as ''unreasonably,'' ''refuse to deal or negotiate,'' and ''vessel space accommodations,'' and sought comment regarding the meaning of these terms. *See* 87 FR 57676–57677.

In applying the common carrier prohibitions in 46 U.S.C. 41104, the Commission stresses that the statute does not distinguish between U.S. exports or imports and this supplemental proposal also applies to both. The Commission explained its basis for this view as part of its initial proposal, noting the challenges faced by U.S. exporters to obtain vessel space and observing that the purpose of the Commission's authority under the Shipping Act contains an export focus while also noting reports of restricted access to equipment and vessel space for U.S. importers, particularly in the Trans-Pacific market. 87 FR 57674–57675. Further background and discussion on market conditions can be found in the notice of proposed rulemaking. 87 FR 57674–57675.

The Commission also notes that nothing in the previous proposed rule or in this SNPRM is meant to restrict the ability of ocean common carriers to reposition empty containers. The repositioning of empty containers can include the use of sweeper vessels. Vessels cannot be arbitrarily designated as sweeper vessels to avoid accepting exports. After the fact or ad hoc reclassifications of a vessel as a sweeper vessel may be closely scrutinized by the Commission. A shipper or the Commission's Bureau of Enforcement, Investigations, and Compliance (BEIC) can also allege that a reclassification was a subterfuge to avoid providing vessel space for exports. As the Commission previously explained, staff review of ocean common carrier documents indicates that ocean common carriers typically maintain documented procedures and policies related to their operations. The Commission stated further that effective export policies should be tailored to specific categories of cargoes and include documented policies on export business practices. Because every ocean common carrier operating in the U.S. market is presumed by the Commission—barring the submission of

further information to the contrary—to be able to transport both exports and imports, an ocean carrier may not categorically exclude U.S. exports from its service without showing how this action is reasonable. 87 FR 57675. This presumption continues to apply in this SNPRM.

The Commission also took note of common carrier assertions that they have seen delays in the movement of export cargo due to a lack of mutual commitment between shippers and common carriers leading to cancellations of vessel space accommodation by either party, sometimes as late as the day of sailing. These actions contribute to uncertainty for both the common carriers and shippers. *See* 87 FR 57675. Bookings canceled by common carriers lead to rolled freight and other negative consequences for shippers. *See* American Chemistry Council (ACC) at 4.

Finally, as stated in the initial proposed rule and elsewhere, ocean common carriers and those with whom they contract to operate and load/unload their vessels have the best information on the ability of any particular vessel to accept cargo for import or export—information that shippers generally do not have. *See* 87 FR 57675–57676; *see also* Fact Finding Investigation 29 Final Report (F.M.C.), 2022 WL 2063347 at 11, 21–23, 26, 34–35 (noting difficulties experienced by non-carrier entities to obtain information such as earliest return dates and vessel scheduling information held by ocean common carriers). As a result, the Commission proposed a mechanism by which, upon a prima facie case of a violation of section 41104(a)(10) being made, the burden would shift from the shipper (or the BEIC) to the ocean common carrier. At this step, the ocean common carrier would need to satisfy its burden of showing that the refusal to deal or negotiate was reasonable. The Commission stressed that its proposal concerned the negotiations or discussions that lead up to a decision about whether an import or export load is accepted for transportation. It added that while there will be situations where an ocean common carrier and a shipper engage in good faith negotiations or discussions that do not result in the provision of transportation, cases where an ocean common carrier categorically excludes U.S. exports from its service will create a presumption of an unreasonable refusal to deal. *See* 87 FR 57675–57676.

The specific provisions of OSRA 2022 that are the subject of this SNPRM are new, and accordingly there is a lack of prior Commission precedent to aid in interpretation of this newly-enacted amendment. In the Commission's history, many cases found the essence of the prohibition on unreasonable refusals to deal or negotiate in contravention of the amended section 41104(a)(10) and its predecessors to be the imposition by a common carrier of an unreasonable impediment to a shipper's access to common carriage. Such impediments can take many forms, and no legislation or regulatory process can predict or attempt to encompass every possible scenario in which an unreasonable refusal to deal or negotiate might occur. Thus, the caselaw is instructive when considering the new legislation. Commission determinations will be factually driven and determined on a case-by-case basis.

This SNPRM describes how the Commission will consider private party adjudications and agency-initiated enforcement cases in which violations of 46 U.S.C. 41104(a)(3) and (a)(10) are alleged relating to unreasonable refusal to provide cargo space accommodations and/or refusals to deal by ocean common carriers. It also considers the common carriage roots in the Shipping Act, as well as the overall competition basis of the Commission's authority,[1] and lays out the framework for considering violations of section 41104(a)(10). In this SNPRM, the Commission continues to note that future cases that allege violations of section 41104(a)(3) and (a)(10) will be factually driven and determined on a case-by-case basis. The framework for this supplemental proposal is taken from Commission precedent on refusal to deal cases generally and on suggestions offered by commenters.

C. Inclusion of Claims of Unreasonable Refusals of Cargo Space Accommodations Subject to 46 U.S.C. 41104(a)(3)

Although this rulemaking was initiated under OSRA 2022 section 7(d) to define terms and elements required for a cause of action under 46 U.S.C. 41104(a)(10), shippers and exporters in particular commented on conduct that occurs outside the scope of that provision. Section 41104(a)(10) prohibits unreasonable refusals during the negotiation stage, when the parties do not have an existing relationship and/or are initiating negotiations over terms and conditions of service. That is different from conduct prohibited under 46 U.S.C. 41104(a)(3). The latter would apply to situations where the parties have an existing relationship and/or already mutually agreed on terms and conditions via a booking confirmation, but the ocean common carrier then unreasonably refuses cargo space accommodations when available, or in other words, refuses to execute on the deal negotiated on the previously agreed-upon terms.

The restrictions that 46 U.S.C. 41104(a)(3) and (a)(10) impose on ocean common carriers are distinct but closely related. Both provisions address refusals by ocean common carriers to accommodate shippers' attempts to secure overseas transportation for their cargo. The distinction between the conduct covered by these two provisions is timing, more specifically whether the refusal occurred while the parties were still negotiating and attempting to reach a deal on service terms and conditions (negotiation stage) or after a deal was reached (execution stage). If the refusal occurred at the negotiation stage, 46 U.S.C. 41104(a)(10) would apply. If the refusal occurred at the execution stage, after the parties reached a deal or mutually agreed on service terms and conditions, then 46 U.S.C. 41104(a)(3) would apply. When a shipper acting in good faith follows the export policy of the ocean common carrier with which it has been negotiating, either 46 U.S.C. 41103(a)(3) or (a)(10) would still apply if the shipper was unreasonably denied space.

Comments to the NPRM show that shippers and exporters in particular consistently cited blank sailings, no-notice or delayed notice of schedule changes, inadequate loading times, and similar actions as primary drivers that prevented them from getting their cargo to overseas markets. These impediments occur during the execution stage over shippers' interactions with ocean common carriers, taking them outside the scope of 46 U.S.C. 41104(a)(10) and beyond the confines of the initial proposal. In order to fully address the comments received, the Commission has decided to issue an SNPRM and expand the scope of the rulemaking. Rather than defer addressing these concerns in a separate rulemaking, the Commission proposes broadening the scope of this rulemaking. The Commission is also currently working on addressing section 7(c) of OSRA 2022 and will separately complete a rulemaking defining different terms than those defined in this SNPRM from section 41104(a)(3), *i.e.,* ''unfair or unjustly discriminatory methods.''

Protecting shippers from unreasonable refusals to deal or negotiate only partially addresses the obstacles that shippers and trade associations have identified in the

[1] *See Orolugbagbe* v. *A.T.I.,U.S.A., Inc.,* Informal Docket No. 1943(I) at *31–38.

comments as major impediments to their ability to get their cargo to overseas markets. As commenters have pointed out, there are far-reaching consequences that cannot easily or quickly be reversed if they cannot meet their contractual obligations to their overseas buyers. U.S. exporters' ability to rely on ocean common carriers meeting their obligations by providing cargo space accommodations negotiated for or as advertised is a critical component of that equation. U.S. exporters are in an untenable position if they cannot rely on vessels calling at U.S. ports to load and transport their cargo to overseas destinations as scheduled or agreed to by the ocean common carrier. Missed or late deliveries to overseas buyers are likely to cause them to lose confidence in the reliability of their U.S. suppliers and prompt them to look to alternative suppliers from other countries able to commit to a more reliable delivery system. Overseas buyers would not continue dealing with U.S. suppliers who repeatedly miss delivery dates and cannot promise on-schedule deliveries because they are at the mercy of ocean common carriers who unpredictably change scheduled sailings, blank scheduled sailings, or otherwise unreasonably refuse to execute on their commitments. Business that U.S. exporters lose to competitors from other countries will be difficult to recapture over the short term and perhaps over the long term as well. The longer reliability issues persist, the more harm U.S. exporters will suffer and the more difficult it will be to restore lost confidence in ocean transportation for U.S. exports.

Restricting this rulemaking to refusals to deal or negotiate under 46 U.S.C. 41104(a)(10) will not address the reliability issues that commenters identified as a critical and a driving factor impeding their ability to ship cargo overseas. Shippers impacted by unlawful refusals to accommodate their requests for vessel space accommodations have been able to bring a cause of action against ocean common carriers since the OSRA 2022 amendments took effect immediately in June 2022. They may find it more difficult, however, to plead, and prevail on those claims without implementing regulations from the Commission defining the elements and statutory terms. Parties may also find it more difficult to identify and litigate claims for unreasonable refusals under 46 U.S.C. 41104(a)(3) without a clearer indication from the Commission of conduct covered by that provision as distinguished from 46 U.S.C. 41104(a)(10). Absent further guidance now from the Commission, shippers and BEIC are likely to devote considerable resources to litigating how an ''unreasonable refusal'' under 46 U.S.C. 41104(a)(3) should be defined and the elements required to prove a violation of that provision. That may make litigating 46 U.S.C. 41104(a)(3) claims a time-consuming and resource-intense process as parties litigate not just the facts of their particular case but also advocate for their proposed interpretation of key terms like ''unreasonable refusal'' and the factors relevant in determining whether an ocean common carrier acted unreasonably. Parties would also expend time litigating the difference between ''unreasonable refusals to deal or negotiate'' and ''unreasonable refusals to provide vessel space accommodations.''

Clearly delineating these distinctions as part of the current rulemaking will lessen the time and resources that shippers, carriers and the Commission will otherwise need to devote to defining these concepts in individual cases. Defining the elements and terms used in 46 U.S.C. 41104(a)(3) requirements as part of this rulemaking is also important because in practice it may be difficult to discern whether a carrier's refusal was at the negotiation or execution stage and additional guidance now from the Commission may help avoid needless disputes over that issue. Shippers' and carriers' interactions about service terms and conditions and securing vessel space may not always march consistently forward from the initial offer through booking and loading cargo on the vessel bound for the destination point. It is important for ocean common carriers to have sufficient guidance to conform their conduct and practices to fall within the bounds of reasonable or unreasonable within the meaning of 46 U.S.C. 41104(a). Also, this rule would ensure that shippers can readily discern when a carrier has acted outside the bounds of reasonableness and know what type of claim to bring before the Commission.

Interpreting these related provisions in tandem in a single rulemaking will allow the Commission to delineate the types of refusal conduct covered by 46 U.S.C. 41104(a)(3) and (a)(10) and highlight where the differences are between them.

D. Differences in Cases Involving Section 41104(a)(10) and Section 41104(a)(3)

Generally, the distinction between those acts covered under section 41104(a)(3) and those falling under section 41104(a)(10) is temporal-based. Although it is possible for claims to arise later in the process, ''refusal to deal or negotiate'' (section 41104(a)(10)) will frequently involve those actions occurring prior to a carrier providing a shipper with a booking confirmation to carry that shipper's cargo. If negotiations to reach an agreement have ceased (or if efforts to engage in negotiations were ignored), then a claim of unreasonable refusal to deal or negotiate under section 41104(a)(10) could arise. When read in conjunction with this provision, to ''unreasonably refuse cargo space accommodations'' or ''resort to other unfair or unjustly discriminatory methods'' under section 41104(a)(3) would necessarily involve a set of acts that occur after a booking has been confirmed. As a result, this SNPRM adds to the scope of the original NPRM by proposing to address those refusals that occur at the execution stage, after the parties reached a deal or mutually agreed on service terms and conditions via a booking confirmation subject to section 41104(a)(3). In a future rulemaking, the Commission will define ''unfair and unjustly discriminatory methods'' within the meaning of section 41104(a)(3). The Commission seeks comment on its approach with respect to the difference between potential violations of 46 U.S.C. 41104(a)(3) and 46 U.S.C. 41104(a)(10).

II. Comments to the NPRM and Responses by the Commission

In developing this SNPRM, the Commission carefully considered the comments it received regarding its previous proposed rule. These comments, along with issues relevant to those comments, are addressed in greater detail in the discussion that follows.

A. Commenters

The Commission received responses from shippers, shipping industry trade associations, common carriers, and governmental entities. These commenters consisted of the following entities:

Commenters	Entity type
Agriculture Transportation Coalition (AgTC)	Shippers Trade Association.
American Chemistry Council (ACC)	Shippers Trade Association.
American Cotton Shippers Association (ACSA)	Shippers Trade Association.
BassTech International (BassTech)	Shipper.
Consumer Brands Association (CBA)	Shippers Trade Association.
CMA CGM (America) LLC	Carrier.
Dole Ocean Cargo Express, LLC (DOCE)	Carrier.
International Federation of Freight Forwarders Association (FIATA)	Freight Forwarding Trade Association.
International Dairy Foods Association (IDFA)	Shippers Trade Association.
International Fresh Produce Association (IFPA)	Shippers Trade Association.
Lanca Sales, Inc	Shipper/Beneficiary Cargo Owner.
Meat Import Council of America and North American Meat Institute (MICA/NAMI).	Shippers Trade Association.
National Association of Chemical Distributors (NACD)	Shippers Trade Association.
National Association of Manufacturers (NAM)	Shippers Trade Association.
National Customs Brokers & Forwarders Association of America, Inc. (NCBFAA).	Freight Forwarder, Custom Broker, and Ocean Transportation (incl'g Carriers) Trade Association.
National Fisheries Institute (NFI)	Shippers Trade Association.
Northwest Horticultural Council (NHC)	Shippers Trade Association.
National Industrial Transportation League and Institute for Scrap Recycling Industries, Inc. (NITL/ISRI).	Shippers Trade Association.
Pacific Merchant Shipping Association (PMSA)	Carrier Trade Association.
Retail Industry Leaders Association (RILA)	Shippers Trade Association.
Tyson Foods (Tyson)	Shipper.
U.S. Dairy Exporters Council (USDEC)	Shipper Trade Association.
World Shipping Council (WSC)	Carrier Trade Association.
Members of the House of Representatives (Congress)	Legislative Branch (Federal)—multiple comments.
United States Department of Justice (DOJ)	Executive Branch (Federal).
United States Department of Agriculture (USDA)	Executive Branch (Federal).

Except as noted, each relevant comment is addressed within the context of the specific topics raised. These topics are discussed in detail in the sections that follow.

1. General Comments From Federal Government Commenters

The Commission notes that it received four separate submissions from Federal commenters. One set of comments was submitted by a group of seven Members of the House of Representatives—Representative John Garamendi, Representative Dusty Johnson, Representative Jim Costa, Representative Adrian Smith, Representative Mike Thompson, Representative David G. Valadao, and Representative Jimmy Panetta. The Members made the specific point that ''[o]cean carriers refusing to accommodate American exports is an unreasonable business practice and, following passage of the Ocean Shipping Reform Act of 2022, also is now illegal.'' Congress at 1. It also received one comment jointly submitted by Senator John Thune, Senator Amy Klobuchar, Senator John Hoeven, and Senator Tammy Baldwin. The Senators state they have received reports of ocean carriers refusing certain export cargo, particularly agricultural cargo, even when vessel space was readily available, and often opting to carry empty containers instead. Senate at 1. Also, the Senators urge the Commission to consider whether additional clarifying language about the magnitude of the ''transportation factors'' might provide useful industry guidance. *Id.*

The Commission greatly appreciates the comments offered by the Members and Senators. As the Commission agrees and explained in its proposal, the categorical refusal to accommodate U.S. exports, without demonstrating that the refusal is reasonable, would violate 46 U.S.C. 41104(a)(10). 87 FR 57675. Under section 41104(a)(10), an ocean common carrier's refusal to deal or refusal to negotiate must be unreasonable to constitute a violation. *See* 46 U.S.C. 41104(a)(10). By definition, not all refusals will necessarily violate this provision. Whether a refusal to deal or a refusal to negotiate falls within the scope of section 41104(a)(10) depends upon the particular circumstances in a given case.

In response to various public comments, including those from Senators Thune, Klobuchar, Hoeven, and Baldwin, the Commission is proposing new language that relies on both 46 U.S.C. 41104(a)(3) and (a)(10) to address more comprehensively potential violations related to refusal to deal or negotiate. The new proposed approach covers a broader set of conduct, explicitly including those instances where an ocean common carrier refuses export cargo even when vessel space was readily available. This SNPRM also revises the definition of transportation factors and proposes to remove the language initially referring to scheduling considerations.

The Antitrust Division of the United States Department of Justice (DOJ) also submitted comments and agreed that reasonableness is necessarily a case-by-case determination. However, DOJ expressed concern that the Commission's proposed criteria to prove the statutory elements of ''refusal to deal'' and ''unreasonable'' would be too difficult to establish. DOJ also suggested including additional considerations, such as the parties' prior course of dealings or whether a carrier, after issuing a refusal, offered the affected shipper any remedies or assistance. DOJ suggested that information may be relevant in deciding whether the carrier's refusal was unreasonable. The Commission adopted DOJ's proposed language on further remedies or assistance offered to the shipper and added it to the proposed rule in § 542.1(d)(1). DOJ also believes that it would be critical to evaluate past business actions in the context of allegations to refuse the provision of service.

As to DOJ's concern that the proposed standard for establishing the second and third elements of a prima facie case may set the bar too high by suggesting that complainants must show an actual refusal to even entertain their proposal, this SNPRM clarifies that is not a required showing and emphasizes that

claims will be evaluated on a case-by-case basis.

As to the elements that the Commission would rely on to make a determination of reasonableness, the Commission believes that the new proposed elements form an appropriate basis for determining whether an ocean common carrier has acted reasonably in refusing to deal with a particular shipper. Those elements are: (1) whether the ocean common carrier follows a documented export policy enabling the efficient movement of export cargo; (2) whether the ocean common carrier engaged in good-faith negotiations; (3) the existence of legitimate transportation factors; and (4) any other factors the Commission deems relevant. These elements, when coupled with the opportunity for the ocean common carrier to establish that conduct was reasonable, are both workable and fair by allowing potential claimants to bring complaints of violations under section 41104(a)(10) and shifting the burden of production of information to the carrier to justify its actions. And in evaluating a given case, the Commission's proposed approach in this SNPRM would provide the information it would need and also enable it to consider other relevant factors such as prior dealings and mitigation measures in determining whether a refusal was unreasonable.

Finally, DOJ noted that the terms ''deal'' and ''negotiate'' have different meanings under the antitrust laws and encouraged the Commission to define those terms in the Commission's rule. DOJ at 4–5. It states that the term ''negotiate'' refers to the discussion about a particular transaction, while ''deal'' typically refers to the transaction itself—whether it be the provision of goods or services. DOJ at 5. The goal of prohibiting unreasonable refusal to deal or negotiate by ocean common carriers with respect to vessel space will be achieved better by giving the terms their ordinary meanings. That way, the Commission will be able to address unreasonable refusal to deal or negotiate with respect to vessel space with more flexibility. That is consistent with our case-by-case approach which DOJ endorses.

The Secretary of the United States Department of Agriculture (USDA) submitted a comment and asked the Commission to broaden the definition of an unreasonable refusal to deal or negotiate, narrow the proposal's guidance on reasonableness, and encourage specific actions by carriers to guard against engaging in an unreasonable refusal. USDA suggested the Commission specify certain actions, such as cancellations without sufficient notice, perpetual re-bookings, and failure to provide necessary equipment, in the definition of refusal to deal or negotiate. USDA at 2. The points that USDA focuses on as potentially unfair or unjustly discriminatory conduct may be refined at a later date through another rulemaking or on a case-by-case basis.

USDA also suggested that in considering reasonableness of refusal to deal or negotiate, ''[t]he Commission should excuse only a few exceptional circumstances.'' USDA at 2. It urged the Commission to narrow the language on reasonableness and clarify that the existence of multiple factors (such as profitability, business development strategy, or transportation factors) will not absolve problematic practices. USDA also encouraged ''clearer, more affirmative duties for carriers, greater specificity with respect to the requirements they need to meet, and that non-confidential portions of these documents be made available for shippers and the public to review.'' USDA at 2–3. This SNPRM includes greater specificity and strives to better delineate each party's duties when communicating with each other about vessel space accommodations. The Commission's NPRM included some of the factors USDA discussed, and it does not absolve problematic practices based upon just a few factors or certain affirmative actions. Rather, each case will be considered under the totality of the circumstances to prohibit all possible unreasonable refusals to deal or negotiate by ocean common carriers with respect to vessel space accommodations.

2. Inability To Obtain Vessel Space for Export Cargo Despite Having Previously Negotiated Terms and Conditions

Comments from the Retail Industry Leaders Association (RILA) assert that an unreasonable refusal to deal or negotiate is not confined to the negotiation stage under 46 U.S.C 41104(a)(10) but can arise at any point in the parties' dealings short of the point at which the shippers' cargo is actually loaded aboard the vessel. As RILA explains:

> The ''lived experience'' of U.S. importers during the COVID–19 pandemic has demonstrated that unreasonable refusals to deal or negotiate can arise not only in the context of negotiating (or refusing to negotiate) the terms of a service contract before it is entered into, or of booking (or seeking to book) carriage pursuant to the common carrier's published tariff before cargo is tendered, but also during the term of a service contract and even after the provision of (or failure to provide) the services contemplated.

RILA Comments at 3. RILA urged the Commission to address this issue by expansively defining unreasonable refusals to deal or negotiate within the meaning of section 41104(a)(10) to include actions or communications that ''can arise at any point in parties' dealings with each other.'' *Id.*

The Commission understands and concurs with the concern underlying this suggestion but does not agree that expanding the definition of unreasonable refusal to deal or negotiate within the meaning of section 41104(a)(10) is the solution. As discussed elsewhere in this proposal, the Commission proposes defining section 41104(a)(3) and (a)(10) in tandem as the better solution. Further, as also mentioned in this discussion, expanding the definition of conduct governed by 46 U.S.C. 41104(a)(10) to include the same conduct prohibited by section 41104(a)(3) would render meaningless (at least in part) the section 41104(a)(3) language prohibiting unreasonable refusals to accept cargo. That interpretation would violate the canon of statutory construction against construing the statute in a manner that renders language superfluous or meaningless.[2]

RILA further explains that in its experience,[3] unless shippers have enforceable service contracts, they ''are unable to protect themselves from volatile shipping rates and ocean carriers have few forecasting tools to provide the shipping capacity necessary to serve their customers.'' *Id.* at 3. RILA suggests as a partial remedy that the Commission explicitly announce that the existence of a service contract does not insulate a common carrier from a claim that it violated 46 U.S.C. 41104(a). This SNPRM should clarify that carriers

[2] ''It is 'a cardinal principle of statutory construction'' that ''a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.' '' *TRW Inc.* v. *Andrews,* 534 U.S. 19, 31 (2001) quoting *Duncan* v. *Walker,* 533 U.S. 167 (2001); *United States* v. *Menasche,* 348 U.S. 528, 538–539, (1955) (''It is our duty 'to give effect, if possible, to every clause and word of a statute.' '' (quoting *Montclair* v. *Ramsdell,* 107 U.S. 147, 152, (1883)).

[3] RILA also points to concerns identified in the Commission's Final Report on Fact Finding Investigation 29 in which Commissioner Rebecca F. Dye emphasized that ''[f]or some time, [she] has been concerned that the contracts negotiated by many U.S. importers and exporters lack . . . mutuality of understanding and obligation and are not enforceable. Without enforceable contracts, shippers are unable to protect themselves from volatile shipping rates and ocean carriers have few forecasting tools to provide the shipping capacity necessary to serve their customers.'' RILA Comments at 3.

are not immune from 46 U.S.C. 41104(a)'s restrictions because they have a service contract with the shipper. Although the Commission does have jurisdiction over 46 U.S.C. 41104(a) violations, breach of contract claims are not within the Commission's jurisdiction.

Other shippers and trade associations expressed similar misgivings about the proposed scope of 46 U.S.C. 41104(a)(10) and the urgent need for a solution to refusals that arise past the negotiation stage, *i.e.,* after the parties have (or ostensibly have) a contract to transport the cargo. The U.S. Dairy Export Council (USDEC) termed these concerns ''anti-backsliding considerations'' and explained why these post-negotiation issues urgently need to be addressed and how these concerns relate to 46 U.S.C. 41104(a)(10) restrictions on unreasonable refusals to deal or negotiate. USDEC Comments at 3–4. As it explained:

> Negotiations between shippers and carriers are functionally intended to facilitate the international carriage of goods on an ocean vessel. The rule should not permit carriers to negotiate for vessel accommodations, only to have those bookings get rolled, delayed or cancelled. Disruptions to vessel schedules are understandable, but should a pattern emerge where negotiated vessel space accommodations are regularly unreliable, that should raise questions at the FMC about the intent and purpose of the negotiations. Compliance on negotiating for vessel space should be done in good faith and not solely as a means of achieving compliance without affording the service.

Id. at 4.

The International Dairy Foods Association (IDFA) raised the same concerns and termed them ''de facto'' unreasonable refusals to deal. IDFA Comments at 2. IDFA listed multiple examples of de facto unreasonable refusals to deal, such as:

> skipping or cancelling services to certain ports; changing the port of loading; calling on such ports but not alerting exporters to their presence; poorly communicating when vessel schedules change; providing windows for loading that are impractical due to their short length; blank sailings without providing sufficient notice to exporters; not pre-positioning containers inland close to export customers; providing inaccurate and unreliable vessel, shipment and tracking information; and continually rolling export bookings, which amounts to an effective denial of service.

Id. at 2–3. IDFA also emphasized the untenable consequence of these de facto refusals—''a shipping environment where there is no schedule reliability which harms the competitiveness of U.S. export in oversea markets.'' *Id.* IDFA also stated that its members have reported that as frequently as 90–100% of the time, their bookings have been rolled or canceled. *Id.*

IDFA proposed that the Commission address these problems by declaring the following actions presumptively unreasonable under section 41104(a)(10): (1) a blank sailing with less than six weeks' notice; (2) not providing at least 72 hours' notice to load a vessel; (3) skipping, suspending, or discontinuing services to ports or changing the port of loading despite export demand at such ports; (4) not clearly communicating or providing consistent, accurate information directly to cargo owners when ships come into port or vessel schedules change; (5) rolling a valid export booking; and (6) refusing a booking for perishable cargo. *Id.* at 4 and 7. Most of these actions could not logically be considered part of the negotiation stage since in most cases, they would occur after shipper and carrier have negotiated a deal.

IDFA criticized the proposed rule as inappropriately ''preoccupied with solving unreasonable refusals to deal in specific negotiation and discussion contexts,'' which it contends ''is not the heart of the problem.'' *Id.* IDFA states that ''[i]n order to address the bulk of the unreasonable refusal to deal issue, a Commission rule must target the VOCC [vessel-operating common carriers] policies and procedures that systematize and operationalize the de facto unreasonable refusal to deal or negotiate with cargo owners.'' *Id.* at 7–8. The Commission acknowledges that these concerns are legitimate and proposes broadening the scope of this rulemaking to encompass section 41104(a)(3) as the best solution. The revised rulemaking will globally address unreasonable refusals prohibited under Section 41104(a) that hamstring shippers' attempts to transport their cargo to their overseas buyers.

The American Chemistry Council (ACC) raised the same concerns and pointed out that if the NPRM only covers contract negotiations and discussions between carriers and shippers, it will ''leave[ ] a gaping hole that will continue to allow unreasonable conduct by'' ocean common carriers. ACC Comments at 2. To emphasize that point, it lists numerous practices ''that amount to an effective refusal to deal that the NPRM does not appear to address.'' *Id.* The examples ACC recited include providing insufficient vessel space allocations; calling on ports but not alerting exporters to their presence; poorly communicating when vessel schedules change; providing insufficient windows for loading a vessel; blank sailings without providing sufficient notice to exporters; and repeated rolling of export bookings. *Id.* at 3–4.

The American Cotton Shippers Association (ACSA) highlighted the same concerns about carriers not loading their containerized export cargo. ACSA Comment at 6–7. ACSA submitted numbers showing their calculations and comparisons on warehouse pickup performance in terms of cotton bales shipped and bales not picked up between August 2019 and June 2021. *Id.* at 7. The Commission has not independently verified ACSA's statistics but notes that they reflect the same general concern raised by others, namely that unreasonable refusals to deal or negotiate is only a part of the export problem that OSRA 2022 was meant to address. *See also,* Comments from Bass Tech International at 1–2 (noting other ways, besides outright refusal to deal or negotiate, that common carriers use to avoid providing service and stating that it ''is critical that the NPRM addresses these types of conduct as well''); Comments from Members of Congress at 1 (identifying service cancellations at ports that agricultural exports rely on, like the Port of Oakland, as concerns to be addressed).

B. Distinguishing Between Negotiation Refusals Under 46 U.S.C. 41104(a)(10) and Execution Refusals Under 46 U.S.C. 41104(a)(3)

Comments from the USDEC highlight the fallacy of presuming that as a practical matter, it will always be feasible to draw a discernible line between unreasonable refusals covered by section 41104(a)(10) as distinguished from those covered by section 41104(a)(3). *See* USDEC at 2–4. USDEC explained how communications between shippers and carriers typically flow in the real world. As it explained, shippers' and carriers' negotiations are not always neatly confined to rates and general terms of service. *Id.* Rather, negotiations may cover all

> matters related to the shipment, such as the cost of the shipment, the volume of the shipment (both in terms of total TEU containers as well as weight), the timing of vessel accommodations, origin and location of shipments, whether the shipment involves any intermodal carriage, the inclusion of equipment (containers, reefers, chassis), among other details.

Id. at 2–3.

What these concerns mean as a practical matter is that discerning whether a common carrier has unreasonably refused cargo or vessel space accommodations is not a simple binary question of determining what prevented the shippers' cargo from

actually being loaded aboard an outbound vessel. That question may be bound up with an unbroken series of interactions and communications that cannot always be neatly separated into the negotiation stage (covered by 46 U.S.C. 41104(a)(10)) and the execution stage (covered by 46 U.S.C. 41104(a)(3)) of the parties' interactions. *Id.* at 3–4. USDEC suggests the Commission address this concern by defining ''whether negotiation can occur on only limited aspects of this scope, or if it must encompass all the aspects of a vessel accommodation.'' *Id.* Instead of broadening the scope of section 41104(a)(10) as USDEC suggests, the Commission proposes defining unreasonable refusals covered by section 41104(a)(3) in the same rulemaking. For reasons already discussed, this proposed approach is superior to a bifurcated rulemaking that defines the two provisions separately. Further, the Commission proposes to define what constitute unfair or unjustly discriminatory methods within the meaning of section 41104(a)(3) in a separate rulemaking pursuant to section 7(c) of OSRA 2022.

3. Reasonableness Factors

Most commenters addressed the proposed reasonableness factors with mixed support for the existence of a documented export strategy or policy and the scope of legitimate transportation factors.

a. Documented Export Policy

The concept of having a documented export policy as stated in § 542.1(b)(2)(i) of the NPRM was generally supported by ACSA, ACC, CBA, IDFA, USDEC, and DOJ. Nearly all commenters in support provided additional context for how export strategies should be structured. ACC commented that the Commission should make it clear that export strategies should include provisions that facilitate exports, not just maintain the status quo. ACC at 4–5. ACC also asserted that carriers should report every year. ACC at 5.

Multiple commenters suggested that a more specific definition of export strategy should be provided. *See* CBA at 2, DOJ at 5. IDFA further recommends mandatory standards for an export strategy and regulations concerning failure to adhere to such standards. IDFA at 9–11. USDEC recommended that carrier export strategies be made public. *See* USDEC at 3.

PMSA and WSC opposed the proposed export strategy component for a variety of reasons. WSC stated that including an export strategy is equivalent to requiring such a strategy and the Commission lacks the authority to do so. WSC at 3. They further asserted that the Commission failed to explain how such a document would be relevant and to consider that they are sensitive business documents. WSC provided additional information it believed supports its assertion that the Commission lacks the authority to require such a document. WSC at 4. WSC also asserted that this proposed requirement will result in the lack of a document being interpreted as a per se indicator of unreasonableness, resulting in a disadvantage to the carrier. It further asserted that the lack of a required ''import strategy'' means that the proposed rule would not equally apply to both imports and exports, contradicting an assertion included by the Commission in the preamble. It added that this criticism should not be interpreted as suggesting that an ''import strategy'' document should be required. WSC at 7. Finally, it asserted that the lack of specifics on how the export strategy will be used further supports WSC's view that such a document should be stricken from the list of factors and that any information in such a document would not be able to be made public.

Similarly, PMSA contended that the NPRM ignores imports, and as the Commission has no authority to require an import or export strategy from ocean common carriers, it cannot use the existence, or not, of such a strategy as a factor in the reasonableness analysis. PMSA at 1. It further contended that only shippers regard cargo as imports or exports and ocean carriers simply regard freight as cargo, regardless of the direction of trade.

The Commission notes the concerns of WSC that export strategies are constantly evolving as the nature of international trade changes and for this reason does not define an exhaustive list of items that must be included in an export policy but instead identifies certain elements that would be helpful in determining reasonableness. If an ocean common carrier also wanted to provide an import policy to help establish how a refusal to deal is reasonable, the Commission would consider that information. And while the Commission will not adopt the IDFA recommendation that the Commission directly compare a carrier's export strategy to key performance indicators, the Commission notes that there are many sources of data on the amount and type of freight that carriers transport for both imports and exports which provide insight into whether the carrier's behavior aligns with its purported policy or strategy.

While WSC is concerned that the lack of an export strategy might be considered a per se indicator of unreasonableness, that is not the intent behind the inclusion of this provision. The intent is to provide carriers with the opportunity to document that their actions align with a documented export policy. And while both WSC and PMSA comment that no similar documentation was requested for imports, the Commission notes that there are few carriers who would need to rely on such a document to provide evidence that they intend to serve the U.S. markets when their ships are already visiting U.S. ports. On the other hand, a cursory glance at the continued decline in containerized exports carried by some ocean common carriers raises the question about the carriers' operations concerning export trades. Further, while PMSA asserts that carriers do not consider exports and imports as separate types of cargo, there is ample evidence in comments from the public, including WSC, that they do. *See, e.g.,* CMA CGM at 2; AgTC at 2; RILA at 2–3. In addition, PMSA's assertion in this regard ignores the existence of exporters, such as USDEC and NHC. In this SNPRM, the Commission has newly proposed revisions on the use of export policy to show what type of information from an existing export policy may be useful in establishing that a refusal to deal was reasonable. In § 542.1(b)(1), the Commission is proposing a definition of ''documented export policy.'' Also, the Commission is proposing extensive revisions to § 542.2(d) by revising the burden shifting framework found in the NPRM (this framework applies even if it is not included in the regulatory text) and adding a proposed requirement to have ocean common carriers follow and submit to the Commission on a yearly basis a documented export policy. It is noted that it is possible that an export policy will have different applications in different situations. An export policy is a long-term document, but it can shed light on what an individual ocean common carrier's best business practice would generally be and whether it was adhered to in an individual case. An export policy can also address import concerns given that the two are interconnected. Proposing a requirement to submit a documented export policy to the Commission pursuant to its authority under 46 U.S.C. 40104 is an important part of monitoring the industry for unreasonable behavior vis-à-vis exports in an effort to address those concerns. Also, in § 542.1(d)(1), the Commission identifies what type of information

would be required to be included in a documented export policy that would help the Commission determine whether an ocean common carrier's conduct in a specific matter aligns with their general policies and thus acted reasonably.

b. Legitimate Transportation Factors

The proposed inclusion of legitimate business factors as one of the reasonableness factors was opposed by the majority of commenters. Two commenters expressed concerns that legitimate business factors would be used to justify rejecting entire classes of cargo, such as hazardous materials. NACD at 3 and NITL/ISRI at 9–10. While WSC favored the use of legitimate business factors, it objected to a reference to the ''character of the cargo'' as vague (87 FR 57677) and suggested removing it from the final rule (WSC at 11). The Commission clarifies that this reference is not intended to allow ocean common carriers to wholesale refuse to deal or negotiate with respect to carriage of certain categories of cargo, such as hazardous materials. The Commission further notes that the definition proposed in the regulatory text does not include ''character of the cargo.'' This SNPRM does revise the definition of transportation factors to focus the scope more squarely on vessel operation considerations.

Multiple commenters worried about including profit or revenue as a legitimate business factor. AgTC cited including revenue factors as part of transportation factors will create a ''loophole'' for carriers. AgTC at 4–5. Likewise, several commenters suggested dropping profit and business decisions or strategies from the list of legitimate factors. *See* BassTech at 3; IDFA at 9–11; IFPA at 1; NITL/ISRI at 10. CMA CGM stated that profitability and legitimate business decisions must be factors. CMA CGM at 2. WSC suggested adding business decisions to the regulatory text. In its view, the scope of business decisions would include past poor performance from the shippers, changing port calls due to blank sailings or other factors, and balancing import and export customer needs. WSC at 9–11. Given the thoughtful and varied comments received on the concept of reasonable business decision-making, this SNPRM removes the general concept from the definition of unreasonableness. Information on business decisions relevant to establishing a reasonable refusal to deal, however, would still be relevant in the Commission's analysis. The SNPRM does not preclude considerations that an ocean common carrier can present when articulating its justification for refusing to deal.

The Commission notes that in its proposed regulatory text at § 542.1(b)(1) of the NPRM, the term ''transportation factors'' would encompass ''the genuine operational considerations underlying an ocean common carrier's practical ability to accommodate laden cargo for import or export, which can include, but are not limited to, vessel safety and stability, scheduling considerations, and the effect of blank sailings.'' The Commission notes the disconnect between this language and language in the preamble that, ''[a]n ocean common carrier may be viewed as having acted reasonably in exercising its business discretion to proceed with a certain arrangement over another by taking into account such factors as profitability and compatibility with its business development strategy.'' In this SNPRM, at § 542.1(b)(2), the transportation factors have been changed and the Commission now proposes to focus those factors on considerations related to vessel operations. Some relevant business decisions do need to be explained as part of an export policy. Business decisions that should be explained as part of an export policy include providing a justification for why a refusal to deal by an ocean common carrier is reasonable when there was a blank sailing that affected the ocean common carrier's ability to take on a shipment to the detriment of the shipper. Also relevant are business decisions that show that the ocean common carrier offered alternative remedies or assistance to the shipper after refusing to deal or negotiate for vessel space accommodations.

The Commission further notes, however, profit and business factors may be present when engaging in negotiations, but these factors would have to be considered alongside other factors presented when the Commission is determining what the true driving factor is for refusing to deal in a given case and whether that driving factor is reasonable.

FIATA noted a concern with the characterization of ocean common carriers' operational decisions, particularly with request to canceled sailings and capacity decisions; namely, that the final rule needed to provide clarity around when an ocean common carrier's operational decisions, particularly with respect to canceled sailings and capacity decisions, will result in a finding of an unreasonable refusal to deal or negotiate. FIATA at 1. WSC explained that its list of business decisions includes schedule changes, including canceled sailings. WSC at 11. The Commission notes the concern from FIATA that since carriers control capacity, they might strategically alter capacity to refuse to deal or negotiate. Canceled sailings or schedule changes are typically driven by decreased demand, port congestion, or changes in service by a vessel sharing partner. The Commission notes that evidence that an ocean common carrier changes schedules for other purposes would result in those changes not being considered a legitimate transportation factor under § 542.1(b)(2)(iii) of the NPRM. This SNPRM proposes changes to the transportation factors definition at § 542.1(b)(2) that addresses these concerns.

ACC and IDFA suggested that shippers' lost sales be considered a reasonableness factor. ACC at 4; IDFA at 8. As noted elsewhere, the rule allows the Commission to consider any relevant factor in determining whether a refusal to deal or negotiate was unreasonable. The focus of the definition of reasonableness, however, is on the ocean common carrier's conduct rather than the impact on the shipper. Generally, however, transportation factors relate to the characteristics of the vessel, not the status of the shipper.[4]

Finally, commenters addressed the key role of contract carriage in ocean transportation and expressed concerns that the rule will interfere with contract carriage. DOCE at 5–6, WSC at 14. The Commission notes that service contracts are key to ocean carriage and the intent of the rule is not to dictate a return to carriage under tariff, nor is it intended to interfere with the substance of service contracts reached between parties. Presumably, an enforceable service contract would not allow for the type of conduct that the Commission would be likely to consider an unreasonable refusal to deal or negotiate, and if a service contract is materially breached, the parties have remedies that are beyond the Commission's purview. The Commission also recognizes that, as stated in the preamble, its ''role is not to ensure all interested parties get the same deal,'' and understands that ''me too'' contracts were abolished in the Ocean Shipping Reform Act of 1998. Fully cognizant of the privilege that private parties may enter into their own service contracts, the Commission means to clarify here that, regardless of contract status, an ocean common carrier may not effectively bar a shipper,

[4] *See, e.g., Credit Practices of Sea-land Serv., Inc., & Nedlloyd Lijnen, B.V.,* No. 90–07, 1990 WL 427463 (F.M.C. Dec. 20, 1990); *Dep't of Def.* v. *Matson Navigation Co.,* 19 F.M.C. 503 (1977).

including one without a service contract, from having direct access to ocean common carriage by failing or refusing unreasonably to deal or negotiate the terms of such carriage. This can include an ocean common carrier's failure or refusal to timely provide a rate quotation upon request or to refuse to provide required ancillary intermodal services, if available.

3. Elements

Pursuant to OSRA 2022 and Commission precedent, the Commission proposed that complainants would be required to meet three elements to establish a violation for unreasonable refusal to deal or negotiate. As indicated in the NPRM, the elements would apply in cases where the allegation relates to vessel space accommodations by an ocean common carrier. As proposed, the elements were derived directly from the statutory text established in OSRA 1998 and are: (1) the respondent is an ocean common carrier under the Commission's jurisdiction; (2) the respondent refuses to deal or negotiate with respect to vessel space accommodations; and (3) that the refusal is unreasonable. *See* 87 FR 57679.

Commenters were generally supportive of the proposed elements, *see, e.g.,* BassTech at 1; MICA/NAMI at 2; NFI at 2, although some specific comments expressed concerns regarding the impact of the rule in general and meeting the required elements. As noted earlier, DOJ worried that satisfying the ''refusal to deal'' and ''unreasonable'' elements would be difficult. DOJ at 4–5. While NHC viewed the proposal as falling short of the objective of ensuring the carriage of export containers, *see* NHC at 1, most other comments regarding the proposed elements sought a lengthier or stronger definition of ''refusal'' and ''unreasonable,'' but did not criticize the elements as a whole. *See* MICA/NAMI at 3–4; NITL/ISRI at 6–7, 13–14; RILA at 1, 5 (suggesting additional clarifying language for the proposed regulatory text for 46 CFR 542.1(c)(2)); Tyson at 1. This SNPRM includes changes to the definition of unreasonable to include a non-exhaustive list of scenarios of unreasonable conduct and to propose the removal of business decisions from the definition. Regarding PMSA's concerns that the elements of the proposed rule may impact individual contract negotiations addressing price, volume, timing, payment, delivery, prior experiences, dual commitment contracts and all other factors that are addressed, *see* PMSA at 1, the Commission notes that this rule does not dictate the contractual terms that may be reached between an ocean common carrier and a shipper.

4. Definitions

As the Commission noted in its preamble discussion for its proposal, neither the Shipping Act, as amended, nor OSRA 2022 define the phrase ''vessel space accommodations,'' and this phrase has not been interpreted in prior Commission matters. Therefore, the Commission proposed to define ''vessel space accommodations'' generally as space provided aboard a vessel of an ocean common carrier for laden containers being imported to, or exported from, the United States. In this SNPRM, the Commission also clarifies that ''vessel space services''—*i.e.,* the services necessary to access or book vessel space accommodations—are included in the definition of ''vessel space accommodations.'' This definition continues to be based on the common meaning of the words in the phrase as applied in ocean shipping.

Because the phrase ''refusal to deal or negotiate'' does not lend itself to a general definition, the Commission proposed using a case-by-case evaluation. This SNPRM proposes a revised definition of unreasonableness after further consideration of the comments received. Additionally, the proposed definition now includes a non-exhaustive list of examples of unreasonable conduct.

a. Vessel Accommodations

The Commission received several comments regarding its proposed ''vessel space accommodations'' definition. Comments were generally supportive, with a few suggestions and critiques. In broad summary, the comments urged the Commission to broaden its definition of ''vessel space accommodations'' to include access to vessel space accommodations, meaning the services to book vessel space, the equipment to obtain vessel space, and other ancillary services that would impact exporters' ability to obtain vessel space. While some comments supported the proposed definition but urged expansion, others withheld support due to the definition's perceived narrow interpretation.

First, the National Industrial Transportation League (NITL) and Institute for Scrap Recycling Industries (ISRI) asked that the Commission broaden its definition of vessel space accommodation to include ''vessel services.'' NITL/ISRI at 7. Without the expansion, the NITL and ISRI contended that the proposed rule ''fails to adhere to the intent of Congress.'' *Id.* Similarly, the Agriculture Transportation Coalition (AgTC) says the rulemaking and the above definition is unable to ''recognize the various means the carriers decline to carry export cargo.'' AgTC at 1. While AgTC did not critique the ''vessel space accommodations'' definition specifically, it deliberately used the phrase ''export cargo'' instead of ''vessel space accommodations'' when discussing unreasonable refusals to deal or negotiate. Vessel space accommodation and export cargo hold different meanings. The Commission interprets this deliberate use of ''export cargo'' as a suggestion to revise the vessel space accommodation definition to refer specifically to ''export cargo.'' As explained elsewhere, this proposed rule applies to both import and exports. The differences between the ''vessel space accommodations'' definition and ''cargo space accommodations'' will be addressed below.

Second, the International Federation of Freight Forwarders Associations (FIATA) asked the Commission to clearly define vessel space accommodations to give context to ''operational decisions'' by ocean common carriers that result in a refusal to deal or negotiate. FIATA at 1. It listed ''operational decisions'' as common carrier actions to ''carry out blank sailings, withdraw or reposition capacity, and impose peak season surcharges.'' *Id.* BassTech also asked the Commission to revise the proposed definition of ''vessel space accommodation.'' BassTech at 1. Although it agreed with the Commission's proposed definition, it asked the Commission to consider the processes and practices that would obstruct a shipper from obtaining vessel space. *Id.* at 2.

Third, related to the Commission's proposed definition of vessel space accommodations, the National Customs Brokers & Forwarders Association of America, Inc. (NCBFAA) suggested that non-vessel-operating common carriers (NVOCCs) be excluded from the rule because they do not control vessel space accommodations. NCBFAA at 2–3. It cited the inability of these entities ''to control vessel space accommodations.'' *Id.* at 2. The Commission recognizes the role NVOCCs play and concur that their exclusion is appropriate as they do not control vessel space accommodations. Thus, like the proposed rule, this SNPRM only applies to ocean common carriers.

The Commission notes the potential hardships a narrow reading of ''vessel space accommodations'' would impose on certain industry members. In the

Commission's view, services that would impact the actual acquisition of a ''vessel space'' could also be used by ocean common carriers to frustrate shippers and amount to an ''unreasonable refusal to deal or negotiate.'' Therefore, the definition of ''vessel space accommodations'' necessarily implies that ''vessel space services,'' *i.e.,* the services necessary to access or book vessel space accommodations, are included. Thus, this SNPRM adds a sentence to the definition to acknowledge that vessel space services are included.

5. Shifting Burden From Complainant to Ocean Common Carrier

The Commission's initial proposal also set forth a framework for an ocean common carrier to establish that its efforts to consider an entity's proposal or efforts at negotiation were done in good faith based on the criteria above. Once a complainant (or the BEIC) has established a prima facie case for each of the three elements above, the ocean common carrier will have the burden of production to show or justify why its refusal was reasonable. However, the ultimate burden of persuasion remains with the complainant to show that the refusal to deal or negotiate was unreasonable. Further, the proposed rule included a rebuttable presumption of unreasonableness for those situations where an ocean common carrier categorically excludes U.S. exports shipments.

a. Burden-Shifting

The Commission received various comments with regard to the proposed burden-shifting regime in the NPRM. Three entities (ACSA, NACD, NFI) supported the burden-shifting regime laid out in the NPRM without further comment. ACSA at 10; NACD at 4; NFI at 2. Three entities (AgTC, CBA, IDFA) commented that the ultimate burden should be on the ocean common carriers, not the shippers, due to the ocean common carriers' superior access to real-time data on space availability. AgTC at 5–6; CBA at 2; IDFA at 3–4. CMA CGM commented that Congress did not expressly direct the Commission to incorporate a burden-shifting regime as part of the proposal, as it did with regard to charge complaints. CMA CGM at 2–3.

Other entities supported the burden-shifting regime, but with caveats. AgTC and WSC supported the approach but pointed out that the burden-shifting explanation in the preamble is not in the proposed regulatory text. AgTC at 5; WSC at 15. BassTech supported the proposal so long as the carrier's evidence can be challenged (which, as noted below, would occur in Step 3). BassTech at 3–4. MICA/NAMI suggested that the Commission should also consider whether the carrier has actually engaged in good-faith communications and negotiation. MICA/NAMI at 3. NITL/ISRI strongly supported burden-shifting but did not want a carrier's self-certification to be given dispositive or outsized weight (this SNPRM proposes the deletion of the self-certification provision). NITL/ISRI at 14–15. RILA broadly supported burden-shifting but asked it to be more closely aligned with the charge complaints procedure found in 46 U.S.C. 41310(a) and (b). RILA at 1, 4. Several entities (ACSA, CBA, IDFA) sought the addition of time limits on carrier responses, especially in cases dealing with refusals of perishable goods. ACSA at 10–11; CBA at 3; IDFA at 4.

The Commission has given careful consideration to the comments received on its proposed burden-shifting approach. As a preliminary matter, the Commission notes that this SNPRM proposes to continue using the process followed in cases arising under the Administrative Procedure Act (APA). The initial burden of production is with the complainant (Step 1). If the complainant can satisfy its initial burden of producing evidence sufficient to make out a prima facie case of a violation, the burden then shifts to the respondent to produce evidence sufficient to rebut the complainant's prima facie case (Step 2). But the ultimate burden of persuading the Commission always remains with the complainant (Step 3). *See* 46 CFR 502.203; 5 U.S.C. 551–559. Although a given practice could be treated as per se unreasonable, the occurrence of which would suffice to create a prima facie case of an unreasonable refusal to deal and trigger the ocean common carrier's burden to produce evidence that the refusal was not unreasonable and thus move the case directly to Step 2, the complainant or BEIC would still have to persuade the Commission in Step 3 that the refusal was unreasonable.

Congress tasked the Commission with defining whether a particular action is an unreasonable refusal to deal or negotiate with respect to vessel space under 46 U.S.C. 41104(a)(10). It did not prescribe a particular method for the Commission to follow in developing this definition and it did not proscribe the Commission from using any particular approach. Thus, the Commission adopts the existing process for APA cases and notes in proposed § 541.2(k) that the standard is based ''in accordance with applicable laws'' such as the APA. The Commission also proposes to include Step 3 so that the full standard is available in the regulatory text.

As to the additional suggested modifications of the proposed burden-shifting approach, the Commission does not adopt them at this time. The Commission believes that the approach laid out in this SNPRM sufficiently expresses its expectations as to what is required and provides a reasonable approach that will effectively produce the information needed to allow the Commission to decide whether a given matter involves an unreasonable refusal to deal or negotiate.

Regarding the inclusion of specific aspects such as the application of time limitations in the context of cases involving perishable goods, the Commission may consider the inclusion of such conditions within a given case as appropriate but has opted not to mandate such limits consistent with our case-by-case approach. Regarding suggestions that the procedure be modified to more closely align with that which Congress detailed for charge complaints under 46 U.S.C. 40310, the Commission also does not adopt such an approach because section 40310 on charge complaints does not apply to refusal to deal cases. Similarly, the evidence produced by the ocean common carrier in making its case that refusal to deal or negotiate was not unreasonable is subject to challenge by the opposing party, and all evidence, as in any contested case, will be subject to scrutiny by the Commission. 5 U.S.C. 556(d).

b. Rebuttable Presumption

A number of commenters responded to the Commission's proposed rebuttable presumption approach. For the most part, commenters generally favored the Commission's proposal, with some strongly favoring it, *see* ACSA at 5; MICA/NAMI at 2; Tyson at 1, others offering general support, *see* NCBFAA at 2; NFI at 2; RILA at 1; and others offering suggestions along with their support. *See* NITL/ISRI at 14; PMSA at 3; WSC at 16. One commenter opposed the approach (and the proposal as a whole) as being insufficient in protecting exporters from being denied service whenever there is available cargo space on a vessel and urged that the proposal be revised to limit exceptions and clearly define when it is unreasonable for carriers to deny service. NHC at 1–2.

With respect to those commenters who offered specific suggestions for the Commission to consider, NITL/ISRI

suggested that the regulatory text should include language specifying that a rebuttable presumption of unreasonableness applies in those cases where an ocean common carrier categorically excludes U.S. exports from its backhaul trips from the United States. NITL/ISRA at 14. PMSA offered a number of specific factors for the Commission to use in establishing a rebuttable presumption of reasonableness: (1) the presence of Federal, state or local/port policies that advocate the prioritization of the export of empty containers either through stowage plans or through the use of sweeper vessels; (2) prior experience with individual cargo owners who have engaged in unlawful or improper behavior (*e.g.,* misdeclaration of cargo or shipment of hazardous cargo that has caused or threatened the safety of a vessel and/or that has given rise to adverse governmental action, penalties, fines or other liability); (3) a history of late or nonpayment of services; (4) whether viable alternatives exist, whether through other VOCCs or via NVOCCs, Ocean Freight Forwarders or through Shippers' Associations; (5) the failure to provide contracted amount of cargo or to meet minimum quantity commitments or a history of falling down (*i.e.,* cancellation by either party) or making ghost bookings; (6) changes in vessel rotations due to inland congestion or other factors beyond the carrier's control; (7) whether the export customer is prepared to pay prevailing market freight rates for shipments together with all reasonable charges associated with the destination; and (8) whether the export destination is one with sufficient infrastructure to handle the return of equipment (containers, chassis) such that a return shipment and/or repositioning can be accomplished at a reasonable time and cost. PMSA at 3.

The WSC suggested that the Commission modify the proposed regulatory text for the shifting of the burden of production to emphasize that the burden of persuasion ultimately remains with the complainant or BEIC:

> A complainant (or the BEIC) may seek to establish a violation of 46 U.S.C. 41104(a)(10) by producing sufficient evidence to establish a prima facie case of a violation. If a complain[ant] (or the BEIC) establishes a prima facie case of a violation, the burden of production shifts to the ocean common carrier to rebut the complainant's [or the BEIC's] evidence and justify that its actions were reasonable. Once the ocean common carrier has fulfilled its burden of production, the burden of persuasion rests with the complainant (or BEIC) to prove its case.

WSC at 16. The Commission is proposing to include similar language in § 541.2(k)(3).

Regarding the specific suggestion offered by the NITL/ISRA, the Commission notes that the regulatory text proposed in this SNPRM is sufficient to cover those situations where an unreasonable refusal to carry U.S. exports occurs. The inclusion of the specific example of a carrier's exclusion of U.S. exports from a backhaul trip is unnecessary given the criteria for evaluating whether an ocean common carrier's action is unreasonable. While PMSA's specific examples are illustrative of the types of factors that the Commission may consider when evaluating a specific claim, including these examples within the regulatory text is also unnecessary for similar reasons. However, the Commission notes that this rulemaking does not restrict the ability of ocean common carriers to reposition empty containers, including through use of sweeper vessels. As for the WSC's suggested rewriting of the proposed regulatory text for the shifting of the burden of production, the Commission is proposing language that shows that the burden of persuasion lies with the complainant within the regulatory text.

6. Certification

The proposed rule also sought to include a mechanism for an ocean common carrier to justify its actions through means of a certification. Although the proposal did not require a certification for this purpose, the Commission indicated that it was considering whether to make certification by a U.S.-based compliance officer mandatory. The Commission also noted that any justification must be directly relevant and specific to the case at hand and further noted that information or data supporting generalized propositions would not be helpful in determinations of reasonableness for a specific case. Instead, a certification should document the ocean common carrier's decision in a specific matter, the good faith consideration of an entity's proposal or request to negotiate, and the specific criteria considered by the ocean common carrier to reach its decision. The Commission explained that certification in this context meant that an appropriate U.S.-based representative of the ocean common carrier attests that the decision and supporting evidence is correct and complete. An appropriate representative can include the ocean common carrier's U.S.-based compliance officer. As explained above, however, certification by a compliance officer that a refusal to deal was not unreasonable, and the evidence underlying the certification, are elements that the Commission will consider in the context of deciding the case. The Commission will receive evidence that is relevant and will give it the appropriate weight. Certification by a compliance officer would be but one factor; it does not automatically end the case in favor of the ocean common carrier.

Some commenters supported the proposed certification. *See* BassTech at 3–4 (supported so long as the certification can still be disputed), DOJ at 5; MICA/NAMI at 2; NCBFAA at 2; NFI at 2; Tyson at 1 (supporting MICA/NAMI comments). Others raised concerns. *See* NACD at 4 (indicating that while it did not oppose the use of an optional certification by carriers it harbored concern over that certification being given undue weight in determining reasonableness); NITL/ISRI at 15 (expressing concern over undue weight being afforded to carrier decisions when evaluating reasonableness under the proposed certification approach); WSC at 15–16 (suggesting that (1) the proposed certification method be only one of a variety of permissible ways for an ocean common carrier to demonstrate reasonableness, (2) ocean common carriers who do not certify not be prejudiced, (3) the Commission explain the probative value of certifying, and (4) the Commission explain why it is considering making certification by a U.S.-based compliance officer necessary). Still other commenters expressly opposed allowing any self-certification by carriers. *See* IDFA at 10–11 (opposing carrier self-certification and suggesting that certification be continuous and overseen by an independent third party), NHC at 1–2 (generally critical of the proposal in its entirety).

After carefully considering these comments, the Commission has decided not to adopt a mandatory requirement that the certification be made by a U.S.-based compliance officer. Although self-certification could have provided some useful information, a robust and mandatory self-certification approach would require a more holistic and costly approach and the Commission finds it is not necessary at this time.

7. Other Issues

Finally, the Commission received a number of comments that did not fall within the categories already discussed. These comments covered a broad range of topics ranging from simply offering

the commenter's expertise through further individualized discussions to help better understand the Commission's proposal (*e.g.,* Lanca at 1) to more in-depth suggestions falling outside the immediate scope of the proposal (*e.g.,* Tyson at 1–2 (suggesting that the Commission require carriers to provide accurate forecasting and updated information to ensure that shippers can position their shipments at port terminals within agreed-upon time windows, supporting greater transparency with respect to vessel capacity, loading timeframes, and vessel schedule changes that would impact contracted delivery times, and urging the Commission consider how it plans to address forthcoming changes to import rotation and the impact of these changes on port congestion)). Some of these issues are under consideration in the Maritime Transportation Data System project. *See https://www.fmc.gov/fmc-maritime-transportation-data-initiative/.*

AgTC and IDFA both commented that the proposal failed to deal with ''de facto unreasonable refusals to deal'' that are not the product of negotiations, but rather are dropped on the shipper by the carrier at the last minute. AgTC at 3; IDFA at 2–3. FIATA suggested that the Commission should address whether the rule applies to shipments of foreign cargo as long as there are some U.S. shipments involved in the same service contract. FIATA at 2. BassTech appreciated that the status of the shipper is not a legitimate transportation factor sufficient to refuse a booking but expressed concern that a shipper's status could nevertheless be grounds for a refusal based on a reasonable business decision (*i.e.,* especially with regard to hazardous cargo). BassTech at 3. ACC believed that the proposed rule failed to consider the negative effect on the exporter of a refused booking. ACC at 2. CBA argued that there should be a national data portal or similar information technology infrastructure to allow all parties to have access to all the relevant booking and space-availability data. CBA at 3. CMA CGM commented that ''me too'' contracts were abolished in 1998 and parties must continue to be free to contract as they wish. CMA CGM at 2.

MICA/NAMI noted that difficulties in getting perishable cargo shipped has led to the loss of business for U.S. suppliers and enabled in-roads by competitors in Europe and Australia. MICA/NAMI at 2. They cited to export data showing blank sailings rose as chilled beef and pork exports to high-value markets declined. MICA/NAMI at 2. MICA/NAMI also pointed to insufficient information shared by ocean common carriers regarding vessel schedules and space availability as factors complicating the ability of shippers to identify alternate routes or means of transportation for their products. MICA/NAMI at 3. MICA/NAMI further noted that ocean common carriers often cancel meat and poultry export bookings up to the sailing date with no warning to shippers and that its member experiences with ''failures to deal or negotiate'' on detention and demurrage fees posed a major problem. MICA/NAMI at 3. They also urged that ''[i]n cases where a carrier may be holding cargo until an invoice is paid regardless of its validity, the lack of a clear channel of communication to challenge the billing statement is unconscionable and should be addressed by the FMC'' as part of this (and other) rulemakings. MICA/NAMI at 3.

As indicated elsewhere, this supplemental proposal addresses the criteria that the Commission will consider in evaluating whether there has been a refusal to deal or negotiate, which will occur on an individualized basis. The Commission appreciates the additional feedback provided regarding the field experiences shared by MICA/NAMI members. These experiences will be considered as appropriate within the context of a given case. Also, some proposals may be outside the scope of this rule and/or better addressed by other Commission initiatives such as the Demurrage and Detention Billing Requirement rule, Commission's Docket No. 22–04, other future rulemakings or the Maritime Transportation Data System project.

NAM observed that ocean common carriers own and operate the ships (and often, the containers) used in ocean transit and noted that any enforcement measures should be directed towards those parties responsible for schedules and operational disruption. NAM at 2. NAM also generally noted that disruptions to the supply chain have a ripple effect and indicated that ''[e]stablishing minimum notification thresholds for ocean common carriers as they plan strategic equipment movement and port calls would ease burdens for all shipping partners and enhance system-wide transportation supply chain reliability.'' NAM at 2. NAM also noted that the prominence of blank sailings and a rising propensity/apparent partiality of ocean common carriers to accept empty containers for profitability goals are linked to economic viability and competitiveness for U.S. manufacturers and encouraged the Commission to consider these factors in this rulemaking. NAM at 2–3.

The Commission acknowledges the disruptions noted by NAM and appreciates the concerns it raised with respect to the impacts these disruptions have on the overall supply chain. With respect to the factors noted by NAM regarding the evaluation of blank sailings, the Commission notes that the causes of blank sailings may vary, ranging from inclement weather, force majeure events, port congestion, vessel mechanical failure and a steep decline in demand. As a result, an individual ocean common carrier may not necessarily have control over the causes leading to blank sailings. While the impacts of these actions often lead to cascading negative impacts, the Commission's focus in the context of this rule is to address instances where ocean common carriers fail to mitigate the impacts flowing from blank sailings and other similar actions instead of actively working with the shipper to get alternative accommodations for the freight. In its evaluations, the Commission anticipates that it will consider the relevant facts present in an individual situation to determine whether those actions by an ocean common carrier fall within the scope of the definition being set out as part of this SNPRM.

NCBFAA suggested that NVOCCs be excluded from the scope of the rule and described the supportive role that NVOCCs play in helping their customers navigate the complex ocean shipping industry by securing competitive pricing and favorable transportation routes by using the unique industry experience and relationships NVOCC have developed with ocean common carriers. NCBFAA at 2. NCBFAA emphasized that NVOCCs, unlike ocean common carriers, do not control vessel space accommodations. NCBFAA at 2–3. This SNPRM continues to restrict its application to VOCCs and does not include NVOCCs at this time. The Commission agrees that NVOCCs, unlike ocean common carriers, do not control vessel space accommodations.

NFI noted its members continue to face carrier-related shipping issues, including unpredictable dwell times; exponential increases in demurrage and other port-related costs; unfair and discriminatory commercial practices against shippers by oceangoing carriers and NVOCCs; shortages of containers, chassis, and labor; dramatically higher tariff/contract rates for oceangoing freight; and limited cold storage availability. NFI at 2.

The Commission acknowledges the presence of the issues noted by NFI but also notes that issues centering on

container, chassis, and labor shortages are, in many cases, not carrier-related in origin. This SNPRM may not necessarily directly resolve each of these issues, but the Commission acknowledges that shippers face significant stresses stemming from supply chain congestion and also notes that these factors fall outside the scope of the Commission's task in defining what constitutes an unreasonable refusal to deal or refusal to negotiate.

NITL/ISRI asserted that blank sailing decisions must be reasonable to justify refusals to deal or negotiate, such as being based on a legitimate need to right-size supply based on demand rather than an action to reduce capacity to artificially inflate prices. NITL/ISRI at 11.

As noted previously, blank sailings may be attributed to a variety of causes that may fall outside of an ocean common carrier's control. The Commission notes that an ocean common carrier's refusal to deal or negotiate within a blank sailing context must also be weighed against an ocean common carrier's efforts to mitigate the impacts on its customers when a blank sailing (or other similarly adverse outcome due to vessel schedule changes, including timing and port calls) occurs. Through this SNPRM, the Commission is setting forth the criteria that will be applied to determine whether a given refusal to deal or negotiate satisfies the condition of being unreasonable. Such a determination will necessarily include a consideration of the mitigating steps taken by an ocean common carrier to work with its shipper customers. The Commission will monitor these activities and act accordingly. Any future refinements to the Commission's regulations may be considered, if appropriate.

PMSA asserted that the proposal ignored imports even though imports are part of the overall network. PMSA at 1. It added that the proposal also did not mention the roles of shipper associations, NVOCCs, and ocean freight forwarders. PMSA asserted that these entities can collectively combine their bargaining power and provide export-related support to individual shippers and their respective roles should factor into any export policy or inquiry. PMSA at 2.

The September 2022 proposal specifically noted that the current statutory framework does not distinguish between U.S. exports or imports and that it would apply to both. *See* 87 FR 57674. The Commission recognizes that imports are an inherent component of the overall shipping network and the application of this rule to both imports and exports reflects that recognition. As to the roles of those entities who are not VOCCs, the Commission notes that while this SNPRM would apply only to VOCCs, the roles of other entities who play a role in potential Shipping Act violations would be addressed in the context of the appropriate statutory provisions applicable to those violations, such as those provided under 46 U.S.C. 41102 and 41104, and the Commission will evaluate those violations as appropriate.

RILA urged the Commission to strengthen the language of its proposal, particularly with respect to its applicability to conduct occurring in the context of an existing service contract relationship to help ensure that the rule addresses the concerns and real-world experiences of U.S. importers and exporters. RILA at 1. RILA also emphasized that the Commission should account for the circumstances and criteria relevant to U.S. importers in addition to exporters. RILA at 2. It noted that many U.S. importer plans were disrupted when VOCC contract partners abruptly stopped providing cargo space for which importers had contracted, thereby forcing them onto the spot market and its accompanying higher rates. RILA at 2.

The Commission assumes that in those instances where a service contract already exists between an ocean common carrier and a shipper, a refusal to deal or negotiate would be addressed within the context of the provisions of the agreement made between those parties and the remedies afforded when there is a breach of contract. However, it is possible that there are circumstances in which a contract is silent on what to do if there is a refusal to deal or negotiate within the bounds of the contractual relationship. The Commission is interested in comments identifying those situations where a contract does not address how a refusal to deal with respect to vessel accommodations would be remedied.

In addition to the issues noted earlier, Tyson stated that the proposed rule would enable the Commission to ensure carriers are ''providing a sound business rationale for either failing to accept a booking request or failing to fulfill an existing booking agreement.'' Tyson at 2. It added that changes are needed ''to ensure the flow of information is balanced and allows each party, both carriers and shippers, to have fair and informed discussions regarding vessel space.'' Tyson at 2.

The Commission acknowledges the importance of ensuring that a sufficient information flow exists between ocean common carriers and shippers regarding vessel space, but this particular issue falls outside the scope of this rulemaking.

USDEC indicated that the regulations that the Commission adopts must emphasize consistency and to this end, suggested that the Commission establish a ''consistency test'' to help it assess whether a carrier is deviating from its past practices with respect to negotiating for vessel accommodations. USDEC at 3. It also suggested that the Commission consider what information a shipper should retain to substantiate a violation under whatever regulation is adopted. USDEC at 3. In its view, the adopted regulations should result in increasing a shipper's ability ''to effectively seek and secure vessel space accommodations in a competitive marketplace.'' USDEC at 3. With respect to the scope of negotiation, USDEC suggested that the Commission outline ''whether negotiation can occur on only limited aspects'' or all aspects of vessel accommodation such as the shipment's cost, volume, origin or location, and the involvement of intermodal carriage. USDEC at 3–4. USDEC suggested that the Commission consider adopting ''anti-backsliding'' provisions as part of its rule to ensure that carriers negotiate in good faith and to prevent carriers from engaging in a pattern of rolling, delaying, or cancelling shipper bookings. USDEC at 4. Additionally, USDEC asserted that the Commission should consider the impacts to shippers from a failure to negotiate on vessel accommodations within the context of potential enforcement actions and penalties for violations, impacts such as those on potential lost sales, diminished product values, additional shipping costs, and increased administrative costs. USDEC at 4–5. USDEC added that penalties imposed by the Commission should operate as a deterrent to willful or negligent violations of the regulations and be sizable enough to encourage corrective action by the carrier. USDEC at 5.

The Commission agrees that its rules should be applied consistently after a careful consideration of the facts presented in a given case. Regarding the types of information that a shipper should retain to substantiate a potential violation, each shipper should retain those materials that it believes clearly demonstrates that the violation being alleged has occurred. This information may differ based on the specific circumstances involved and may involve items such as (but not limited to) the documenting of attempts to reach an ocean common carrier and, if available, written communications indicating a refusal by an ocean

common carrier. The scope of any negotiation will depend on the individual circumstances that present themselves and the Commission will evaluate those circumstances as they appear in a given case as appropriate. Consideration of an anti-backsliding provision to ensure that ocean common carriers negotiate in good faith and do not engage in a pattern of disrupting shipper bookings, along with the setting of appropriate penalties for violations, are issues falling outside the scope of this specific rulemaking but may be considered in the context of other rulemakings as well as enforcement actions taken by the Commission.

III. Proposed Changes to the NPRM

The Commission is modifying aspects of the NPRM in this SNPRM after evaluating the proposed rule in light of the comments received. The SNPRM proposes to modify the definition of transportation factors to focus on vessel operation considerations. The SNPRM proposes a revision of the definition of the term unreasonable as well as includes a non-exhaustive list of examples of unreasonable conduct. This change is intended to provide a better idea of what types of conduct that Commission believes would generally be considered unreasonable. The Commission proposes to clarify that vessel space services were already included in the definition of vessel space accommodations and add a definition for cargo space accommodations as well. It also includes new text discussing the relationship between 46 U.S.C. 41104(a)(3) and (a)(10) and the elements required to establish violations of those provisions. Also, many comments expressed concerns about how business decisions would affect the overall analysis and thus this SNPRM changes how business decisions will be considered. This SNPRM then revises the voluntary export policy documentation language and proposes that ocean common carriers submit a documented export policy to the Commission once per year. It also revises the burden shifting framework to clarify that it applies even if it was not included in the rule and notes that the ultimate burden of persuasion lies with the complainant or BEIC. Finally, this SNPRM proposes to remove the voluntary certification provision as it is not necessary.

A. Section 542.1(b)—Definitions

In § 542.1(b), this SNPRM proposes a new definition of ''cargo space accommodations,'' ''documented export policy,'' and ''sweeper vessel.'' It also proposes to modify the definitions for ''transportation factors'' and ''unreasonable,'' and ''vessel space accommodations.'' After careful consideration of the comments, these proposed definitions now provide more clarification and specificity to allow parties to identify unreasonable refusal to deal more easily.

The proposed definition of ''cargo space accommodations,'' like the definition of ''vessel space accommodations'' has not been interpreted in prior Commission matters. The two definitions are similar because both terms are part of concepts aimed at preventing similar conduct at different points of a shipping transaction. Because the term ''cargo space accommodations'' concerns situations where the parties have an existing relationship and/or already mutually agreed on terms and conditions via a booking confirmation, it is presumed that there is some evidence that negotiation for space aboard the vessel has already occurred. The Commission is interested in comments addressing if, in fact, that space has been agreed to at the time of a booking confirmation.

The new proposed definition of ''vessel space accommodations'' means space that is available aboard a vessel. Since 46 U.S.C. 41104(a)(10) prohibits unreasonable refusals during the negotiation stage—when the parties do not have an existing relationship and/or are initiating negotiations over terms and conditions of service, it is presumed that space has not yet been provided but that it may be available.

Both definitions, ''cargo space accommodations'' and ''vessel space accommodations'' should also include the concept of vessel space services. The Commission proposes to include in these definitions a reference to the services necessary to access or book vessel space accommodations. As some comments pointed out and is discussed above, services that would impact the actual acquisition of a ''vessel space'' could also be used by ocean common carriers to frustrate shippers and amount to an ''unreasonable refusal to deal or negotiate.'' Thus, an unreasonable refusal to deal over the related services should also be included in the definition. These services could include for example, a shipper's access to a representative or a booking portal for vessel space, in summary any service impacting a shipper's ability to confirm its booking. It could also include services involving operational decisions that would impact a shipper's already-confirmed booking for purposes of the definition of ''cargo space accommodations.''

The Commission is also proposing a new definition of ''documented export policy.'' This proposed definition uses the term ''policy'' instead of ''strategy'' to better describe the type of information the Commission seeks. The proposal is intended to identify that the export policy must be in the form of a report and it must detail practices and procedures for U.S. outbound services. Pursuant to its authority in 46 U.S.C. 40104, the Commission seeks to require ocean common carriers to provide this information to the Commission on a yearly basis. It will use this information to monitor the industry for any unreasonable behavior with respect to refusals to deal or negotiate.

This SNPRM newly proposes a definition for ''sweeper vessel.'' After reviewing the public comments, the Commission wanted to note that the use of sweeper vessels is a legitimate practice that is critical to the efficiency of our transportation system. This new definition, however, does specify that a sweeper vessel must be one exclusively designated for that purpose, *i.e.,* a carrier that does not want to take exports cannot designate a vessel as a sweeper vessel in order to avoid certain shipments.

In the ''transportation factors'' definition, this SNPRM proposes to focus the definition on ''vessel operation considerations'' rather than the broader ''genuine operational considerations'' phrase that included factors other than those related to the safe operation of the vessel. For that reason, this SNPRM also proposes to remove the phrase ''the effect of blank sailings'' since this factor is not directly related to vessel safety or operational needs. Given the focus on operational considerations, the proposed definition now also includes ''weather-related scheduling considerations'' to ensure that scheduling within the control of the ocean common carrier is not used as a factor. The Commission also seeks to clarify with this SNPRM that transportation factors are not a way for a carrier to refuse to carry entire classes of cargo such as properly tendered hazardous cargo, heavier products or inland shipments. Instead, legitimate transportation factors must exist, be outside the vessel operators' control and relate to the facts of a specific transaction or vessel.

The Commission also seeks to revise the definition of the term ''unreasonable'' by proposing an overarching definition that applies in both 46 U.S.C. 41104(a)(3) and 41104(a)(10) claims. In later sections of

the rule, the SNPRM proposes revised factors and examples of unreasonable conduct that are non-binding and illustrate the type of conduct that Commission will consider unreasonable. The new proposed definition of the term ''unreasonable'' is ocean common carrier conduct that unduly restricts the ability of shippers to access ocean carriage services. The Commission believes this definition better aligns with the purpose of OSRA 2022 and the Shipping Act, as amended, as a whole.

B. Section 542.1(c) Through (e)—Claims Under 46 U.S.C. 41104(a)(3)

The Commission proposes adding new § 542.1(c) through (e) to define how a shipper can address unreasonable conduct by ocean common carriers that prevents shippers from obtaining space aboard vessels, when available, for their cargo pursuant to 46 U.S.C. 41104(a)(3). Section 542.1(c) proposes the elements of a claim. These elements are similar to those for a 46 U.S.C. 41104(a)(10) claim under § 542.1(f) given that both claims aim to prevent similar conduct at different points of a shipping transaction. As previously stated above, 46 U.S.C. 41104(a)(3) claims focus on those refusals that occur at the execution stage, after the parties reached a deal or mutually agreed on service terms and conditions via a booking confirmation subject to section 41104(a)(3).

Section 542.1(d) proposes a list of factors that the Commission may choose to consider in evaluating whether a particular ocean common carrier's conduct was unreasonable. Like in a claim under 46 U.S.C. 41104(a)(10), the factors mentioned would help establish an ocean common carrier's bona fide attempts and interest in fulfilling its previously made commitment to a shipper to take its cargo. Provision of a documented export policy includes a good faith effort in mitigating the impact of the refusal as well as evidence that the refusal was based on legitimate transportation factors. These are all considerations the Commission could rely on to make a reasonableness finding.

In § 542.1(e), the Commission proposes a non-binding and non-exhaustive list of examples to show the type of conduct it could consider unreasonable pursuant to 46 U.S.C. 41104(a)(3). The examples listed are the types of situations that could signal that an ocean common carrier was not sincere in attempting to fulfill the previously agreed-to service terms and conditions.

The example in § 542.1(e)(4) identifies an issue raised in the comments. *See, e.g.,* Bass Tech at 1; IDFA at 2. The imposition by ocean common carriers of time restrictions on when a vessel can be loaded that are impracticably short thereby denies a shipper actual access to cargo space accommodations that have ostensibly been provided. As discussed, the focus of the rule is on eliminating impediments to access. The Commission may view carrier-imposed time constraints as unreasonable if they unduly deprive a shipper acting in good faith of access to cargo space.

Finally, the Commission believes it should keep open the opportunity to consider any other interactions or communications with the shipper as well as other conduct that the Commission finds unreasonable in any given case. Thus, the proposed list is considered non-exhaustive and only provides examples of conduct that could be considered unreasonable. The decision will be made on a case-by-case basis.

C. Section 542.1(f) Through (h)—Claims Under 46 U.S.C 41104(a)(10)

The Commission proposes adding new § 542.1(f) through (h) to define how a shipper can address unreasonable conduct by ocean common carriers that refuses to deal or negotiate with shippers regarding vessel space accommodations pursuant to 46 U.S.C. 41104(a)(10). Section 542.1(f) contains the elements of a claim. These elements are the same as those proposed in the NPRM.

Section 542.1(g) proposes a list of factors that the Commission may choose to consider in evaluating whether a particular ocean common carrier's conduct was unreasonable. The factors in this section are those that were proposed in § 542.1(b)(2)(i) through (iv) of the NPRM except that business decisions are no longer a factor to be explicitly considered. The Commission decided with the help of the public comments that there is the potential for business decisions to overwhelm the rest of the factors and thus it decided to remove that language from the proposed rule. In this SNPRM, the provision of a documented export policy, good faith effort showing an interest and ability in mitigating the impact of the refusal and evidence that the refusal was based on legitimate transportation factors are all considerations the Commission could rely on to make a reasonableness finding. The list is not exhaustive as other facts the Commission finds relevant could be considered. The factors in § 542.1(g) are the same as those proposed in § 542.1(d).

In 46 CFR 542.1(h), the Commission proposes a non-binding and non-exhaustive list of examples to show the type of conduct it could consider unreasonable pursuant to 46 U.S.C. 41104(a)(10). The examples listed are the types of situations that could signal that an ocean common carrier was not sincere in attempting to fulfill the previously agreed-to service terms and conditions.

The various proposed scenarios the Commission finds involve unreasonable conduct by ocean common carriers. These include: (1) quoting rates that are so far above market as to render the quote not a serious negotiation; (2) categorically or systematically excluding exports in providing vessel space accommodations, and (3) any other interactions or communications with the shipper or other conduct the Commission finds unreasonable.

The SNPRM rule proposes that quoting rates that are so far above market as to render the quote not a serious negotiation is unreasonable conduct. An ocean common carrier would be required to consider in good faith a shipper's effort at negotiation. Consideration in good faith includes, among other things, quotes that are within reasonable market rates. *See, e.g.,* NITL/ISRI at 13–14. If in response to a shipper's request for vessel space accommodations the carrier quotes rates far above market (or insists on other terms, such as unrealistic quantity demands), it will likely be regarded under the SNPRM as an unreasonable refusal to deal or negotiate under 46 U.S.C. 41104(a)(10).

Finally, the Commission believes it should keep open the opportunity to consider any other interactions or communications with the shipper as well as other conduct generally the Commission finds unreasonable in any given case. Thus, the proposed list is considered non-exhaustive and just provides examples of conduct that could be considered unreasonable. The decision will be made on a case-by-case basis.

1. Section 542.1(i)—Use of Sweeper Vessels

In § 542.1(i), the Commission is proposing that the use of sweeper vessels is a legitimate practice that is critical to the efficiency of our transportation system. Along with the proposed definition, this paragraph serves as a reminder that a sweeper vessel must be one designated for that purpose. This provision is proposed to prevent ocean common carriers from using ad hoc designations of vessels as

sweeper vessels to avoid having to take certain export shipments.

2. Section 542.1(j)—Documented Export Policy

This SNPRM modifies the voluntary documented export policy found in the NPRM and now proposes a requirement that ocean common carriers follow and submit to the Commission on a yearly basis a documented export policy. Proposing a requirement to submit a documented export policy to the Commission pursuant to its authority under 46 U.S.C. 40104 is an important part of monitoring the industry for unreasonable behavior vis-à-vis exports in an effort to address those concerns. Also, in § 542.1(j)(1), the Commission identifies what type of information it seeks to have included in a documented export policy that would help the Commission determine whether an ocean common carrier's conduct in a specific matter aligns with their general policies and that the ocean common carrier thus acted reasonably. The yearly requirement would provide an appropriate but not overly burdensome time frame on which to report updates to the policy relative to changes in the industry. The proposed report documenting an ocean common carrier's export policy would remain confidential. Aggregate data may be provided in annual reports submitted to Congress or compiled for other purposes but will not reveal confidential information provided by or about individual carriers.

Although the Commission is not proposing in this SNPRM a voluntary export policy, it is interested in receiving comments on this alternative. The Commission believes the new proposed requirement to submit the export policy to the Commission on a yearly basis will enhance its ability to monitor the industry for prohibited actions but would also consider a voluntary approach. Maintenance of a voluntary documented export policy would allow ocean common carriers to maintain and provide a documented export policy showing how it developed and applied business decisions in a fair and consistent manner in the instance of a claim before the Commission. The documented export policy could also address situations, such as schedule disruptions (due to blank sailings or other conditions) on the ability to take on shipments. Carriers may also address the alternative remedies or assistance it will make available to a shipper who is refused vessel space accommodations. Developing this type of detailed information and providing it during the burden shifting process could assist the Commission's analysis when deciding whether the ocean common carrier's conduct was reasonable. The Commission seeks comments on these two approaches.

3. Proposed language in the NPRM Removed in This SNPRM

The Commission is proposing revisions to § 542.1(d) of the NPRM by moving the burden shifting framework to § 542.1(k) and clarifying certain issues raised in the comments. Various commenters pointed out that this is the existing process under the APA. The new proposed section emphasizes that the burden shifting framework is not unique to this proposed rule and remains a legal requirement whether it appears in the SNPRM or not. Also, this SNPRM proposes including in § 542.1(k)(3) that the ultimate burden of persuading the Commission remains with the complainant (or BEIC). This language is responsive to comments received recommending this language be included.

The Commission also proposes to remove the self-certification by ocean common carrier provision in § 542.1(d) of the original proposed rule. Numerous commenters raised concerns about this voluntary provision and that they would be given undue weight in the Commission's analysis. Some commenters supported the provision if it was part of a more robust process including an independent evaluation of the information forming the basis of the certification. Although self-certification could have provided some useful information, a robust and mandatory self-certification approach addressing some of these concerns would require a more holistic and costly approach and the Commission finds it is not necessary at this time.

The Commission seeks comment and supporting information regarding all the proposed changes in this SNPRM.

IV. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. You may submit your comments electronically through the Federal Rulemaking Portal at *www.regulations.gov.* To submit comments on that site, search Docket No. FMC–2023–0010 and follow the instructions provided.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by mail to the address listed above under **ADDRESSES**:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked ''Confidential-Restricted,'' and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.
- A public version of your comments with the confidential information excluded. The public version must state ''Public Version—confidential materials excluded'' on the cover page and on each affected page and must clearly indicate any information withheld. You may submit the public version to the Commission by email or mail.

How can I read comments submitted by other people?

You may read the comments received on this SNPRM at *www.regulations.gov* by searching Docket No. FMC–2023–0010, Definition of Unreasonable Refusal to Deal or Negotiate with Respect to Vessel Space Accommodations Provided by an Ocean Common Carrier.

V. Rulemaking Analyses

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, provides that whenever an agency publishes a notice of proposed rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 553, the agency must prepare and make available for public comment a regulatory flexibility analysis describing the impact of the rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603–605. As the head of the agency, the Chairman, by voting to approve this SNPRM, is certifying that it will not have a significant economic impact on a substantial number of small entities.

B. National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to

prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. This SNPRM describes the Commission's criteria to determine whether an ocean common carrier has engaged in an unreasonable refusal to deal with respect to vessel space accommodations under 46 U.S.C. 41104(a)(10), and the elements necessary for a successful claim under that section. This rulemaking thus falls within the categorical exclusion for matters related solely to the issue of Commission jurisdiction and the exclusion for investigatory and adjudicatory proceedings to ascertain past violations of the Shipping Act. *See* 46 CFR 504.4(a)(20), (22). Therefore, no environmental assessment or environmental impact statement is required.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public.[5] The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking.[6] As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. 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 OMB control number.

This action contains new information collection requirements. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimates cover the time for reviewing instructions, searching existing sources of information, gathering and maintaining the information needed, and completing and reviewing the collection.

Title: Documented Export Policy.

OMB Control Number: None assigned yet.

Summary of the Collection of Information: This SNPRM proposes a requirement that ocean common carriers create and maintain a documented export policy they submit to the Commission on a yearly basis.

Need and Proposed Use of Information: Proposing a requirement to submit a report documenting an ocean common carrier's export policy to the Commission pursuant to its authority under 46 U.S.C. 40104 is an important part of monitoring the industry for unreasonable behavior vis-à-vis exports. Also, in proposed § 542.1(j)(1), the Commission identifies what type of information it seeks to have included in a documented export policy that would help the Commission determine whether an ocean common carrier's conduct in a specific matter aligns with their general policies and that the ocean common carrier thus acted reasonably. The yearly requirement would provide an appropriate but not overly burdensome time frame on which to report updates to the policy relative to changes in the industry. An ocean common carrier can update their policy more frequently than once per year if it chooses to do so. The proposed reporting by individual ocean common carriers would remain confidential but, in practice, the Commission would provide aggregate descriptions and potentially best practices that do not contain individual carrier-level information but do provide information to the public and Congress (via annual report or other documents available to the public).

Frequency: This SNPRM proposes that respondents will file a documented export policy meeting the requirements in § 541.2(j) once per calendar year.

Type of Respondents: Ocean common carriers.

Number of Annual Respondents: The Commission anticipates an annual respondent universe of 140 ocean common carriers.

Estimated Time per Response: The Commission estimates 40 hours of burden for developing, documenting, and submitting an export policy using the parameters in proposed § 541.2(j) for the first year, assuming that no such policy already exists. For annual updates, the estimated burden would be 5 hours including review and revisions of the existing policy and submitting it electronically.

Total Annual Burden: The Commission estimates the total person-hour burden at 5,600 hours for initial filing and 700 hours thereafter.

Comments are invited on:

- Whether the collection of information will have practical utility;
- Whether the Commission's estimate for the burden of the information collection is accurate;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Please submit any comments, identified by the docket number in the heading of this document, by the methods described in the **ADDRESSES** section of this document.

D. Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). 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, available at *https://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects in 46 CFR Part 542

Administrative practice and procedure, Non-vessel-operating common carriers, Ocean common carrier, Refusal to deal or negotiate, Vessel-operating common carriers, Vessel space accommodations.

■ For the reasons set forth in the preamble, the Federal Maritime Commission proposes to add 46 CFR part 542 to read as follows:

PART 542—COMMON CARRIER PROHIBITIONS

Sec.

Authority: 5 U.S.C. 553; and 46 U.S.C. 46105, 40307, 40501–40503, 40901–40904, 41101–41106.

§ 542.1 Definition of unreasonable refusal of cargo space accommodations when available and unreasonable refusal to deal or negotiate with respect to vessel space provided by an ocean common carrier.

(a) *Purpose.* This part establishes the elements and definitions necessary for the Federal Maritime Commission (Commission) to apply 46 U.S.C. 41104(a)(3) with respect to refusals of cargo space accommodations when available and to apply 46 U.S.C. 41104(a)(10) with respect to refusals of vessel space accommodations provided by an ocean common carrier. This part applies to complaints brought before the

[5] 44 U.S.C. 3507.

[6] 5 CFR 1320.11.

Commission by a private party and enforcement cases brought by the Commission.

(b) *Definitions.* For the purposes of this section:

(1) *Cargo space accommodations* means space which has been negotiated for aboard the vessel of an ocean common carrier for laden containers being imported to or exported from the United States. Cargo space accommodations includes the services necessary to access and load or unload cargo from a vessel calling at a U.S. port.

(2) *Documented export policy* means a written report produced by an ocean common carrier that details the ocean common carrier's practices and procedures for U.S. outbound services.

(3) *Sweeper vessel* means a vessel exclusively designated to load and move empty containers from a U.S. port for the purpose of transporting them to another designated location.

(4) *Transportation factors* means factors that encompass the vessel operation considerations underlying an ocean common carrier's ability to accommodate laden cargo for import or export, which can include, but are not limited to, vessel safety and stability, weather-related scheduling considerations, and other factors related to vessel operation outside the vessel operators' control.

(5) *Unreasonable* means ocean common carrier conduct that unduly restricts the ability of shippers to meaningfully access ocean carriage services.

(6) *Vessel space accommodations* means space available aboard a vessel of an ocean common carrier for laden containers being imported to or exported from the United States. Vessel space accommodations also includes the services necessary to access or book vessel space accommodations.

(c) *Elements for claims.* The following elements are necessary to establish a successful private party or enforcement claim under 46 U.S.C. 41104(a)(3):

(1) The respondent must be an ocean common carrier as defined in 46 U.S.C. 40102;

(2) The respondent refuses or refused cargo space accommodations when available; and

(3) The ocean common carrier's conduct is unreasonable.

(d) *Non-binding considerations when evaluating unreasonable conduct.* In evaluating the reasonableness of an ocean common carrier's refusal to provide cargo space accommodations, the Commission may consider the following factors:

(1) Whether the ocean common carrier followed a documented export policy that enables the efficient movement of export cargo;

(2) Whether the ocean common carrier made a good faith effort to mitigate the impact of a refusal;

(3) Whether the refusal was based on legitimate transportation factors; and

(4) Any other factors relevant in determining whether there was a refusal in that particular case.

(e) *Non-binding examples of unreasonable conduct.* The following are examples of the kinds of conduct that may be considered unreasonable under 46 U.S.C. 41104(a)(3) when linked to a refusal to provide cargo space accommodations:

(1) Blank sailings or schedule changes with no advance notice or with insufficient advance notice;

(2) Vessel capacity limitations not justified by legitimate transportation factors;

(3) Failing to alert or notify shippers with confirmed bookings;

(4) Scheduling insufficient time for vessel loading so that cargo is constructively refused;

(5) Providing inaccurate or unreliable vessel information;

(6) Categorically or systematically excluding exports in providing cargo space accommodations; or

(7) Any other conduct the Commission finds unreasonable.

(f) *Elements for claims.* The following elements are necessary to establish a successful private party or enforcement claim under 46 U.S.C. 41104(a)(10):

(1) The respondent must be an ocean common carrier as defined in 46 U.S.C. 40102;

(2) The respondent refuses or refused to deal or negotiate with respect to vessel space accommodations; and

(3) The ocean common carrier's conduct is unreasonable.

(g) *Non-binding considerations when evaluating unreasonable conduct.* In evaluating the reasonableness of an ocean common carrier's refusal to deal or negotiate with respect to vessel space accommodations, the Commission may consider the following factors:

(1) Whether the ocean common carrier followed a documented export policy that enables the efficient movement of export cargo;

(2) Whether the ocean common carrier engaged in good-faith negotiations;

(3) Whether the refusal was based on legitimate transportation factors; and

(4) Any other factors relevant in determining whether there was a refusal in that particular case.

(h) *Non-binding examples of unreasonable conduct.* The following are examples of the kinds of conduct that may be considered unreasonable under 46 U.S.C. 41104(a)(10) when linked to a refusal to deal or negotiate:

(1) Quoting rates that are so far above current market rates they cannot be considered a real offer or an attempt at engaging in good faith negotiations;

(2) Categorically or systematically excluding exports in providing vessel space accommodations; and

(3) Any other interactions or communications with the shipper or other conduct the Commission finds unreasonable.

(i) *Use of sweeper vessels.* Nothing in this part precludes ocean common carriers from using sweeper vessels previously designated for that purpose to reposition empty containers.

(j) *Documented export policy.* Ocean common carriers must follow a documented export policy that enables the efficient movement of export cargo.

(1) A documented export policy must be submitted once per calendar year and include, in a manner prescribed by the Commission, pricing strategies, services offered, strategies for equipment provision, and descriptions of markets served. Updates may be submitted more than once per year if the ocean common carrier chooses to do so. Other topics a documented export policy should also address, if applicable, include:

(i) The effect of blank sailings or other schedule disruptions on the ocean common carrier's ability to accept shipments; and

(ii) The alternative remedies or assistance the ocean common carrier would make available to a shipper to whom it refused vessel space accommodations.

(2) A documented export policy required to be filed by this part must be submitted to: Director, Bureau of Trade Analysis, Federal Maritime Commission, *exportpolicy@fmc.gov.*

(k) *Shifting the burden of production.* In accordance with applicable laws, the following standard applies:

(1) The burden to establish a violation of this part is with the complainant or Bureau of Enforcement, Investigations, and Compliance.

(2) Once a complainant sets forth a prima facie case of a violation, the burden shifts to the ocean common carrier to justify that its action were reasonable.

(3) The ultimate burden of persuading the Commission remains with the complainant or Bureau of Enforcement, Investigations, and Compliance.

§ 542.2 [Reserved]

By the Commission.

William Cody,

Secretary.

[FR Doc. 2023–12744 Filed 6–12–23; 4:15 pm]

BILLING CODE 6730–02–P

Notices

Federal Register
Vol. 88, No. 114
Wednesday, June 14, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–AMS–22–0066]

United States Standards for Beans

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of final action.

SUMMARY: The United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is revising the United States Standards for Beans under the United States Agricultural Marketing Act of 1946, as amended, (AMA). AMS is revising the grade-determining factors for Moisture and Contrasting Chickpeas in the class Chickpea/Garbanzo Beans.

DATES: Applicable July 1, 2023.

FOR FURTHER INFORMATION CONTACT: Loren Almond, USDA AMS; Telephone: (816) 702–3925; Email: *Loren.L.Almond@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the AMA (7 U.S.C. 1621–1627), as amended, AMS establishes and maintains a variety of voluntary quality and grade standards for agricultural commodities that serve as a fundamental starting point to define commodity quality and facilitate marketing of U.S. commodities in the domestic and global marketplace.

The USDA–AMS–Federal Grain Inspection Service (FGIS) maintains and implements the U.S. Standards for Beans, last revised in 2017, which are available on the AMS public website (*https://www.ams.usda.gov/grades-standards*). The U.S. Standards for Beans define commonly used industry terms; contain basic principles governing the application of standards, such as the type of sample used for a particular quality analysis; outline the basis of determination; and specify grades and grade requirements. Official testing procedures for determining grading factors are provided in the Bean Inspection Handbook. Together, the grading standards and testing procedures allow buyers and sellers to communicate quality requirements, compare bean quality using equivalent forms of measurement, and assist in price discovery.

AMS published a notice and request for comments in the **Federal Register** on October 12, 2022 (87 FR 61559), inviting interested parties to comment on proposed revisions to the standards pertaining to Moisture and Contrasting Chickpeas/Garbanzo Beans as grade-determining factors in the class Chickpeas/Garbanzo Beans in the U.S. Standards for Beans. AMS proposed the revisions following discussions with stakeholders in the bean processing/handling industry.

Proposed Revision of Moisture Determination in Chickpea/Garbanzo Beans

Currently, the maximum tolerance for moisture in U.S. No. 1, 2, and 3 grade chickpeas is 18.0 percent. AMS–FGIS met with representatives of bean industry stakeholders, who stated that 18.0 percent moisture content is too high for proper storage and maintenance of Chickpea/Garbanzo Beans and that the standard should be revised to a lower moisture content. However, FGIS is aware that moisture content is often a contract specification and that there is a need in the market for a grade that recognizes a higher moisture content. After various meetings and discussions, bean stakeholders recommended revising the moisture limit for U.S. No. 1, 2, and 3 grades of Chickpea/Garbanzo Beans downward from 18.0 percent to 14.0 percent and revising the standard for ''High Moisture'' beans from above 18.0 percent to above 14.0 percent moisture. Accordingly, FGIS proposed in the October 12, 2022, notice (87 FR 61559), that Chickpea/Garbanzo Beans with more than 14.0 percent moisture should be designated as Special Grade, ''High Moisture.''

Proposed Revision of Contrasting Chickpea/Garbanzo Beans

Currently, the maximum tolerance for contrasting chickpeas, that differ substantially in shape or color, in U.S. No. 3 grade is 5.0 percent. Chickpea samples with greater than 5.0 percent contrasting chickpeas are considered ''U.S. Substandard'' grade. However, stakeholders told FGIS that contrasting chickpeas of greater than 5.0 percent do not affect actual bean quality, the entire sample of beans is still considered Chickpea/Garbanzo Beans, and that such beans are marketable. For these reasons stakeholders requested that chickpeas with greater than 5.0 percent contrast not be considered ''U.S. Substandard.'' Stakeholders recommended revising the standard by changing the grade criteria for Contrasting Chickpeas in Chickpea/Garbanzo Beans. Under the recommended revision, Chickpea/Garbanzo Beans with greater than 2.0 percent contrasting chickpeas could be considered U.S. No. 3 grade. Accordingly, FGIS proposed in the October 12, 2022, notice (87 FR 61559), that Chickpea/Garbanzo Beans found to contain more than 2.0 percent Contrasting Chickpeas could be designated as U.S. No. 3 but would grade no higher than U.S. No. 3. Contrasting Chickpea grading criteria for U.S. No. 1 and U.S. No. 2 would remain unchanged.

Comment Review

The publication of the notice and request for comment initiated a 60-day comment period, which ended December 12, 2022. AMS received no comments on the proposed revisions.

Final Action

For the foregoing reasons, AMS–FGIS is revising the U.S. Standards for Beans in the class Chickpea/Garbanzo Bean by amending the criteria for Special Grade ''High Moisture'' and the grade determining factor ''Contrasting Chickpeas''. Accordingly, Chickpeas/Garbanzo Beans with more than 14.0 percent moisture will be considered Special Grade, ''High Moisture,'' and samples with Contrasting Chickpeas over 2.0 percent will grade no higher than U.S. No. 3 Chickpea/Garbanzo Beans.

These revisions to the Chickpea/Garbanzo Bean standard are effective July 1, 2023. Table 3.10 of the Bean Inspection Handbook will be updated to reflect the revised bean standard, as shown below.

TABLE 3.10—CHICKPEAS (GARBANZO BEANS)

Grade	Maximum limits of—						
	Moisture [1] (percent)	Total defects (DB, FM, CCL, & SPL) (percent)	Total damaged (percent)	Foreign material		Contrasting Classes [2] (percent)	Contrasting Chickpeas [3] (percent)
				Total (percent)	Stones (percent)		
U.S. No. 1	14.0	2.0	2.0	0.5	0.2	0.5	1.0
U.S. No. 2	14.0	4.0	4.0	1.0	0.4	1.0	2.0
U.S. No. 3	14.0	6.0	6.0	1.5	0.6	2.0	>2.0

[1] Beans with more than 14.0 percent moisture are graded High Moisture.
[2] Beans with more than 2.0 percent contrasting classes are graded Mixed Beans.
[3] Beans with more than 2.0 percent contrasting chickpeas must grade no higher than a U.S. No. 3.

U.S. Substandard: U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3 or U.S. Sample Grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample Grade.

U.S. Sample Grade: U.S. Sample Grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass, or metal fragments; or which are otherwise of distinctly low quality.

Authority: 7 U.S.C. 1621–1627.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–12708 Filed 6–13–23; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Reinstatement Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and reinstatement under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (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 the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by July 14, 2023. 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.

National Agricultural Statistics Service

Title: Irrigation and Water Management Survey (IWMS).

OMB Control Number: 0535–0234.

Summary of Collection: The 2023 Irrigation and Water Management Survey will mark 44 years of irrigation data collected on water management practices and water uses in American agriculture. Irrigation surveys have been conducted since 1974 as supplements to the quinquennial Censuses of Agriculture. This survey, supplementing basic irrigation data collected in the census, is conducted on a sample basis; the survey can provide comprehensive analyses of irrigation, production, and operator information with less respondent burden and cost than if this information were gathered as part of a census collection. The 2023 Irrigation and Water Management Survey will obtain data describing the irrigation activities of U.S. farm operations. Some of these activities are of current National interest, such as the chemigation, fertigation, and water-conserving uses and practices of irrigators. The 2023 Irrigation and Water Management Survey will play an important part in providing critically needed data to address these types of issues. The Irrigation Survey is an integral part of the 2022 Census of Agriculture and is conducted every five years under the authority of the Census of Agriculture Act of 1997 (Pub. L. 105–113) where participation is mandatory. This law requires the Secretary of Agriculture to conduct a census of agriculture in 2002 and every fifth year thereafter (prior to 1997 the census was conducted by the Department of Commerce).

Need and Use of the Information: The primary purpose of this survey is to provide detail data relating to on-farm irrigation activities for use in preparing a wide variety of water-related local programs, economic models, legislative initiatives, market analyses, and feasibility studies. The Irrigation and Water Management Survey data are the only data that are complete, consistent, and accurate enough to be used for bench-marking on-farm irrigation measures over time. The absence of the Irrigation and Water Management Survey data would certainly affect irrigation policy decisions. Federal programs, legislation, and impact studies would instead be subject to greater uncertainty and error.

Description of Respondents: Farms; business or other for-profit.

Number of Respondents: 35,100.

Frequency of Responses: Reporting: once.

Total Burden Hours: 26,974.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–12667 Filed 6–13–23; 8:45 am]

BILLING CODE 3410–20–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 14, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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

Foreign Agricultural Service

Title: Scientific Exchange Program.

OMB Control Number: 0551–New.

Summary of Collection: The primary purpose for this information collection is for the Scientific Exchanges Program implemented by USDA's Foreign Agricultural Service, Global Programs, Fellowship Programs. The program aims to educate a new generation of agricultural scientists from middle-income and emerging market countries, promote collaborative research, and extend knowledge to users and intermediaries in the international agricultural marketplace. USDA also uses the program as a market development tool to assist in opening markets and decreasing or eliminating trade barriers, which ultimately increases and creates new opportunities for U.S. agricultural exports. Authority for these programs falls under: 7 U.S. Code § 3291—Agricultural fellowship program for middle income countries, emerging democracies, and emerging markets.

Need and Use of the Information: The information collected by Fellowship Programs is used to implement the USDA FAS Scientific Exchanges Program. The information is collected through the Scientific Exchanges Program Application that candidates submit to FAS staff through a form application submitted by email. This information is collected to execute each Scientific Exchanges Program. Applicants are interviewed verbally as part of the application process. Based on this interview, the best qualified candidates are selected to participate in the Program.

The evaluation form is used by Scientific Exchanges Program staff to assess the success of each training program. Fellowship staff uses this form to assess whether programs goals were achieved and receive feedback from participants on how to improve future programming. This is a critical part of Fellowship Programs as it helps improve programs and ensure Fellowship Programs is meeting FAS goals.

Without the application and evaluation form, the Foreign Agricultural Service would not be able execute the Scientific Exchange Program and it would be severely impacted and the objected and goals would not be met.

Description of Respondents: Individuals or households.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 426.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–12683 Filed 6–13–23; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–38–2023]

Foreign-Trade Zone (FTZ) 163, Notification of Proposed Production Activity; Puerto Rico Steel Products Corporation; (Construction and Fencing Products); Coto Laurel, Puerto Rico

Puerto Rico Steel Products Corporation submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Coto Laurel, Puerto Rico within Subzone 163L. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on June 8, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material/component and specific finished product 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 product and material/component would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed finished product is galvanized chain link fence with PVC coating (duty rate is duty-free).

The proposed foreign-status material/component is galvanized wire with PVC coating (duty rate is duty-free). The request indicates that the material/component is subject to duties under section 232 of the Trade Expansion Act of 1962 (section 232) or section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 232 and 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 8, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–12690 Filed 6–13–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Thomas Harris, Jr., Inmate Number: 77801–066, FCI Pollock, Federal Correctional Institution, P.O. Box 4050, Pollock, LA 71467; Order Denying Export Privileges

On March 1, 2022, in the U.S. District Court for the Eastern District of Pennsylvania, Thomas Harris, Jr. (''Harris'') was convicted of violating 18 U.S.C. 554(a). Specifically, Harris was convicted of smuggling and attempting to smuggle 14 firearms from the United States to Saint Lucia. As a result of his conviction, the Court sentenced Harris to 46 months of confinement, three years of supervised release and a $1,500 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Harris's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Harris to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Harris.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Harris's export privileges under the Regulations for a period of 10 years from the date of Harris's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Harris had an interest at the time of his conviction.[3]

Accordingly, it is hereby *Ordered:*

First, from the date of this Order until March 1, 2032, Thomas Harris, Jr., with a last known address of Inmate Number: 77801–066, FCI Pollock, Federal Correctional Institution, P.O. Box 4050, Pollock, LA 71467, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), 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 Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, 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 Regulations, or engaging in any other activity subject to 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 Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Harris 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 order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Harris may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Harris and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until March 1, 2032.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–12715 Filed 6–13–23; 8:45 am]

BILLING CODE 3510–DT–P

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Boris Livshits, 9V Kuttuzi, Leningrad Oblast, St. Petersburg, Russian Federation; Svetlana Skvortsova, Yablochinkova 21, Moscow, Russian Federation; Aleksey Ippolitov, Ozernaya 46, Moscow, Russian Federation; Advanced Web Services, 417 Brightwater Court, Apt 6f, Brooklyn, NY 11235'; Strandway, LLC, 99 Wall St, Ste. 148, New York, NY 10005; Nikolaos Bogonikolos, Artemidos 36, Palaio Faliro, Attica, Greece; Aratos Group, L. Amfitheas 10, Athens, 17564, Greece. and 10 Amfitheas Avenue, 17564, Palaio Faliro, Greece; Order Renewing Temporary Denial of Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations (the ''Regulations'' or ''EAR''),[1] I hereby grant the request of the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its 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, along with the additions and denial of the export privileges of Nikolaos Bogonikolos (''Bogonikolos'') and the Aratos Group (''Aratos''), are necessary in the public interest to prevent an imminent violation of the Regulations.

I. Procedural History

On December 13, 2022, I signed an order denying the export privileges of Boris Livshits, Svetlana Skvortsova, Aleksey Ippolitov, Advanced Web Services, and Strandway, LCC (''Strandway'') (collectively ''the Respondents'') 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]

On May 18, 2023, BIS, through OEE, submitted a written request for renewal of the TDO that was issued on December 13, 2022. OEE's request for renewal also contained evidence related to Bogonikolos and Aratos.[3] The written request was made more than 20 days before the TDO's scheduled expiration. A copy of the renewal request was sent to Respondents 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. 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 ''[l]ack 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.

As of February 24, 2022, any item classified under any Export Classification Control Number (''ECCN'') in Categories 3 through 9 of the Commerce Control List (''CCL'') required a license to be exported or reexported to Russia. *See* 87 FR 12226 (Mar. 3, 2022). As of April 8, 2022, the license requirements for Russia were expanded to cover all items on the CCL. *See* 87 FR 22130 (Apr. 14, 2022). These rules were codified in Title 15 CFR 746.8, which state, ''a license is required, excluding deemed exports and deemed reexports, to export, reexport, or transfer (in-country) to or within Russia or Belarus any item subject to the EAR and specified in any Export Control Classification Number (''ECCN'') on the CCL.''

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 demonstrate the existence of an extensive procurement network conspiring to violate U.S. export control laws by unlawfully procuring and shipping military and sensitive dual-use technologies from U.S. manufacturers to Russian end users. As detailed in its May 18, 2023 request for renewal of the TDO, OEE's investigation, which remains ongoing, has revealed evidence that this illicit network and its reach are broader in scope and more extensive than initially realized. As a result, the renewal of this order, along with the issuance of an order temporarily denying the export privileges of Nikolaos Bogonikolos and the Aratos Group, are necessary.

1. The Basis for the Initial TDO

On or about September 12, 2022, and as detailed in the initial TDO issued on December 13, 2022, Livshits, Skvortsova, and Ippolitov, along with co-conspirators Yevgeniy Grinin,[4] were each indicted on multiple counts in the United States District Court for the Eastern District of New York. The

[1] The Regulations, currently codified at 15 CFR parts 730–774 (2021), originally issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), as extended by successive Presidential Notices, continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)) (''IEEPA''). 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 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 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.

[2] The TDO was published in the **Federal Register** on December 16, 2022 (87 FR 77067).

[3] In the renewal request, OEE also noted that a TDO request related to Bogonikolos and the Aratos Group was forthcoming.

[4] Grinin is the owner and operator of Photon Pro, LLP (''Photon''), which was placed on the BIS Entity List on March 9, 2022, with a policy of denial for all items subject to the EAR (87 FR 13141). Grinin and Photon have also both been identified as Specially Designated Nationals (SDNs) by the U.S. Treasury Department, Office of Foreign Assets Control (''OFAC'') pursuant to Executive Order 14024 (87 FR 20505).

charges included, but were not limited to, conspiring to violate U.S. export control laws in connection with the unlicensed export of electronic signal generator and measurement equipment, among other items, to BIS-listed entities in Russia, including OOO Serniya Engineering (''Serniya''),[5] a wholesale machinery and equipment company located in Moscow, Russia.

As further detailed in the initial TDO, Serniya heads an illicit procurement network (collectively, the ''Serniya Network'') operating under the direction of Russia's intelligence services to evade U.S. sanctions to acquire sensitive military grade and dual-use technologies, including advanced semiconductors, for the Russian military, defense sector, and research institutions. The initial TDO was also based on evidence that Livshits and the other Respondents were engaged in unlawfully procuring and shipping military and sensitive dual-use technologies from U.S. manufacturers to Russian end users, including the Serniya Network. These items included advanced electronics and sophisticated testing equipment, some of which can be used in military applications. As stated in the initial TDO, the procurement activity occurred from at least January 2017 through October 2022, and Respondents actively sought to conceal their unlawful export-related activities in order to evade detection by law enforcement.

2. Basis for Renewal and Additions of Bogonikolos and the Aratos Group

In its May 18, 2023 request for renewal of the TDO, OEE has presented evidence that the scope of the Serniya Network is broader, and its conduct more extensive, than initially realized. OEE has presented additional evidence demonstrating that the procurement network extends to multiple co-conspirators and countries. For instance, OEE's investigation has identified other co-conspirators and procurement agents for the Serniya Network, including Nikolaos Bogonikolos, the founder and president of the Aratos Group, a network of defense-related companies in the Netherlands and Greece.

As noted in OEE's request for renewal, a superseding indictment was filed on or about December 5, 2022, charging Livshits, Skvortsova, Ippolitov, Grinin and three additional co-conspirators with, among other charges, conspiring to violate U.S. export control laws. On or about May 2, 2023, in the United States District Court for the Eastern District of New York, Bogonikolos was charged by complaint with smuggling and other related offenses. As alleged in the complaint, Bogonikolos assisted Grinin and Ippolotov in their efforts to procure U.S. origin items on behalf of the Serniya Network, including the procurement of tactical military antennas, which were classified under ECCN 3A611.x, controlled for national security reasons, and required a license for export to Russia. Specifically, after Grinin and Ippolotov identified U.S. origin items for procurement, Bogonikolos assisted the Serniya Network by purchasing the items and concealing the true end user by claiming the items would be used by Aratos in the Netherlands.

On May 22, 2023, a second superseding indictment was filed in the United States District Court for the Eastern District of New York charging Livshits, Skvortsova, Ippolitov, Grinin, and Bogonikolos, and others, with smuggling and conspiracy to violate U.S. export control laws, *inter alia.* As detailed in the second superseding indictment, Bogonikolos, a Greek national, is the founder and president of the Aratos Group, a defense conglomerate in the Netherlands and Greece. Bogonikolos purchased sensitive military and dual-use items from U.S. companies on behalf of Serniya and Sertal and routed the shipments through the Aratos Group to various transshipment points to conceal the true Russian end users.

As further alleged in the second superseding indictment, Bogonikolos, who provided false end use statements to U.S. companies, was recruited as a procurement agent by the Serniya Network in 2017. As part of the arrangement and at Ippolitov's direction, Bogonikolos agreed to work exclusively with Grinin, advising that he understood that Ippolitov sought to purchase sensitive items. Bogonikolos also advised Grinin about ways to obtain such items in furtherance of the conspiracy. For instance, in February 2018, after Grinin advised that he was having difficulty obtaining a certain product specification, Bogonikolos recommended that he add other items and alter them from Grinin's prior order in an attempt to obtain the shipment and evade detection. On another occasion, Bogonikolos advised Grinin that he signed a false end-use statement, stating that certain items were only for use in the Netherlands.

OEE's investigation also reveals that Bogonikolos and employees of the Aratos Group tracked orders for the Serniya Network by excel spreadsheet. These orders, which occasionally listed the applicable ECCN, included orders with related invoices for either Serniya or Photon. Moreover, one such spreadsheet included a column related to export controls and information about U.S. and European export control restrictions, demonstrating knowledge and familiarity with export control laws.

Since the issuance of the TDO on December 13, 2022, arrest warrants have been issued for Respondents Boris Livshits, Svetlana Skvortsova, and Aleksey Ippolotov. The parties are presently fugitives from U.S. law enforcement and reside in the Russian Federation. Because they have not yet been apprehended, OEE has reason to believe that their illicit procurement efforts will remain ongoing, given the length and nature of the conduct identified to date. Significantly, OEE's investigation has revealed that they are familiar with methods of concealment and are likely to use increasingly sophisticated methods to avoid detection by law enforcement. Additionally, given the size and scope of the Serniya procurement network, including newly identified parties and entities, such as Bogonikolos[6] and the Aratos Group, that span multiple countries including the Netherlands and Greece, there is substantial risk that continued evasion efforts will be successful, absent the renewal of the TDO and addition of Bogonikolos and the Aratos Group as respondents.

III. Findings

I find that the evidence presented by BIS demonstrates that a violation of the Regulations by the above-captioned parties is imminent in both time and degree of likelihood. As such, a TDO is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with Boris Livshits, Svetlana Skvortsova, Aleksey Ippolitov, Advanced Web Services, Strandway, LCC, Nikolaos Bogonikolos, and the Aratos Group in export or reexport transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to preclude future violations of the Regulations given the deliberate, covert, and determined

[5] On March 3, 2022, Serniya, along with OOO Sertal (''Sertal''), another Moscow-based machinery and equipment company and part of the Serniya Network, were both placed on the BIS Entity List, section 744.11 and Supplement No. 4 to part 744 of the Regulations, because they ''have been involved in, contributed to, or otherwise supported the Russian security services, military and defense sectors, and military and/or defense research and development efforts'' (87 FR 13141).

[6] Bogonikolos was arrested in Paris, France in May 2023 based on the criminal charges pending in the U.S. District Court for the Eastern District of New York.

nature of the misconduct and clear disregard for complying with U.S. export control laws.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation in accordance with Section 766.24 and 766.23(b) of the Regulations.

It is therefore ordered:

First, that BORIS LIVSHITS, with an address at 9V Kuttuzi, Leningrad Oblast, St. Petersburg, Russian Federation; SVETLANA SKVORTSOVA, with an address at Yablochinkova 21 Moscow, Russian Federation; ALEKSEY IPPOLITOV, with an address at Ozernaya 46 Moscow, Russian Federation; ADVANCED WEB SERVICES, with an address at 417 Brightwater Court, Apt 6f Brooklyn, NY 11235; STRANDWAY, LLC, with an address at 99 Wall St, Ste. 148 New York, NY 10005; NIKOLAOS BOGONIKOLOS, with an address at Artemidos 36, Palaio Faliro, Attica, Greece; and the ARATOS GROUP, with addresses at L. Amfitheas 10, Athens, 17564, Greece and 10 Amfitheas Avenue, 17564, Palaio Faliro, Greece; and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') 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, 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, or in any other activity subject to the EAR; 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 in any other activity subject to the EAR.

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 a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person 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 a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person 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; 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 a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. 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 Boris Livshits, Svetlana Skvortsova, Aleksey Ippolitov, Advanced Web Services, Strandway, LCC, Nikolaos Bogonikolos, and/or the Aratos Group by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

In accordance with the provisions of Section 766.24(e) of the EAR, Boris Livshits, Svetlana Skvortsova, Aleksey Ippolitov, Advanced Web Services, Strandway, LCC, Nikolaos Bogonikolos, and the Aratos Group 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. Respondents Boris Livshits, Svetlana Skvortsova, Aleksey Ippolitov, Advanced Web Services, Strandway, LCC, Nikolaos Bogonikolos, and the Aratos Group may oppose a request to renew this Order by filing a written submission with the Assistant Secretary 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 served on each denied person and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023–12679 Filed 6–13–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–850]

Carbon and Alloy Seamless Standard, Line, And Pressure Pipe (Over 4½ Inches) From Japan: Continuation of the Antidumping Duty Order

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) order on carbon and alloy seamless standard, line, and pressure pipe (over 4½ inches) (large diameter pipe) from Japan 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 this AD order.

DATES: Applicable June 6, 2023.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski, 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) 482–1395.

SUPPLEMENTARY INFORMATION:

Background

On June 26, 2000, Commerce published in the **Federal Register** the AD order on large diameter pipe from Japan.[1] On October 3, 2022, the ITC

[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) (*Order*).

instituted,[2] and Commerce initiated,[3] the fourth sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its review, Commerce determined that revocation of the *Order* 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 *Order* be revoked.[4]

On June 6, 2023, the ITC published its determination, pursuant to sections 751(c) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The products covered by this *Order* are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (ASTM) A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this *Order* also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of this *Order* are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 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 this *Order* are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.19.10.30, 7304.19.10.45, 7304.19.10.60, 7304.19.50.50, 7304.31.60.10, 7304.31.60.50, 7304.39.00.04, 7304.39.00.06, 7304.39.00.08, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.15, 7304.51.50.45, 7304.51.50.60, 7304.59.20.30, 7304.59.20.55, 7304.59.20.60, 7304.59.20.70, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. 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 American Society of Mechanical Engineers (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. 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 in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. 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.

The scope of this *Order* 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 exclusions discussed below, 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 this review. 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–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 this *Order.*

[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) (*Initiation Notice*).

[4] *See Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan: Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 87 FR 80162 (December 29, 2022) and accompanying Issues and Decision Memorandum.

[5] *See Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan and Romania,* 88 FR 37096 (June 6, 2023) (*ITC Final Determination*).

Specifically excluded from the scope of this *Order* are: A. 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–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. B. Finished and unfinished oil country tubular goods (OCTG), 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. C. Products produced to the A–335 specification unless they are used in an application that would normally utilize ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications. D. Line and riser pipe for deepwater application, *i.e.,* line and riser pipe that is (1) used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.,* API 5L).

With regard to the excluded products listed above, the Department will not instruct U.S. Customs and Border Protection (CBP) to require end-use certification until such time as Petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized 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 a covered application as described above. For example, if, based on evidence provided by Petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–335 specification is being used in an A106 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 subject to this scope is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the AD *Order* 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 *Order.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Order* will be 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 the *Order* not later than 30 days prior to fifth anniversary of the date of the last determination by the Commission.

Administrative Protective Order (APO)

This notice also serves as a final 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

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

Dated: June 8, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–12765 Filed 6–12–23; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See ITC Final Determination.*

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Advisory Committee

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Renewable Energy and Energy Efficiency Advisory Committee (REEEAC or the Committee) will hold an in-person meeting, accessible to the public in-person and online, on Tuesday, June 27, 2023 at the U.S. Department of Commerce in Washington, DC. Registration instructions for the public to attend either in-person or online are provided below. The meeting has a limited number of spaces for members of the public to attend in-person. Requests to attend in-person will be considered on a first-come first-served basis.

DATES: Tuesday, June 27, 2023, from approximately 9:30 a.m. to 3:30 p.m. Eastern Daylight Time (EDT). Members of the public wishing to participate must register in advance with Cora Dickson at the contact information below by 5:00 p.m. EDT on Friday, June 23, 2023, including any requests to make comments during the meeting or for accommodations or auxiliary aids.

ADDRESSES: To register, please contact Cora Dickson, Designated Federal Officer (DFO), Office of Energy and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–6083; email: *Cora.Dickson@trade.gov.* In their registration, members of the public wishing to attend in-person must request in-person attendance by the firm deadline above.

FOR FURTHER INFORMATION CONTACT: Cora Dickson, DFO, Office of Energy and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–6083; email: *Cora.Dickson@trade.gov.* Registered participants joining virtually will be emailed the login information for the meeting, which will be accessible as a livestream via WebEx Webinar. Registered participants joining in-person will be emailed instructions on accessing the designated meeting space.

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the REEEAC pursuant to discretionary authority and in accordance with the Federal Advisory Committee Act, as amended (5

U.S.C. app.), on July 14, 2010. The REEEAC was re-chartered most recently on May 27, 2022. The REEEAC provides the Secretary of Commerce with advice from the private sector on the development and administration of programs and policies to expand the export competitiveness of U.S. renewable energy and energy efficiency products and services. More information about the REEEAC, including the list of appointed members for this charter, is published online at *http://trade.gov/reeeac.*

On June 27, 2023, the REEEAC will hold the third meeting of its current charter term. The Committee, with officials from the Department of Commerce and other agencies, will be briefed on government programs designed to enhance the competitiveness of the U.S. renewable energy and energy efficiency industries, and hold discussions within subcommittees in order to develop recommendations. An agenda will be made available by June 23, 2023 upon request to Cora Dickson.

The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **DATE** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may not be possible to fill.

A limited amount of time before the close of the meeting will be available for oral comments from members of the public attending the meeting. Members of the public attending virtually who wish to speak during the public comment period must give the DFO advance notice in order to facilitate their access. To accommodate as many speakers as possible, the time for public comments will be limited to two to five minutes per person (depending on number of public participants). Individuals wishing to reserve speaking time during the meeting must contact Cora Dickson using the contact information above and submit a brief statement of the general nature of the comments, as well as the name and address of the proposed participant, by 5:00 p.m. EDT on Friday, June 23, 2023. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a copy of their oral comments by email to Cora Dickson for distribution to the participants in advance of the meeting.

Any member of the public may submit written comments concerning the REEEAC's affairs at any time before or after the meeting. Comments may be submitted via email to the Renewable Energy and Energy Efficiency Advisory Committee, c/o: Cora Dickson, Designated Federal Officer, Office of Energy and Environmental Industries, U.S. Department of Commerce; *Cora.Dickson@trade.gov.* To be considered during the meeting, public comments must be transmitted to the REEEAC prior to the meeting. As such, written comments must be received no later than 5:00 p.m. EDT on Friday, June 23, 2023. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of REEEAC meeting minutes will be available within 30 days following the meeting.

Man K. Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2023–12689 Filed 6–13–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee: Meeting of the Civil Nuclear Trade Advisory Committee

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

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Tuesday, June 27, 2023, from 9:00 a.m. to 4:00 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EDT on Thursday, June 22, 2023.

ADDRESSES: The meeting will be held via Microsoft Teams. The link will be provided by email to registrants. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to Ms. Tshanda Kalombo, Office of Energy & Environmental Industries, International Trade Administration, (email: *tshanda.kalombo@trade.gov*). Members of the public should submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Ms. Tshanda Kalombo, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Phone: 202–482–2561; email: *tshanda.kalombo@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. app.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand U.S. exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the Tuesday, June 27, 2023, CINTAC meeting will include the establishment of CINTAC subcommittees, the election of CINTAC leadership, a discussion of CINTAC priorities for its 2022–2024 charter term, and a discussion on activities related to the U.S. Department of Commerce's Civil Nuclear Trade Initiative.

Members of the public wishing to attend the meeting must notify Ms. Tshanda Kalombo at the contact information above by 5:00 p.m. EDT on Thursday, June 22, 2023, in order to pre-register. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting.

A limited amount of time will be available for brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 20 minutes. Individuals wishing to reserve speaking time during the meeting must contact Ms. Kalombo and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EDT on Thursday, June 22, 2023. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the

meeting, ITA may conduct a lottery to determine the speakers.

Any member of the public may submit written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to Ms. Tshanda Kalombo in the International Trade Administration's Office of Energy & Environmental Industries. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EDT on Thursday, June 22, 2023. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Man K. Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2023–12743 Filed 6–13–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–040]

Truck and Bus Tires From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Determination of Antidumping Duty Investigation; Notice of Amended Order; Correction

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

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published notice in the **Federal Register** of June 6, 2023, in which Commerce amended the antidumping duty order on truck and bus tires from the People's Republic of China (China). This notice contained an incorrect description of the amended order effective date, the merchandise that should be liquidated, and the merchandise which remains subject to the order and which remains enjoined.

FOR FURTHER INFORMATION CONTACT: 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) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2023, Commerce published in the **Federal Register** a notice of decision not in harmony and amended antidumping duty order.[1] We provided an incorrect description of the amended order effective date, the merchandise that should be liquidated, and the merchandise which remains subject to the order and which remains enjoined.

Correction

In the **Federal Register** of June 6, 2023, in FR Doc 2023–12051, on page 37023, in the second and third columns, replace the last sentence in the ''Summary'' section as follows: ''Commerce is notifying the public that the CIT's final judgment is not in harmony with *Truck and Bus Tires from the People's Republic of China: Antidumping Duty Order,* 84 FR 4436 (February 15, 2019) (*Order*), and that Commerce is amending the *Order* to have an effective date of February 21, 2020. With respect to Guizhou Tyre Import and Export Co., Ltd. (GTCIE), merchandise exported by GTCIE during the period February 15, 2019, through February 20, 2020, is not subject to the *Order*; merchandise exported by GTCIE on or after February 21, 2020, remains subject to the *Order*.''

In the **Federal Register** of June 6, 2023, in FR Doc 2023–12051, on page 37024, in the second column, replace the sentence in the ''Amended Antidumping Duty Order'' section as follows: ''Pursuant to the Court's order, Commerce is amending the *Order* to have an effective date of February 21, 2020.''

In the **Federal Register** of June 6, 2023, in FR Doc 2023–12051, on page 37024, in the second column, make the following corrections in the ''Liquidation of Suspended Entries'' section:

- Correct the first sentence of the first paragraph as follows: ''As a result of this amended order, Commerce will direct CBP to terminate any suspension of liquidation of entries from GTCIE during the period February 15, 2019, through February 20, 2020, and to release any bonds or other security and refund cash deposits with interest pertaining to any suspended entries from GTCIE during the period February 15, 2019, through February 20, 2020.''
- Correct the first sentence of the second paragraph as follows: ''At this time, Commerce remains enjoined by CIT order from liquidating entries that were exported by GTCIE, and were entered, or withdrawn from warehouse, during the period February 21, 2020, through January 31, 2024.''
- In the third paragraph, replace ''produced and/or exported by GTCIE,'' with ''exported by GTCIE,''.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: June 9, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–12777 Filed 6–13–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* Truck and Bus Tires from the People's Republic of China: Notice of Court Decision Not in Harmony with the Final Determination of Antidumping Duty Investigation; Notice of Amended Order, 88 FR 37023 (June 6, 2023).

DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Request for Duty-Free Entry of Scientific Instrument or Apparatus; Resubmission

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 March 17, 2023 during a 60-day comment period. This resubmission notice allows for an additional 30 days for public comments.

Agency: Enforcement & Compliance, International Trade Administration.

Title: Review and Approval; Comment Request; Request for Duty-Free Entry of Scientific Instrument or Apparatus.

OMB Control Number: 0625–0037.

Form Number(s): ITA–338P.

Type of Request: Regular Submission current information collection.

Number of Respondents: 65.

Average Hours per Response: 2 hours.

Burden Hours: 130.

Needs and Uses: The collected information is necessary in order to assess a respondent's eligibility to enter equipment duty free, consistent with 19 U.S.C. 1202 and 15 CFR 301.

Affected Public: State or local government; Federal agencies; not for-profit institutions.

Frequency: Every time respondent seeks to import qualifying equipment duty free.

Respondent's Obligation: Mandatory.

Legal Authority: 19 U.S.C. 1202; 15 CFR 301.

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 0625–0037.

Sheleen Dumas,

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

[FR Doc. 2023–12670 Filed 6–13–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD074]

Management Track Assessment for Bluefish, Deep Sea Red Crab, Longfin Inshore Squid, Scup, Summer Flounder

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

ACTION: Notice of public meeting.

SUMMARY: NMFS and the Assessment Oversight Panel (AOP) will convene the Management Track Assessment Peer Review Meeting for the purpose of reviewing bluefish, deep sea red crab, longfin inshore squid, scup, and summer flounder. The Management Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore U.S. waters of the northwest Atlantic. Assessments are prepared by the lead stock assessment analyst and reviewed by an independent panel of independent panel of stock assessment experts. The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

DATES: The public portion of the Management Track Assessment Peer Review Meeting will be held from June 26, 2023—June 28, 2023. The meeting will conclude on June 28 at 5 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held via Google Meet *https://meet.google.com/fxa-tmxy-smy.*

Meeting number (US) + +1 402–8626
Meeting password: 566 056 608

FOR FURTHER INFORMATION CONTACT: Michele Traver, phone: 508–495–2195; email: *michele.traver@noaa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please visit the Northeast Fisheries Science Center (NEFSC) website at *https://www.fisheries.noaa.gov/event/peer-review-2023-june-management-track-assessments.* For additional information about management track assessment peer review, please visit the NEFSC web page at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/management-track-stock-assessments.*

Daily Meeting Agenda—Management Track Peer Review Meeting

The agenda is subject to change; all times are approximate and may be changed at the discretion of the Meeting Chair.

MONDAY, JUNE 26, 2023

Time	Subject	Presenter
9:30 a.m.–9:45 a.m	Welcome/Logistics/Conduct of Meeting	Michele Traver, Russ Brown, Cynthia Jones, Chair.
9:45 a.m.–11:15 a.m	Deep Sea Red Crab, Discussion/Questions	Toni Chute, Panel.
11:15 a.m.–11:30 a.m	Break	
11:30 a.m.–12 p.m	Morning Wrap Up, Summary/Discussion	Panel.
12 p.m.–12:15 p.m	Public Comment	Public.
12:15 p.m.–1:15 p.m	Lunch	
1:15 p.m.–3:30 p.m	Scup, Discussion/Questions	Mark Terceiro, Panel.
3:30 p.m.–3:45 p.m	Break	
3:45 p.m.–4:15 p.m	Afternoon Wrap Up, Summary/Discussion	Panel.
4:15 p.m.–4:30 p.m	Public Comment	Public.
4:30 p.m	Adjourn	

TUESDAY, JUNE 27, 2023

Time	Subject	Presenter
9:30 a.m.–9:35 a.m	Welcome/Logistics	Michele Traver, Cynthia Jones, Chair.
9:35 a.m.–11:15 a.m	Longfin Inshore Squid, Discussion/Questions	Lisa Hendrickson, Panel.
11:15 a.m.–11:30 a.m	Break.	
11:30 a.m.–12 p.m	Morning Wrap Up, Summary/Discussion	Panel.
12 p.m.–12:15 p.m	Public Comment	Public.
12:15 p.m.–1:15 p.m	Lunch.	
1:15 p.m.–3:30 p.m	Summer flounder, Discussion/Questions	Mark Terceiro, Panel.
3:30 p.m.–3:45 p.m	Break.	
3:45 p.m.–4:15 p.m	Afternoon Wrap Up, Summary/Discussion	Panel.
4:15 p.m.–4:30 p.m	Public Comment	Public.
4:30 p.m	Adjourn.	

WEDNESDAY, JUNE 28, 2023

Time	Subject	Presenter
9:30 a.m.–9:35 a.m	Welcome/Logistics	Michele Traver, Cynthia Jones, Chair.
9:35 a.m.–11:15 a.m	Bluefish, Discussion/Questions	Tony Wood, Panel.
11:15 a.m.–11:30 a.m	Break.	
11:30 a.m.–12 p.m	Morning Wrap Up, Summary/Discussion	Panel.
12 p.m.–12:15 p.m	Public Comment	Public.
12:15 p.m.–1:15 p.m	Lunch.	
1:15 p.m.–4:30 p.m	Report Writing	Panel.
4:30 p.m	Adjourn.	

The meeting is open to the public; however, during the 'Report Writing' session on Wednesday, June 28, 2023, at 1:15 p.m. the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to Michele Traver, via email.

Dated: June 8, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–12669 Filed 6–13–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC979]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Offshore of New Jersey and New York

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

ACTION: Notice; issuance of an Incidental Harassment Authorization (IHA).

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Atlantic Shores Offshore Wind, LLC (Atlantic Shores) to incidentally harass marine mammals during marine site characterization surveys off New Jersey and New York.

DATES: This Authorization is effective from June 9, 2023, through June 8, 2024.

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, 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 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.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

History of Request

On August 16, 2021, NMFS received a request from Atlantic Shores for an IHA to take marine mammals incidental to high-resolution geophysical (HRG) marine site characterization surveys offshore of New Jersey and New York in the area of the Bureau of Ocean Energy Management's (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area (OCS–A) 0499 and associated Export Cable Route (ECR) area. Atlantic Shores requested authorization to take small numbers of up to 15 species of marine mammals, by Level B harassment only. On January 27, 2022, NMFS published a notice of the proposed IHA in the **Federal Register** (87 FR 4200). After a 30-day public comment period and consideration of all public comments received, we subsequently issued the IHA, which was effective from April 20, 2022 through April 19, 2023 (87 FR 24103, April 22, 2022). A minor correction notice was published on May 5, 2022 (87 FR 26726).

Atlantic Shores conducted the required marine mammal mitigation and monitoring and did not exceed the authorized levels of take under previous IHAs issued for surveys offshore of New York and New Jersey (85 FR 21198, April 16, 2020; 86 FR 21289, April 22, 2021). These previous monitoring results are available to the public on our website: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-marine-site-characterization.*

On December 27, 2022, NMFS received a request from Atlantic Shores for an IHA to take marine mammals incidental to HRG marine site characterization surveys off of New Jersey and New York in the areas of BOEM Lease Areas OCS–A 0499 and OCS–A 0549 and associated ECR area. Following NMFS' review of the application, Atlantic Shores submitted a

revised request. The application was deemed adequate and complete on January 10, 2023 (the 2023 request). Atlantic Shores' request was for the take of 15 species (16 stocks) of marine mammals, by Level B harassment only. Neither Atlantic Shores nor NMFS expect 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.

This request is identical to the activities covered in the IHA previously issued in 2022. However, NMFS had determined a renewal of the 2022 IHA is not appropriate in this circumstance due to the availability of updated marine mammal density information (June 20, 2022) for all species in the project area (*https://seamap.env.duke.edu/models/Duke/EC/*). Because of this, NMFS relied substantially herein, as appropriate, on the information previously presented in notices associated with issuance of the 2022 IHA (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022; 87 FR 26726, May 5, 2022). We note that BOEM had previously segmented Lease Area OCS–A 0499 into Lease Areas OCS–A 0499 and 0549; thus, the physical lease area is the same as described in the 2022 IHA. More information can be found on BOEM's website: *https://www.boem.gov/renewable-energy/state-activities/new-jersey/atlantic-shores-north-ocs-0549.*

No changes were made from the proposed to the final IHA.

Description of the Activity and Anticipated Impacts

Overview

Atlantic Shores will conduct geotechnical and HRG marine site characterization surveys in BOEM Lease Areas OCS–A 0499 and OCS–A 0549 and along potential submarine ECRs (ECRs North and South) that lead to landfall locations in either New York or New Jersey (refer back to Figure 1 in 88 FR 19075, March 30, 2023). The survey area is the same as previously described in the application for the 2022 IHA (see 87 FR 24103, April 22, 2022) and will consist of approximately 1,450,006 acres (5,868 square kilometers (km^2)) and extends approximately 24 nautical miles (nmi; 44 km) offshore.

The purpose of these surveys are to support the site characterization, siting, and engineering design of offshore wind project facilities, including wind turbine generators, offshore substations, and submarine cables within the Lease Areas and along the ECRs. As many as three survey vessels will operate concurrently as part of the surveys. During the survey effort, vessels will operate at a maximum speed of 3.5 knots (4 miles per hour). Up to 360 survey days will occur, where a ''survey day'' is defined as a 24-hour activity period in which active acoustic sound sources are used (Table 1).

TABLE 1—NUMBER OF SURVEY DAYS THAT ATLANTIC SHORES WILL PERFORM THE DESCRIBED HRG SURVEY ACTIVITIES

Survey area		Number of active survey days expected [1]	
Lease Areas	OCS–A–0499	50	120 days total.
	OCS–A–0549	70	
Export Cable Route North (ECR North)		180	
Export Cable Route South (ECR South)		60	

[1] Surveys in each area may temporally overlap; therefore, actual number of days of activity in a given year may be less than 360.

Underwater sound resulting from Atlantic Shores' site characterization survey activities have the potential to result in incidental take of marine mammals in the form of behavioral harassment (*i.e.,* Level B harassment), specifically during use of acoustic sources operating at <180 kilohertz (kHz). Geotechnical activities have been discussed previously with regards to past IHAs issued to Atlantic Shores (see 85 FR 7926, February 12, 2020; 87 FR 24103, April 22, 2022) and, as no new information has been presented that would change our determinations on these activities, this information will not be reiterated here. Atlantic Shores has requested and NMFS has issued an IHA authorizing the take by Level B harassment only of 15 species of marine mammals (comprising 16 stocks) incidental to marine site characterization surveys, specifically in association with the use of HRG survey equipment. The mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

A detailed description of Atlantic Shores' planned surveys is provided in the **Federal Register** notice of the proposed IHA (88 FR 19075, March 30, 2023) and the 2022 **Federal Register** notice (87 FR 24103, April 22, 2022). Since that time, no changes have been made to the survey activities. Therefore, a detailed description is not provided here. Please refer to those **Federal Register** notices for the description of the specified activities.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to Atlantic Shores was published in the **Federal Register** on March 30, 2023 (88 FR 19075). That proposed notice described, in detail, Atlantic Shores' proposed activities, the marine mammal species that may be affected by these activities, and the anticipated effects on marine mammals while heavily referencing the previous and similar project described in the 2022 proposed (87 FR 4200, January 27, 2022) and 2022 final notices (87 FR 24103, April 22, 2022). In the March 30, 2023 notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 30-day public comment period.

In total, NMFS received 118 public comment letters, including 84 individual comments from private citizens that were non-responsive to NMFS' solicitation for public comment specifically on the proposed authorization for incidental harassment of marine mammals here and/or discuss topics that are otherwise out of scope for this specific action. These public comments fall into the following categories: general opposition to the planned HRG surveys unrelated to the specific marine mammal incidental take authorization that is the subject of this action, general opposition to wind energy development or related

activities, or general opposition to the take of marine mammals under the MMPA; comments relevant to BOEM's authorities and/or actions; and other unrelated and/or irrelevant comments to NMFS' decision regarding the proposed issuance of the subject IHA. Given that many of these comments were non-responsive to NMFS' solicitation and/or discuss topics that are out-of-scope for this specific action, these comments are not described herein or discussed further. NMFS also received five comment letters from non-governmental organizations (NGOs): Clean Ocean Action (COA), the Responsible Offshore Development Alliance (RODA), the Committee For A Constructive Tomorrow (CFACT), and two letters from local citizen groups (Save Long Beach Island (SaveLBI) and Defend Brigantine Beach Inc.), of which the latter of these presented a subset of the same comments submitted by SaveLBI, and therefore, we respond through our responses to both local citizen groups. Lastly, we received 29 comment letters from private citizens that were considered substantive/responsive and are addressed below. However, we also note that these comments from private citizens echoed concerns brought up in the letters received from the aforementioned organizations. Responses to all substantive comments are provided below, and all substantive comments are available on NMFS' website: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* Please see the comment letters for full details regarding the comments and associated rationale.

Comment: SaveLBI provided comments suggesting that this IHA is a renewal of the previous year's IHA.

Response: As NMFS stated in the proposed IHA, the proposed action for which we requested comments was not for a renewal IHA. As described in the proposed **Federal Register** notice, we determined that a renewal IHA was not appropriate due to the release of the new 2022 Duke University density information (Roberts *et al.,* 2023). Instead, we have issued a standard 1year IHA that relied heavily on the previously issued 2022 IHA to Atlantic Shores, as many project details from the previous 2022 survey remained the same as described for the 2023 survey (also as described in the proposed **Federal Register** notice). As we noted in the proposed IHA and in this 2023 IHA, Atlantic Shores has the option for a renewal, if specific conditions and criteria are met.

Comment: A number of commenters have stated that NMFS is proposing to authorize the killing of marine mammals or that a ''take'' equates to mortality of an animal by project activities. Commenters also asserted that the killing of marine mammals has been authorized through previous IHAs.

Response: These comments are founded on the presumption, absent evidence, that serious injury or mortality is a reasonably anticipated outcome of Atlantic Shores' specified activity. NMFS emphasizes that there is no credible scientific evidence available suggesting that mortality and/or serious injury is a potential outcome of the planned survey activity, and commenters provide no information to the contrary. We also refer commenters to the NMFS Greater Atlantic Regional Fisheries Office (GARFO) 2021 Programmatic Consultation, which finds that these survey activities are not likely to adversely affect Endangered Species Act (ESA)-listed marine mammal species, *i.e.,* GARFO's analysis conducted pursuant to the ESA finds that marine mammals are not likely to be taken at all (as that term is defined under the ESA), much less be taken by serious injury or mortality. That document is found here: *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.*

As stated in the **Federal Register** notice (88 FR 19075, March 30, 2023), no mortality or serious injury is expected to occur as a result of the planned surveys, and there is no scientific evidence indicating that any marine mammal could experience these as a direct result of noise from geophysical survey activity. We also note that NMFS has never authorized the mortality of marine mammals via IHAs previously, and NMFS may not permit that form of take under the MMPA using the IHA mechanism. Authorization of mortality and serious injury may only occur through Incidental Take Regulations (ITRs). Furthermore, the applicant did not request, and NMFS has not proposed and has not authorized mortality in any previous HRG IHAs to Atlantic Shores. As the commenters have not pointed out which IHAs they are referring to, NMFS cannot comment more specifically.

Comment: COA advises NMFS to reject Incidental Take Authorizations (ITAs) to Atlantic Shores until the Draft North Atlantic Right Whale and Offshore Wind Strategy (Draft Strategy) is finalized, and measures to avoid, minimize, or eliminate harm are determined so that such measures might be applied to the project. To support its request, COA further notes that the Draft Strategy affirms that the North Atlantic right whales (NARW) population is in dire status, as evidenced by the fact that the potential biological removal (PBR) level is less than one, which, according to COA, means population impacts from Level A or B harassment must be avoided, as the NARW population cannot withstand any mortality/serious injury (M/SI) due to the species low genetic diversity and resilience to future perturbations.

Response: As identified by COA, in October 2022, NMFS and BOEM released a draft joint strategy to protect and promote the recovery of NARWs while responsibly developing offshore wind energy. The draft strategy identifies three main goals: (1) mitigation and decision-support tools, (2) research and monitoring, and (3) collaboration, communication and outreach. It focuses on improving the body of science and integrating past, present and future efforts related to NARWs and offshore wind development. In its comment, the COA discusses the PBR level and the stock's status suggesting that Level B (behavioral) harassment can have population level impacts. We note that no mortality or Level A harassment is anticipated or authorized from the Atlantic Shores proposed site assessment surveys. While NMFS agrees that the NARW population abundance is alarmingly low (with entanglement in fishing gear and vessel strikes being the leading causes of NARW mortality), NMFS disagrees that the type of harassment authorized in this IHA would adversely impact population levels. The magnitude of harassment is very low and the severity of any behavioral responses is limited to temporary displacement and avoidance of the area when some acoustic sources that have the potential to result in harassment are active (see Determinations section). Moreover, the MMPA mandates that NMFS shall issue requested authorizations provided certain findings are made and that those findings be made based on the best available science. NMFS has made the required findings, based on the best available science, and has included mitigation measures, many of which are included in the Draft Strategy as appropriate for HRG surveys, designed to effect the least practicable adverse impact on NARWs. Finalizing the Strategy or similar efforts is not a requirement to issue ITAs. COA's comment regarding other construction activities is outside the scope of this

authorization. NMFS analyzes requests for authorization to harass marine mammals for wind farm construction as received. The specified activity in Atlantic Shores' application is limited to HRG site assessment surveys, not construction.

Comment: COA states that NMFS should pause all ''industrial full-scale construction (and related activities)'' for offshore wind energy until the Federal agencies determine the best way to eliminate or avoid all impacts on NARW.

Response: We note that COA has not provided any suggestions on how to eliminate and avoid all impacts on the NARW. Therefore, NMFS is not able to evaluate or consider other suggestions, beyond the mitigation measures that were already proposed in the **Federal Register** notice (88 FR 19075, March 30, 2023). If COA wishes to provide additional suggestions in the future, NMFS would be able to evaluate these in context with the specific proposed action(s). In the absence of additional information or proposals regarding further reduction of impacts to NARWs, NMFS must implement the MMPA as required by the statute (*i.e.,* upon making the necessary findings (*e.g.,* small numbers; negligible impact) and prescribing measures affecting the least practicable adverse impact), as we have done here, NMFS shall authorize incidental take of marine mammals.

Given the primary risk to NARWs is ship strike, the mitigation measures that NMFS requires do address this specifically and include: a requirement that all vessel operators comply with 10 knots (kn; 18.5 km/hour) or less speed restrictions in any Seasonal Management Area (SMA), Dynamic Management Area (DMA), or Slow Zone while underway, and check daily for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (SMAs, DMAs, Slow Zones) and information regarding NARW sighting locations; a requirement that all vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 operate at speeds of 10 kn (18.5 km/hour) or less; a requirement that all vessel operators reduce vessel speed to 10 kn (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed near the vessel; a requirement that all survey vessels maintain a separation distance of 500 m or greater from any ESA-listed whales or other unidentified large marine mammals visible at the surface while underway; a requirement that, if underway, vessels must steer a course away from any sighted ESA-listed whale at 10 kn or less until the 500 m minimum separation distance has been established; a requirement that, if an ESA-listed whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral; a requirement that all vessels underway must maintain a minimum separation distance of 100 m from all non-ESA-listed baleen whales; and a requirement that all vessels underway must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel). We have determined that the ship strike avoidance measures in the IHA are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat.

Comment: COA states that the applicant's survey activities will increase the number of vessels in the ocean in the project area, which would lead to an increased threat of harm by vessel strikes to marine mammals, specifically NARW. Similarly, members of the public and CFACT have claimed that animals being displaced out of lower traffic areas into a higher trafficked area may increase the likelihood of fatal ship strikes.

Response: NMFS does not anticipate that NARW would be permanently displaced or displaced for extended periods of time from the area where Atlantic Shores' marine site characterization surveys would occur, and commenters do not provide evidence that this effect should be a reasonably anticipated outcome of the specified activity. We expect temporary avoidance to occur, at worst, but that is distinctly different from displacement. Similarly, NMFS is not aware of any scientific information suggesting that the survey activity would drive marine mammals into shipping lanes and disagrees that this would be a reasonably anticipated effect of the specified activities. The authorized take by Level B harassment is precautionary but considered unlikely as NMFS' take estimation analysis does not account for the use of extremely precautionary mitigation measures (*e.g.,* the requirement for Atlantic Shores to implement a shutdown zone (500 m) that is more than three times as large as the estimated harassment zone (141 m)). These requirements are expected to largely eliminate the actual occurrence of Level B harassment events and to the extent that harassment does occur, would minimize the duration and severity of any such events. Therefore, even if a NARW was in the area of the specified activities, a displacement impact is not anticipated.

Although the primary stressor to marine mammals from the specified activities is acoustic exposure from the sound source, NMFS takes seriously the risk of vessel strike and has prescribed measures sufficient to avoid the potential for ship strike to the extent practicable. NMFS has required these measures despite a very low likelihood of vessel strike; vessels associated with the survey activity will add a discountable amount of vessel traffic to the specific geographic region and furthermore, vessels towing survey gear travel at very slow speeds (*i.e.,* roughly 4–5 kn; 7.4–9.3 km/h).

Comment 7: COA and SaveLBI suggest that NMFS address the cumulative impacts on marine mammals, specifically the NARW and other endangered marine mammal species, from all vessels associated with Atlantic Shores' project as well as other projects occurring in the nearby region. SaveLBI additionally asserts that, because the MMPA refers to ''citizens'' in the plural, and because section 101(a)(5)(A) of the MMPA refers to findings relating to the total taking over a 5-year (or less) period, the MMPA requires cumulative impact assessments.

Response: Neither the MMPA nor NMFS' codified implementing regulations call for consideration of other unrelated activities and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989) states, in response to comments, that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (*e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors). The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There, NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, this IHA as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated

activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D) issued to discrete applicants.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Atlantic Shores was the applicant for the IHA, and we are responding to the specified activity as described in that application and making the necessary findings on that basis.

Through the response to public comments in the 1989 implementing regulations (54 FR 40338, September 29, 1989), NMFS also indicated (1) that we would consider cumulative effects that are reasonably foreseeable when preparing a National Environmental Policy Act (NEPA) analysis and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for listed species, as appropriate. Accordingly, NMFS has written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities in similar locations (*e.g.,* the 2017 Ocean Wind, LLC EA for site characterization surveys off New Jersey and the 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island). Cumulative impacts regarding issuance of IHAs for site characterization survey activities, such as those planned by Atlantic Shores, have been adequately addressed under NEPA in prior environmental analyses that support NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. NMFS independently evaluated the use of a categorical exclusion (CE) for issuance of Atlantic Shores' IHA, which included consideration of extraordinary circumstances.

Separately, the cumulative effects of substantially similar activities in the northwest Atlantic Ocean have been analyzed in the past under section 7 of the ESA when NMFS has engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (*https://repository.library.noaa.gov/view/noaa/29291*). Analyzed activities include those for which NMFS issued previous IHAs (82 FR 31562, July 7, 2017; 85 FR 21198, April 16, 2020; 86 FR 26465, May 10, 2021), which are similar to those planned by Atlantic Shores under this current IHA request. This Biological Opinion determined that NMFS' issuance of IHAs for site characterization survey activities associated with leasing, individually and cumulatively, are not likely to adversely affect listed marine mammals. NMFS notes that, while issuance of this IHA is covered under a different consultation, this Biological Opinion remains valid.

With regard to SaveLBI's additional assertions that the MMPA's incidental take authorization provisions require a cumulative impacts assessment, we reiterate our disagreement. Regardless of the MMPA's references to ''citizens'' in the plural, there is no guidance offered by the MMPA, NMFS' implementing regulations, or any other supporting information, such as the associated legislative history, that an assessment of cumulative impacts is required under the MMPA. SaveLBI's reference to the 5-year period, found in section 101(a)(5)(A) of the MMPA, is not relevant to the issuance of the subject IHA under section 101(a)(5)(D) of the MMPA, and we do not address it further.

Comment 8: COA, SaveLBI, and a member of the public state that they do not believe the take proposed for authorization related to this project consists of ''small numbers'' of marine mammals as required by the MMPA. SaveLBI further states that NMFS' small numbers determination is not supported scientifically or consistent with the holding in *Natural Resources Defense Council* vs. *Evans*. SaveLBI further advises that NMFS redefine ''small numbers'' to align with a more science-based population percentage based on SaveLBI's suggestions where a specific distinction would be made for ''endangered'' and ''critically endangered'' species.

Response: NMFS disagrees with the commenters' arguments on the topic of small numbers. Although there is limited legislative history available to guide NMFS and an apparent lack of biological underpinning to the concept, we have worked to develop a reasoned approach to small numbers. NMFS explains the concept of ''small numbers'' in recognition that there could also be quantities of individuals taken that would correspond with ''medium'' and ''large'' numbers. As such, NMFS considers that one-third of the most appropriate population abundance number—as compared with the assumed number of individuals taken—is an appropriate limit with regard to ''small numbers.'' This relative approach is consistent with the statement from the legislative history that ''[small numbers] is not capable of being expressed in absolute numerical limits'' (H.R. Rep. No. 97–228, at 19 (September 16, 1981)), and relevant case law (*Center for Biological Diversity* v. *Salazar,* 695 F.3d 893, 907 (9th Cir. 2012) (holding that the U.S. Fish and Wildlife Service reasonably interpreted ''small numbers'' by analyzing take in relative or proportional terms)). In regards to SaveLBI's suggestion that the one-third number is inconsistent with prior case law, we note that SaveLBI cited the *Natural Resources Defense Council Inc. (NRDC)* v. *Evans* decision of October 31, 2002 (232 F. Supp. 2d 1003), which was related to the plaintiffs' motion for a preliminary injunction. Ultimately, after parties' cross-motions for summary judgment, the Evans court held that NMFS' regulatory definition of small numbers (which NMFS did not apply here) improperly conflated the small numbers and negligible impact issues (*NRDC* v. *Evans,* 279 F. Supp. 2d 1129 (N.D. Cal. 2003)). Contrary to SaveLBI's suggestion, the Evans court expressly stated that it was not setting any numerical limit for small numbers. *NRDC* v. *Evans,* 279 F. Supp. 2d at 1153. As for SaveLBI's suggestion to reconsider small numbers specifically for NARW, the argument to establish a small numbers threshold on the basis of stock-specific context is unnecessarily duplicative of the required negligible impact finding, in which relevant biological and contextual factors are considered in conjunction with the amount of take.

Comment 9: SaveLBI states that NMFS authorizing take by harassment for 33 percent of a marine mammal population is approximately 43 times the potential biological removal (PBR) level of (0.7) defined for NARW.

Response: SaveLBI inappropriately conflates Level B harassment (*i.e.,* behavioral disturbance)—the only type of taking authorized through this IHA—with mortality and serious injury through its reference to the stock's PBR level. A stock's PBR level is ''the maximum number of animals, not including natural mortalities that may be *removed* from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable

population.'' PBR is not an appropriate metric to evaluate Level B harassment, which does not result in mortality or serious injury of marine mammals (*i.e.,* removals from the population), and NMFS has described and used an analytical framework that is appropriate. We consider levels of ongoing anthropogenic mortality from other sources, such as commercial fisheries, in relation to calculated PBR levels as part of the environmental baseline in our negligible impact analysis.

Comment: COA expresses their concern over potential ''masking'' of NARW calls, which could reduce breeding and foraging opportunities or impair navigation and transiting.

Response: Fundamentally, the masking effects to any one individual whale from one survey are expected to be minimal. Masking is referred to as a chronic effect because one of the key harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. Also, inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur (and further, this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency) and as our analysis both quantitatively and qualitatively indicates, we do not expect these exposures with the potential for masking to be of a long duration within a given day because of the relative movement of whales and vessels. Further, because of the relatively low density of mysticetes and relatively large area over which the vessels travel, we do not expect any individual whales to be exposed to potentially masking levels from these surveys for more than a few days in a year.

As noted above, any masking effects of this survey are expected to be limited and brief, if present. Given the likelihood of significantly reduced received levels beyond even short distances from the survey vessel combined with the short duration of potential masking and the lower likelihood of extensive additional contributors to background noise offshore and within these short exposure periods, we believe that the incremental addition of the survey vessel is unlikely to result in more than minor and short-term masking effects likely occurring to some small number of the same individuals captured in the estimate of behavioral harassment.

Comment: COA is concerned regarding the number of species that could be impacted by the activities as well as a lack of baseline data being available for species in the area (*e.g.,* harbor seals), specifically their habitat use of the waters in and around Atlantic Shores' lease areas. In addition, COA has stated that NMFS did not adequately address the potential for cumulative impacts to bottlenose dolphins from Level B harassment over several years of project activities.

Response: NMFS repeats our response from the previous **Federal Register** notice (87 FR 24103, April 22, 2022), as it remains applicable to the comment provided by COA.

We appreciate the concern expressed by COA. NMFS utilizes the best available science when analyzing which species may be impacted by an applicant's proposed activities. Based on information found in the scientific literature as well as based on density models developed by Duke University, all marine mammal species included in the proposed **Federal Register** notice have some likelihood of occurring in Atlantic Shores' survey areas. Furthermore, the MMPA requires us to evaluate the effects of the specified activities in consideration of the best scientific evidence available and, if the necessary findings are made, to issue the requested take authorization. The MMPA does not allow us to delay decision making in hopes that additional information may become available in the future. Furthermore, NMFS notes that it has previously addressed discussions on cumulative impact analyses in previous comments and references COA back to these specific responses in this notice.

Regarding the lack of baseline information cited by COA, with specific concern pointed out for harbor seals, NMFS points towards two sources of information for marine mammal baseline information: the Ocean/Wind Power Ecological Baseline Studies, January 2008—December 2009 completed by the New Jersey Department of Environmental Protection in July 2010 (*https://dspace.njstatelib.org/xmlui/handle/10929/68435*) and the Atlantic Marine Assessment Program for Protected Species (AMAPPS; *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/atlantic-marine-assessment-program-protected*) with annual reports available from 2010 to 2021 (*https://www.fisheries.noaa.gov/resource/publication-database/atlantic-marine-assessment-program-protected-species*) that cover the areas across the Atlantic Ocean. NMFS has duly considered this and all available information. Based on the information presented, NMFS has determined that no new information has become available nor do the commenters present additional information that would change our determinations since the publication of the proposed notice.

Comment: COA, RODA, Defend Brigantine Beach Inc., and members of the public assert that the strandings that have occurred in the New Jersey/New York region since December 2022 could be connected to offshore wind pre-construction activities.

Response: NMFS reiterates that there is no evidence that noise resulting from offshore wind development-related site characterization surveys could potentially cause marine mammal stranding, and there is no evidence linking recent large whale mortalities and currently ongoing surveys. The commenters offer no such evidence. NMFS will continue to gather data to help us determine the cause of death for these stranded whales. We note the Marine Mammal Commission's recent statement: ''There continues to be no evidence to link these large whale strandings to offshore wind energy development, including no evidence to link them to sound emitted during wind development-related site characterization surveys, known as HRG surveys. Although HRG surveys have been occurring off New England and the mid-Atlantic coast, HRG devices have never been implicated or causatively-associated with baleen whale strandings.'' (Marine Mammal Commission Newsletter, Spring 2023).

There is an ongoing Unusual Mortality Event (UME) for humpback whales along the Atlantic coast from Maine to Florida, which includes animals stranded since 2016. Partial or full necropsy examinations were conducted on approximately half of the whales. Necropsies were not conducted on other carcasses because they were too decomposed, not brought to land, or stranded on protected lands (*e.g.,* national and state parks) with limited or no access. Of the whales examined (roughly 90), about 40 percent had evidence of human interaction, either ship strike or entanglement. Vessel strikes and entanglement in fishing gear are the greatest human threats to large whales. The remaining 50 necropsied whales either had an undetermined cause of death (due to a limited examination or decomposition of the carcass), or had other causes of death including parasite-caused organ damage and starvation.

As discussed herein, HRG sources may behaviorally disturb marine mammals (*e.g.,* avoidance the immediate area). These HRG surveys are very different from seismic airguns used in oil and gas surveys or tactical military sonar. They produce much smaller impact zones because, in general, they have lower source levels and produce output at higher frequencies. The area within which HRG sources might behaviorally disturb a marine mammal is orders of magnitude smaller than the impact areas for seismic airguns or military sonar. Any marine mammal exposure would be at significantly lower levels and shorter duration, which is associated with less severe impacts to marine mammals.

Comment: COA suggests that NMFS provide evidence that whale occurrence increased in this area during the winter.

Response: NMFS directs COA to Duke University's Marine Geospatial Ecology Laboratory's 2022 density data (Roberts *et al.,* 2023), which NMFS considers to be the best available science regarding NARW occurrence (version 12; *https://seamap.env.duke.edu/models/mapper/EC?species=Eubalaena%20glacialis*). Based on the dataset, humpback whale occurrence off New Jersey is fairly consistent year-round, with reductions noted starting around July through August, and densities increasing again starting in September. Humpback whales, as the population has grown, are seen more often in the Mid-Atlantic. Along the New Jersey shore, these whales may be following their prey (small fish) which were reportedly close to shore this winter. These prey also attract fish that are of interest to recreational and commercial fishermen, which increases the number of boats in these areas.

Comment: COA insists that NMFS provide ''clarity and due process'' for the ''determination of accountability,'' specifically related to understanding how much accumulated Level A harassment and Level B harassment from offshore wind energy development and other activities is too much.

Response: NMFS is unclear regarding the meaning of COA's references to ''clarity and due process,'' or under what statutory requirement COA believes that an ambiguous ''determination of accountability'' is required. We do note, as discussed elsewhere herein, that NMFS has made all necessary findings under the MMPA in support of issuance of the subject IHA, and is similarly compliant with other relevant statutory requirements, *e.g.,* NEPA, ESA. We also refer to the previous response addressing concerns regarding the need for additional analysis of cumulative impacts.

Comment: COA states that BOEM has no legal authority for permitting offshore geotechnical and geophysical survey activities, based on text from the proposed BOEM Renewable Energy Modernization proposed rule (88 FR 5968, January 30, 2023; 88 FR 19578, April 3, 2023). They further state that this has allowed for no oversight with regards to surveys off New Jersey and New York and that they do not understand how BOEM can make assertions without regulations/guidance for HRG survey work. COA further states that, given NMFS' regulatory authority under the MMPA and ESA, they should oversee the governance of surveys.

Response: NMFS' statutory authority for this particular action is limited to authorizing incidental take of marine mammals. COA associates these authorities under the MMPA and ESA with a suggestion that NMFS should ''oversee the governance of surveys,'' but without further explanation of why this would be appropriate or authorized by statute. NMFS respectfully refers the commenter to BOEM, the agency with responsibility for managing development of U.S. Outer Continental Shelf energy and mineral resources in an environmentally and economically responsible way.

Comment: RODA states that NMFS should cease what it describes as a segmented phase-by-phase and project-by-project approach to IHAs, and suggests that NMFS provide additional clarification and transparency on the ITA process for offshore wind actions and how an ITR is determined as appropriate versus an IHA. They also state that this process and information should be made publicly available, and recommend that NMFS improve the transparency of this process. Conversely, COA suggests that the IHA, as proposed, is for two separate offshore wind energy projects (Atlantic Shores 1 and Atlantic Shores 2) and their relevant export cable areas and that requests covering more than one project should be submitted and reviewed separately, rather than collectively.

Response: The MMPA and its implementing regulations allow, upon request, the incidental take of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region. NMFS responds to these requests by authorizing the incidental take of marine mammals if it finds that the taking would be of small numbers, have no more than a ''negligible impact'' on the marine mammal species or stock, and not have an ''unmitigable adverse impact'' on the availability of the species or stock for subsistence use. NMFS emphasizes that an IHA does not authorize the specified activity itself but rather, authorizes the take of marine mammals incidental to the ''specified activity'' for which incidental take coverage is being sought. In this case, NMFS is responding to the applicant, Atlantic Shores and the specified activity described in their application and making necessary findings on the basis of what was provided in their application. The authorization of Atlantic Shores' specified activity (note, not the authorization of takes incidental to that activity) is not within NMFS' jurisdiction.

For transparency on NMFS' ITA process, we direct RODA to our website (*https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act*) and the detailed application instructions (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/apply-incidental-take-authorization*) for additional information on the ITA process, which is consistently applicable across all types of activities (*e.g.,* offshore wind, construction, oil and gas, military, research, HRG). These resources describe, in detail, step-by-step instructions on what is needed in an ITA request, what is evaluated, and how determinations are made for any specific project. This information is and has remained publicly available.

Regarding clarification on IHAs versus ITRs, as described on our website, IHAs are 1-year authorizations and ITRs are 5-year regulations that allow for the issuance of Letters of Authorization (LOA). An ITR must be used if authorization of take by mortality is appropriate. However, both options are available for applicants requesting authorization of harassment only. While applicants may request a 5-year regulation for HRG survey activities, NMFS has not received any requests like that to date. Instead, applicants have most often requested 1-year authorizations to cover a single year of activities at a single time.

Finally, NMFS is required to consider applications upon request, and the MMPA does not provide NMFS with authority to dictate an applicant's definition of its specified activity (*e.g.,* separation/combination of survey effort for Atlantic Shores 1 and 2). An individual company owning multiple lease areas may apply for a single authorization to conduct site characterization surveys across a combination of those lease areas, such

as activities conducted by Orsted (see 85 FR 63508, October 8, 2020; 87 FR 13975, March 11, 2022; 87 FR 61575, October 12, 2022) or may request a single authorization for a single project or lease area. Regarding the RODA suggestion, to date, NMFS has not received any joint HRG applications between multiple applicants. While an individual company owning multiple lease areas may apply for a single authorization to conduct site characterization surveys across a combination of those lease areas (see 85 FR 63508, October 8, 2020; 87 FR 13975, March 11, 2022), this is not applicable in this case. In the future, if applicants wish to undertake this approach, NMFS is open to the receipt of joint applications and additional discussions on joint actions.

Comment: RODA expressed concern regarding the potential for increased uncertainty in estimates of marine mammal abundance resulting from wind turbine presence during aerial surveys and potential effects of NMFS' ability to continue using current aerial survey methods to fulfill its mission of precisely and accurately assessing protected species.

Response: NMFS has determined that offshore wind development projects may impact several Northeast Fisheries Science Center (NEFSC) surveys, including aerial surveys for protected species, and NEFSC has developed and implemented a Federal survey mitigation program to mitigate the impacts to these surveys. However, this impact is outside the scope of analysis related to the authorization of take incidental to Atlantic Shores' specified activity under the MMPA.

Comment: RODA expressed concerns with the high amount of increased vessel traffic associated with offshore wind projects throughout the region in areas transited or utilized by certain protected resources as well as concern for vessel noise.

Response: Atlantic Shores did not request authorization for take incidental to vessel traffic during marine site characterization surveys. Nevertheless, NMFS analyzed the potential for vessel strikes to occur during the survey and determined that the potential for vessel strikes is so low as to be discountable. NMFS does not authorize any take of marine mammals incidental to vessel strike resulting from the survey. If Atlantic Shores were to strike a marine mammal with a vessel, this would be an unauthorized take and a violation of the MMPA. This gives Atlantic Shores a strong incentive to operate its vessels with all due caution and to effectively implement the suite of vessel strike avoidance measures called for in the IHA. Section 4(g) in the issued IHA contains a suite of non-discretionary requirements pertaining to ship strike avoidance, including vessel operation protocols and monitoring. To date, NMFS is not aware of any site characterization vessels from HRG surveys reporting a vessel strike within the United States. When considered in the context of low overall probability of any vessel strike by Atlantic Shores' vessels, given the limited additional survey-related vessel traffic relative to existing traffic in the survey area, the comprehensive visual monitoring, and other additional mitigation measures described herein, NMFS believes these measures are sufficiently protective to avoid ship strike. These measures are described fully in the Mitigation section below and include, but are not limited to: training for all vessel observers and captains, daily monitoring of North Atlantic right whale Sighting Advisory System, WhaleAlert app, and United States Coast Guard (USCG) Channel 16 for situational awareness regarding NARW presence in the survey area, communication protocols if whales are observed by any Atlantic Shores personnel, vessel operational protocol should any marine mammal be observed, and visual monitoring.

The potential for impacts related to an overall increase in the amount of vessel traffic due to offshore wind development is separate from the aforementioned analysis of potential for vessel strike during Atlantic Shores' specified survey activities and is not discussed further as this is out-of-scope of this specific action.

Comment: RODA refers to the Marine Mammal Commission's previous comments on the matter of effects on marine mammals from offshore wind development, expressing that ''they are more knowledgeable on impacts of pile driving and acoustics to marine mammals.''

Response: In response to RODA's deferral to the Marine Mammal Commission, we note that the Commission has questioned in its previous public comment submissions whether incidental take authorizations are even necessary for surveys utilizing HRG equipment (*i.e.,* take is unlikely to occur) and has subsequently informed NMFS that they would no longer be commenting on such actions, which includes Atlantic Shores' activity described herein. Additionally, comments related to pile driving and offshore wind construction are outside the scope of this IHA and, therefore, are not discussed.

Comment: RODA refers to the September 9, 2020 letter submitted by 17 Environmental NGOs and echoes their concerns.

Response: NMFS refers RODA to the **Federal Register** notice published at 85 FR 63508 (October 8, 2020) for our responses to the Environmental NGOs' letter.

Comment: RODA expressed concern that negative impacts to local fishermen and coastal communities as a result of a potentially adverse impact to marine mammals (*e.g.,* vessel strike resulting in death or severe injury) were not mentioned nor evaluated in ''the IHA request for this project.'' RODA also emphasized concern about the lack of adequate analysis of individual and cumulative impacts to marine mammals, noting existing fishery restrictions as a result of other NARW protections.

Response: Neither the MMPA nor our implementing regulations require NMFS to analyze impacts to other industries (*e.g.,* fisheries) or coastal communities from issuance of an ITA. As detailed in the proposed IHA notice, NMFS has analyzed the potential for adverse impacts such as vessel strikes to marine mammals, including NARWs, as a result of Atlantic Shores' planned site characterization survey activities and determined that no serious injury or mortality is anticipated. In fact, as discussed in the Determinations section later in this document, no greater than low-level behavioral harassment is expected for any affected species. For the NARW, in particular, it is considered unlikely, as a result of the required precautionary shutdown zone (*i.e.,* 500 m versus the estimated maximum Level B harassment zone of 141 m), that the authorized take (by Level B harassment only) would occur at all.

In regards to the cumulative impacts, we reiterate our response from Comment 7 here as it remains applicable to this comment as well.

Comment: RODA suggests NMFS modify the exclusion zone for all marine mammals to 500 m during nighttime hours.

Response: RODA suggests that the shutdown zone should be increased at night for all marine mammals to match that required for NARW because of its contention that Protected Species Observers (PSOs) may not be able to differentiate between different species of cetaceans in low-light conditions. However, the IHA empowers the PSO to, in cases where identification may be uncertain, base decisions regarding implementation of mitigation on best professional judgment. This means that,

if the PSO believes that an observed marine mammal may be a NARW but is not sure, they have the authority to call for shutdown of the acoustic source. NMFS does not agree that expansion of the shutdown zone for all species during nighttime conditions is warranted.

Comment: RODA suggests that in the event of a ship strike by an Atlantic Shores vessel, the applicant is also required to notify the United States Coast Guard via VHF Channel 16.

Response: As stated in the IHA, in the event of a ship strike of a marine mammal by any vessel involved in the survey activities, Atlantic Shores is required to report the incident to NMFS as soon as feasible. Given this, RODA does not adequately explain why this requirement would be useful nor why it should be required independent of the one described already in the IHA. As such, NMFS does not agree that it should be included in the IHA.

Comment: RODA states that the IHA should not have the option to be renewed or should face additional scrutiny if (a) there are takes not authorized by the initial notice (Level A harassment or other takes of species not included in this IHA); and (b) if HRG surveys are proven to cause harm to marine mammals.

Response: With regards to RODA's first suggestion, NMFS has included language in the final IHA, which was presented in the draft IHA during the public comment period, that includes a relevant provision in the General Conditions (3(c)): ''The taking by injury, serious injury or death of any of the species listed in Table 1 (of the IHA) or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.''

In speaking to the second point described by RODA, NMFS would evaluate IHAs on a case-by-case basis, as necessary, if new information was presented.

Comment: Members of the public, CFACT, and SaveLBI state that they are against the idea that this project is exempt from further analysis under NEPA based upon use of the Categorical Exclusion and suggest that the IHA violates the requirements of NEPA. CFACT and SaveLBI further state that this project requires preparation of a full scale Environmental Impact Assessment/Environmental Impact Statement (EIA/EIS) under NEPA.

Response: NMFS does not agree with the commenters. A categorical exclusion (CE) is a category of actions that an agency has determined does not individually or cumulatively have a significant effect on the quality of the human environment and is appropriately applied for such categories of actions so long as there are no extraordinary circumstances present that would indicate that the effects of the action may be significant. Extraordinary circumstances are situations for which NOAA has determined further NEPA analysis is required because they are circumstances in which a normally excluded action may have significant effects. A determination of whether an action that is normally excluded requires additional evaluation because of extraordinary circumstances focuses on the action's potential effects and considers the significance of those effects in terms of both context (consideration of the affected region, interests, and resources) and intensity (severity of impacts). Potential extraordinary circumstances relevant to this action include (1) adverse effects on species or habitats protected by the MMPA that are not negligible; (2) highly controversial environmental effects; (3) environmental effects that are uncertain, unique, or unknown; and (4) the potential for significant cumulative impacts when the proposed action is combined with other past, present, and reasonably foreseeable future actions.

The relevant NOAA CE associated with issuance of incidental take authorizations is CE B4, ''Issuance of incidental harassment authorizations under section 101(a)(5)(A) and (D) of the MMPA for the incidental, but not intentional, take by harassment of marine mammals during specified activities and for which no serious injury or mortality is anticipated.'' This action falls within CE B4. In determining whether a CE is appropriate for a given incidental take authorization, NMFS considers the applicant's specified activity and the potential extent and magnitude of takes of marine mammals associated with that activity along with the extraordinary circumstances listed in the Companion Manual for NOAA Administrative Order (NAO) 216–6A and summarized above. The evaluation of whether extraordinary circumstances (if present) have the potential for significant environmental effects is limited to the decision NMFS is responsible for, which is issuance of the incidental take authorization. While there may be environmental effects associated with the underlying action, potential effects of NMFS' action are limited to those that would occur due to the authorization of incidental take of marine mammals. NMFS prepared numerous Environmental Assessments (EAs) analyzing the environmental impacts of the categories of activities encompassed by CE B4, which resulted in Findings of No Significant Impacts (FONSIs) and, in particular, numerous EAs prepared in support of issuance of IHAs related to similar survey actions are part of NMFS' administrative record supporting CE B4. These EAs demonstrate the issuance of a given incidental harassment authorization does not affect other aspects of the human environment because the action only affects the marine mammals that are the subject of the incidental harassment authorization. These EAs also addressed factors in 40 CFR 1508.27 regarding the potential for significant impacts and demonstrate the issuance of incidental harassment authorization for the categories of activities encompassed by CE B4 do not individually or cumulatively have a significant effect on the human environment.

Specifically for this action, NMFS independently evaluated the use of the CE for issuance of Atlantic Shores' IHA, which included consideration of extraordinary circumstances. As part of that analysis, NMFS considered including whether this IHA issuance would result in cumulative impacts that could be significant. In particular, the issuance of an IHA to Atlantic Shores is expected to result in minor, short-term behavioral effects on marine mammal species due to exposure to underwater sound from site characterization survey activities. Behavioral disturbance is expected to occur intermittently in the vicinity of Atlantic Shores' survey area during the 1-year timeframe. Level B harassment will be reduced through use of mitigation measures described herein. Additionally, as discussed elsewhere, NMFS has determined that Atlantic Shores' activities fall within the scope of activities analyzed in 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), which concluded surveys such as those planned by Atlantic Shores are not likely to adversely affect ESA-listed species or adversely modify or destroy critical habitat. Accordingly, NMFS has determined that the issuance of this IHA will result in no more than negligible (as that term is defined by the Companion Manual for NAO 216–6A) adverse effects on species protected by the ESA and the MMPA.

Further, the issuance of this IHA will not result in highly controversial environmental effects or result in environmental effects that are uncertain,

unique, or unknown because numerous entities have been engaged in site characterization surveys that result in Level B harassment of marine mammals in the United States. This type of activity is well documented; prior authorizations and analysis demonstrate issuance of an IHA for this type of action only affects the marine mammals that are the subject of the specific authorization and, thus, no potential for significant cumulative impacts are expected, regardless of past, present, or reasonably foreseeable actions, even though the impacts of the action may not be significant by itself. Based on this evaluation, we concluded that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Lastly, as NMFS has already stated, the specified activity identified in this IHA is not for construction activities related to offshore wind but instead for site characterization surveys routinely undertaken by applicants for site assessment. Therefore, any comments related to construction activities are out-of-scope for this action.

Comment: CFACT stated that if a species is displaced due to survey activities this may pressure the prey and food supplies of other species and result in food scarcity.

Response: Given the relatively low and temporary impacts expected from site characterization surveys, NMFS does not expect foraging activities for any species to change to a level that could cause a reduction of individual or species fitness. While NMFS has stated that some temporary avoidance of some species may occur (*e.g.,* NARWs), these effects would be temporary and short-term with animals being able to move away from the vessel and return to the site after the vessel has passed. Even in the event that species are temporarily displaced into parallel habitat, given no known concentrated and primary foraging aggregations in the New Jersey/New York region for any species included in the IHA, we do not expect this to be a likely outcome of these surveys.

Comment: SaveLBI and CFACT has made the assumption that HRG surveys may ''block'' the migration of NARWs, or at least seriously disrupt them. CFACT further states that this would mean 100 percent of the migratory corridor would be impacted instead of the 2.11 percent that NMFS calculated in the proposed notice. Similarly, SaveLBI states that NMFS did not accurately present the NARW migration corridor against Atlantic Shores' survey area. They assert that how NMFS described the overlap is misleading by providing the large spatial area of the migratory corridor. They also cite the 2015 Duke University density models to describe the highest presence of NARWs in the project area.

Response: None of the commenters have provided any evidence or justification that HRG surveys would fully ''block'' the migration of NARWs in the area, so NMFS cannot evaluate this information beyond what is described here. There is no scientific evidence that HRG signals, which are of low intensity and consist of small distances to the Level B harassment threshold (141 m at the largest based on sparker usage), would impede NARW migration or the movements of any marine mammal species. Furthermore, given the relatively small size of the largest harassment zone (141 m), not even accounting for the required 500 m vessel separation distance for NARW from survey vessels, we note that the comparison of the width of the migratory corridor is not the entire survey area planned by Atlantic Shores. Instead, this width is determined by the size of the harassment zone at any given moment in the survey, a tiny portion of the total survey area.

NMFS disagrees with SaveLBI's assertion regarding NARW migratory habitat. As we previously stated above, NARW migratory habitat is very large in comparison to the overall size of Atlantic Shores' survey area but also, importantly, we do not expect any meaningful or significant impacts to important behavior that may occur within the portion of this habitat that may be impacted by the specified activity. Because of this, we expect that any potential exposures NARWs may experience when transiting the migratory corridor would not result in more than behavioral harassment to a minor degree. Furthermore, as we stated above, the largest acoustic source is producing a relatively small harassment zone (141 m) from the vessel and that Atlantic Shores' surveys will not constitute the entire width of the migratory corridor. As is necessary for authorizations issued under the MMPA, we have fully evaluated any potential impacts to both the behaviors of marine mammals (including NARWs) and to their habitats to make our negligible impact determination.

Furthermore, NMFS is not aware of any scientific literature, data, or reports that support this assertion. If the commenters were willing to share their data, NMFS would be able to take this under consideration. However, as it currently stands, there is no credible evidence that we are aware of that states that disturbances would physically ''block'' the migration of NARWs.

Lastly, we also note here that SaveLBI references the Duke University density models for the U.S. Atlantic and Gulf of Mexico from 2015 (*https://seamap.env.duke.edu/models/Duke-EC-GOM-2015/*). NMFS did not use this data in its analysis as much more recent data has since been released that NMFS has determined to constitute the best available science. NMFS refers SaveLBI to the more recent Roberts *et al.* (2023) density models for NARWs (version 12). Based on this data, it appears that December-April are the highest density months with densities dropping off into the summer.

Comment: A private citizen commented that the ''wind wake'' effect from offshore wind farms would reduce annual primary production that some species use as a food source.

Response: NMFS notes that this action, as was proposed for Atlantic Shores, is not for the construction of an offshore wind farm but for a site characterization survey. As such, comments related to construction specifically are out of scope for this specific action.

Comment: CFACT provided a comment stating that Atlantic Shores' proposal is premature because the Atlantic Shores Wind Project has not been approved and harassment should not be authorized for speculative projects.

Response: The MMPA does not require that NMFS ascertain whether a proposed project will be approved or not prior to issuing requested incidental take authorizations. Furthermore, as previously discussed, NMFS considers applications upon request and the issuance of this authorization is separate from any construction activities directly relevant to offshore wind farms.

Comment: CFACT and SaveLBI indicated that they believe the survey area to be too large for the described proposed surveys as the geographical scope of the survey does not seem to match up with the stated site characterization survey area. Commenters justify this by saying that the export cable routes were not previously described in BOEM's Construction and Operations Plans (COP) and Notice of Intent (NOI) and therefore, cannot be included in the scope of Atlantic Shores' requested activities.

Response: As previously stated, it is not in NMFS' jurisdiction to dictate how and where an applicant's activities should be performed. Under the MMPA, NMFS must analyze and make findings, if possible, based on the specified

activity as described by the applicant. Any stakeholder comments regarding the geographical scope and size of survey activities or what information is or is not included in BOEM's COP and NOI (*i.e.,* inclusion of the export cable routes, wind turbine generator placement/locations) are out of scope for the described proposed action as BOEM, not NMFS, is in charge of leasing and activities occurring within a defined area and region.

Comment: A member of the public has expressed concern that the proposed HRG surveys will cause irreparable damage to marine mammal habitat.

Response: NMFS does not expect impacts or damage to marine mammal habitat from HRG surveys. This is due, in part, to the limited area of effect from the acoustic sources as compared to the entire habitat extent (141 m maximum using the sparker) as well as the temporary and localized nature of the acoustic sources themselves. Temporary avoidance of marine mammals and their prey may occur at some points, but these are expected to be localized and few, with occurrence patterns returning to normal levels once the acoustic source has been turned off and/or after the survey vessel has moved. No physical impacts are expected to occur that would change the habitat in any way during the acoustic surveys (*i.e.,* no destruction of the seabed, any nearby reefs, or removal of sediment or bottom resources that fish may use). Because of this, NMFS has determined that all impacts to the marine environment and habitat are considered negligible.

Comment: SaveLBI requests that NMFS explain why a 20 decibel (dB) propagation loss coefficient was applicable to the analysis presented in the proposed notice or to go back and rerun the analysis using a 15 dB propagation loss coefficient.

Response: SaveLBI states that NMFS' assumption that use of a 20logR transmission loss factor (*i.e.,* spherical spreading) is inappropriate and states that ''According to a number of scientific sources, the use of a noise propagation loss coefficient of 20 dB per tenfold increase in distance represents ''spherical spreading'' and is only appropriate in the ''near field'' where the calculated horizontal distance is comparable with the water depth. However, SaveLBI does not cite any such scientific sources, so NMFS must evaluate SaveLBI's recommendations based only on its comment.

A major component of transmission loss is spreading loss and from a point source in a uniform medium, sound spreads outward as spherical waves (''spherical spreading'') (Richardson *et al.,* 1995). In water, these conditions are often thought of as being related to deep water, where more homogenous conditions may be likely. However, the theoretical distinction between deep and shallow water is related more to the wavelength of the sound relative to the water depth versus the water depth itself. Therefore, when the sound produced is in the kilohertz range, where wavelength is relatively short, much of the continental shelf may be considered ''deep'' for purposes of evaluating likely propagation conditions.

As described in the previous **Federal Register** notice of proposed IHA (87 FR 4200, January 27, 2022), the area of water ensonified at or above the root mean square (RMS) sound pressure level 160 dB threshold was calculated using a simple model of sound propagation loss, which accounts for the loss of sound energy over increasing range. Our use of the spherical spreading model (where propagation loss = 20 * log [range]; such that there would be a 6-dB reduction in sound level for each doubling of distance from the source) is a reasonable approximation over the relatively short ranges involved and is suggested for use in our HRG guidance (NMFS, 2020). Use of a spherical spreading model in this case is also consistent with a recent publication regarding HRG (Ruppel *et al.,* 2022), wherein the authors state that spherical spreading dominates even in shallow water depths, at the frequencies of most HRG surveys. Even in conditions where cylindrical spreading (where propagation loss = 10 * log [range]; such that there would be a 3-dB reduction in sound level for each doubling of distance from the source) may be appropriate (*e.g.,* non-homogenous conditions where sound may be trapped between the surface and bottom), this effect does not begin at the source. In any case, spreading is usually more or less spherical from the source out to some distance and then may transition to cylindrical (Richardson *et al.,* 1995). For these types of surveys, NMFS has determined that spherical spreading is a reasonable assumption even in relatively shallow waters (in an absolute sense) as the reflected energy from the seafloor will be much weaker than the direct source and the volume influenced by the reflected acoustic energy would be much smaller over the relatively short ranges involved.

In support of its position, SaveLBI cites several examples of use of practical spreading (a useful real-world approximation of conditions that may exist between the theoretical spreading modes of spherical and cylindrical; 15logR) in asserting that this approach is also appropriate here. However, as NMFS has previously stated to SaveLBI, these examples (U.S. Navy construction at Newport, RI, and NOAA construction in Ketchikan, AK) are not relevant to the activity at hand. First, these actions occur in even shallower water (*e.g.,* less than 10 m for Navy construction). Of greater relevance to the action here, pile driving activity produces sound with longer wavelengths than the sound produced by the acoustic sources planned for use here. As noted above, a determination of appropriate spreading loss is related to the ratio of wavelength to water depth more than to a strict reading of water depth. NMFS indeed uses practical spreading in typical coastal construction applications, but for reasons described here, uses spherical spreading when evaluating the effects of HRG surveys on the continental shelf.

In addition, for many of these HRG sources, absorption should also be accounted for when discussing sound propagation (*i.e.,* great absorption for higher frequency sources). Thus, this analysis is likely conservative for other reasons (*e.g.,* the lowest frequency was used for systems that are operated over a range of frequencies).

NMFS has determined that spherical spreading is the most appropriate form of propagation loss for these surveys and has relied on this approach for past IHAs with similar equipment, locations, and depths. Please refer back to the Garden State HRG IHA (83 FR 14417, April 4, 2018) and the 2019 Skipjack HRG IHA (84 FR 51118, September 27, 2019) for examples. Prior to the issuance of these IHAs (approximately 2018 and older), NMFS typically relied upon practical spreading for these types of survey activities. However, as additional scientific evidence became available, including numerous sound source verification reports, NMFS determined that this approach was inappropriately conservative and since that time, has consistently used spherical spreading.

Comment: A member of the public expressed concern about the concurrent use of vessels for surveying increasing the likelihood of incidental take.

Response: NMFS appreciates the commenter's concern but notes that no evidence is provided to substantiate this concern. NMFS' believes that the authorized take numbers adequately account for the potential take that may result from the proposed survey work, inclusive of the concurrent use of surveying vessels. As a result of the small estimated Level B harassment zones (*i.e.,* maximum 141 m), no overlap of the footprint of potential

effect would occur due to concurrent vessel use. The use of concurrent survey vessels over the relatively large survey area is not expected to increase either the number of takes or the degree of individual take events that may occur.

Comment: SaveLBI and a member of the public assert that Level A harassment may occur, and that this was not accounted for in the proposed notice.

Response: NMFS has previously responded to this comment from SaveLBI (see 87 FR 24103, April 22, 2022) and our response has neither changed nor has new information presented itself that would change our determination. NMFS acknowledges the commenters' concerns regarding the potential for Level A harassment of marine mammals. However, no Level A harassment is expected to result, even in the absence of mitigation, given the characteristics of the sources planned for use. This is additionally supported by the required mitigation and very small estimated Level A harassment zones described in Atlantic Shores' 2020 **Federal Register** notice (85 FR 21198, April 16, 2020), carried through to the 2021 renewal IHA (86 FR 21289, April 22, 2021), and present in the 2022 IHA (87 FR 24103, April 22, 2022) which is of a similar scope of activities presented for the 22023 survey. Furthermore, the commenters do not provide any support for the apparent contention that Level A harassment is a potential outcome of these activities. As discussed in the notice of proposed IHA for the 2023 surveys, NMFS considers this category of survey operations to be near *de minimis,* with the potential for Level A harassment for any species to be discountable.

Comment: SaveLBI continues to suggest that NMFS utilize a source level of 211 dB root-mean-square (rms) instead of the 203 dB for the Dura-Spark 240, as was cited in the proposed **Federal Register** notice (*e.g.,* for sparkers, the peak sound pressure level can be approximately 7 dB higher than the rms sound pressure level (rms SPL) typically associated with NMFS's marine mammal behavioral harassment thresholds (NMFS, 2020)).

Response: As stated in a previous **Federal Register** notice (87 FR 24103, April 22, 2022), NMFS disagrees with SaveLBI's recommendation, and has determined that the 203 dB rms SPL source level is still the most appropriate for use herein. As discussed in the notice of proposed IHA, the Applied Acoustics Dura-Spark was included and measured in Crocker and Fratantonio (2016), but not with an energy setting near 800 J, the energy setting which was determined as the ''worst-case scenario'' by Atlantic Shores for use in the presence of denser substrates. The SIG ELC 820 sparker was deemed as a similar alternative to the Dura-Spark based on information in Table 9 of Crocker and Fratantonio (2016), and where a higher energy setting of 750 J (at a 5 m depth) had been measured. We also note that using the SIG ELC as a surrogate system has been previously documented and employed in other issued IHAs, such as the Mayflower Wind HRG surveys (86 FR 38033, July 19, 2021). NMFS further based this decision on further information on the SIG acoustic source, Crocker and Fratantonio (2016), and other IHA applications (see Mayflower Wind's application at *https://media.fisheries.noaa.gov/2021-02/Mayflower-2021HA_Appl_OPR1.pdf?null*=). The frequency ranges provided for the SIG ELC represent a broad range (0.01—1.9 kHz), which includes the highest bandwidth at the 750 J reported in Crocker and Fratantonio (2016).

We also note that, based on additional discussion with Atlantic Shores, a power level of 750 J was likely an overestimate and that 500–600 J was more likely to be used during the HRG surveys and that 750 was a conservative overestimate. NMFS carries over this information in the 2023 project from Table 2 found in the 2022 proposed **Federal Register** notice (87 FR 4200, January 27, 2022). The use of information that appropriately addresses the potential for use at the higher power level means that the analysis herein, including the selection of source level, is conservative for most typical applications of the acoustic sources.

Comment: SaveLBI states that it believes NMFS' negligible impact finding for NARWs to be insufficient given the analysis SaveLBI included in their letter, which produced higher take numbers for marine mammals, including NARWs. SaveLBI also states that, based on their assertion that serious injury and/or mortality is a potential outcome of the specified activity for NARWs, a rulemaking (Incidental Take Regulation with subsequent Letters of Authorization) would be necessary to authorize Atlantic Shores' site characterization surveys due to SaveLBI's premise that take by serious injury and/or mortality may occur.

Response: NMFS acknowledges that authorization under section 101(a)(5)(A) of the MMPA would be required were mortality or serious injury an expected outcome of the action. However, as noted previously, there is no scientific evidence suggesting that such outcomes are possible and, therefore, an IHA issued under section 101(a)(5)(D) is appropriate. Similarly, if SaveLBI's analysis were considered credible, the results would necessitate a revision to NMFS' negligible impact determination. However, as detailed in previous comment responses, SaveLBI's analysis is not based on the best scientific evidence available, and NMFS does not consider it to be a credible analysis. Separately, it appears that SaveLBI equates Level A harassment with serious injury and mortality in suggesting that Incidental Take Regulations are required. As discussed herein, Level A harassment is not an expected outcome of the specified activity. However, we clarify that section 101(a)(5)(D) of the MMPA, which governs the issuance of IHAs, indicates that the ''the Secretary shall authorize . . . . taking by harassment [. . . .]'' The definition of ''harassment'' in the MMPA clearly includes both Level A harassment and Level B harassment.

SaveLBI further suggested that NMFS should promulgate programmatic Incidental Take Regulations for site characterization activities. Although NMFS is open to this approach, we have not received a request for such regulations from the applicant, and NMFS reminds SaveLBI that the MMPA only allows for the development of Incidental Take Regulations upon request. SaveLBI states that this would be necessary based on the potential for serious injury or mortality that was assumed in SaveLBI's letter. However, as discussed previously, NMFS does not expect any serious injury or mortality, even absent mitigation efforts, because of the nature of the activities described in the proposed **Federal Register** notice. Furthermore, NMFS included a vessel strike analysis in the proposed notice (87 FR 4200, January 27, 2022) under the referenced Potential Effects on Marine Mammals and Their Habitat section. We identified that at average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is low enough to be discountable. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds during transit. Further, Atlantic Shores is required to implement monitoring and mitigation measures during transit, including observing for marine mammals and maintaining defined separation distances between the vessel and any

marine mammal (see the Mitigation and Monitoring and Reporting sections). Finally, despite several years of marine site characterization surveys occurring off the U.S. east coast, NMFS has no reports of any vessels supporting offshore wind development having struck a marine mammal either in transit or during surveying. Because vessel strikes are not reasonably expected to occur, no such take is authorized. The mitigation measures in the IHA related to vessel strike avoidance are not limited to vessels operating within the survey area or cable corridors and therefore, apply to transiting vessels. Because of these reasons and the addition of mitigation efforts, including required vessel separation distances to further reduce any risk, we do not find that a rulemaking is necessary for Atlantic Shores' HRG surveys.

Comment: SaveLBI again asserts that NMFS has not been sufficiently clear with regard to its use of density data, and expresses concern that the density data used may not be sufficiently conservative.

Response: As discussed in greater detail in the notice of proposed IHA (87 FR 4200, January 27, 2022) and notice of final IHA (87 FR 24103, April 22, 2022) for the 2022 survey, NMFS relied upon the best available scientific information in assessing the likelihood of occurrence for all potentially impacted marine mammal species, including the NARW. The Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2023) habitat-based density models, recently updated in 2022, represent the best available information regarding marine mammal densities in the survey area. Density data for all taxa are available for 5 km x 5 km grid cells over the entire survey area and for most species (including NARW; version 12), are available for each of 12 months. For the exposure analysis, these density data were mapped using a geographic information system (GIS) for each of the survey areas (*i.e.,* Lease Areas and relevant Export Cable Routes). Densities of each species were then averaged by season; thus, a density was calculated for each species for spring, summer, fall and winter. To be conservative, the greatest seasonal density calculated for each species was then carried forward in the exposure analysis. All density information used by NMFS is publicly available through Duke University's OBIS–SEAMAP website: *https://seamap.env.duke.edu/models/Duke/EC/*.

We note that SaveLBI again does not discuss what it means by stating that the analysis may not be ''conservative,'' and does not connect this concern to the relevant requirements of the MMPA. However, NMFS believes that its approach using the density information, which was referenced in full based on information from the 2022 notice of proposed IHA (87 FR 4200, January 27, 2022), addresses any such concerns.

Comment: SaveLBI again asserts that the potential for Level A harassment, serious injury and/or death impacts have been insufficiently addressed in NMFS' analysis. SaveLBI also suggests that NMFS must perform a ''cumulative permanent threshold shift (PTS) analysis.'' They further go on to state that ''NMFS' assurance that Atlantic Shores is required to not approach any right whale within 500 m or operate the sparker unit within 500 m of the whale does not inspire confidence'' as NMFS only requires visual detection of animals and not requiring passive acoustic monitoring to supplement human observation. SaveLBI provided recommendations that NMFS should require Passive Acoustic Monitoring (PAM) at all times, both day and night, to maximize the probability of detection for NARWs, as well as other species and stocks.

Response: As previously stated, the commenter still appears to mistakenly reference NMFS' historical Level A harassment threshold of 180 dB rms SPL received level in addressing this issue. However, in 2018, NMFS published Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing, which updated the 180 dB SPL Level A harassment threshold. Since that time, NMFS has been applying dual threshold criteria based on both peak pressure and cumulative sound exposure level thresholds. This dual criteria approach requires that the more conservative of the two hearing group-specific threshold criteria be applied in evaluating the potential for Level A harassment. Therefore, NMFS has considered the potential for Level A harassment on the basis of cumulative sound exposure level (as well as peak pressure) in the way suggested by SaveLBI.

As described in the Estimated Take section, NMFS has established a PTS (Level A harassment) threshold of 183 dB cumulative sound exposure level (SEL) for low frequency specialists. In support of a previous IHA request (see the final 2020 notice (85 FR 21198, April 16, 2020), the 2022 renewal notice (86 FR 21289, April 22, 2021), and the 2022 notice (87 FR 24103, April 22, 2022)), Atlantic Shores provided estimated Level A harassment zones for similar equipment (*i.e.,* the Applied Acoustics Dura-Spark 240 sparker). Despite assuming a higher source level than is used herein, the result of this analysis shows that a NARW would have to come within 1 m of the sparker to potentially incur PTS. NMFS has reviewed the analysis found in Atlantic Shores' 2020, 2021, and 2022 HRG IHA applications and confirmed that these are accurate and similar to this action. These applications can be found on NMFS' website.

Not only are NARWs migrating through the area, meaning that their occurrence in the area is expected to be of relatively brief duration and the likelihood of exposures of longer duration or at closer range minimized, Atlantic Shores is also required to not approach any NARW within 500 m or operate the sparker within 500 m of a NARW (88 FR 19075, March 30, 2023). As such, there is essentially no potential for a NARW to experience PTS (*i.e.,* Level A harassment) from the described surveys.

Regarding use of PAM, the commenters fail to explain why they expect that PAM would be effective in detecting vocalizing mysticetes, and NMFS does not agree that this measure is warranted as it is not expected to be effective for use in detecting the species of concern. It is generally accepted that, even in the absence of additional acoustic sources, using a towed passive acoustic sensor to detect baleen whales (including NARWs) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from about 140 to 195 decibel (dB) re 1 µPa (micropascal) at 1 m (National Research Council (NRC), 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.,* 2012; McKenna *et al.,* 2012; Rolland *et al.,* 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low-frequency and typically masks signals in the same range. Experienced PAM operators participating in a workshop (Thode *et al.,* 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because

background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range but not baleen whales due to expected background noise levels (including seismic noise, vessel noise, and flow noise).

There are several additional reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact during HRG survey activities is limited. First, for this activity, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 141 m); this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low. Together, these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing, while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for NARWs and other low frequency cetaceans species for which PAM has limited efficacy), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat. NMFS has previously provided discussions on why PAM is not a required monitoring measure during HRG survey IHAs in past **Federal Register** notices (see 86 FR 21289, April 22, 2021, and 87 FR 13975, March 11, 2022, for examples).

Regarding monitoring for species that may be present yet go unobserved, NMFS recognizes that visual detection based mitigation approaches are not 100 percent effective. Animals are missed because they are underwater (availability bias) or because they are available to be seen but are missed by observers (perception and detection biases) (*e.g.,* Marsh and Sinclair, 1989). However, visual observation remains one of the best available methods for marine mammal detection. Although it is likely that some marine mammals may be present yet unobserved within the harassment zone, all expected take of marine mammals has been appropriately authorized. For mysticete species in general, it is unlikely that an individual would occur within the estimated 141 m harassment zone and remain undetected. For NARW in particular, the required Exclusion Zone is 500 m, and therefore, it is even less likely that an individual would approach the harassment zone undetected.

Comment: SaveLBI asserts that the potential for Level B harassment and/or masking to lead to serious injury and/or death impacts have been insufficiently addressed in NMFS' analysis.

Response: The best available science indicates that Level B harassment (*i.e.,* disruption of behavioral patterns) may occur. No mortality or serious injury is expected to occur as a result of the planned surveys, and there is no scientific evidence indicating that any marine mammal could experience these as a direct result of noise from geophysical survey activity. Authorization of mortality and serious injury may not occur via IHAs, only within Incidental Take Regulations, and such authorization was neither requested nor proposed. NMFS notes that in its history of authorizing take of marine mammals, there has never been a report of any serious injuries or fatalities of a marine mammal related to the site characterization surveys, including for NARWs. We emphasize that an estimate of take numbers alone is not sufficient to assess impacts to a marine mammal population. Take numbers must be viewed contextually with other factors as explained in the Determinations section of this **Federal Register** notice.

Furthermore, SaveLBI's comment is founded again on the presumption, absent evidence, that serious injury or mortality is a reasonably anticipated outcome of Atlantic Shores' specified activity. NMFS emphasizes that there is no credible scientific evidence available suggesting that mortality and/or serious injury is a potential outcome of the planned survey activity, and SaveLBI provides no information to the contrary. We also refer SaveLBI to the GARFO 2021 Programmatic Consultation, which finds that these survey activities are in general not likely to adversely affect ESA-listed marine mammal species (*i.e.,* GARFO's analysis conducted pursuant to the ESA finds that marine mammals are not likely to be taken at all (as that term is defined under the ESA), much less be taken by serious injury or mortality). That document is found here: *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.*

Comment: SaveLBI asserts that reactions to noise exposure that do not meet the definition of Level B harassment under the MMPA may yet cause delayed injury or mortality to affected marine mammals and states that NMFS should assess this possibility. SaveLBI further states that masking effects may impact migratory activities.

Response: We acknowledge that masking may impact marine mammals, particularly baleen whales, and particularly when considered in the context of the full suite of regulated and unregulated anthropogenic sound contributions overlaying an animal's acoustic habitat. However, we do not agree that masking effects from the incremental noise contributions of individual activities or sound sources necessarily or typically rise to the level of a take. While it is possible that masking from a particular activity may be so intense as to result in take by Level B harassment, we have no information suggesting that masking of such intensity and duration would occur as a result of the specified activity. Potential effects of a specified activity must be accounted for in a negligible impact analysis, but not all responses or effects result in take nor are those that do always readily quantified. In this case, while masking is considered in the analysis, we do not believe it will rise to the level of take in the vast majority of exposures. However, in the unanticipated event that any small number of masking incidents did rise to the level of a take, we would expect them to be accounted for in the quantified exposures above 160 dB. Given the short duration of expected noise exposures, any take by

masking in the case of these surveys would be most likely to be incurred by individuals either exposed briefly to notably higher levels or those that are generally in the wider vicinity of the source for comparatively longer times. Both of these situations would be captured in the enumeration of takes by Level B harassment, which is based on exposure at or above 160 dB, which also means the individual necessarily spent a comparatively longer time in the adjacent area ensonified below 160 dB, but in which masking might occur if the exposure was notably longer. All of these potential outcomes are of notably lower likelihood in this circumstance, where the estimated harassment zone is no greater than 141 m. There is no evidence that these lower-level potential impacts could lead to more severe impacts, such as mortality or serious injury, and SaveLBI provides no such evidence.

Similarly, NMFS disagrees with SaveLBI's contention that such impacts could meaningfully affect whale migratory behavior. Given the vessel transiting, any whales also transiting (as animals are not stationary but mobile) may only have a brief moment of masking which should not be expected to extend for a long period of time. SaveLBI provides no evidence in support of its speculative suggestions.

Comment: SaveLBI states that to properly make a negligible impact determination, NMFS should develop/provide criteria to avoid jeopardizing the existence and survival of the NARW. SaveLBI states that this would ideally include no instances of fatality or serious injury from survey noise and meet that strict criterion with high statistical confidence. SaveLBI notes that they believe the current proposed notice for Atlantic Shores' surveys does not meet this criteria.

Response: As we previously stated in a previous **Federal Register** notice for Atlantic Shores' 2022 HRG surveys (87 FR 24103, April 22, 2022), SaveLBI's comment is founded on the presumption, absent evidence, that serious injury or mortality is a reasonably anticipated outcome of Atlantic Shores' specified activity. As NMFS has emphasized, there is no credible scientific evidence available suggesting that mortality and/or serious injury is a potential outcome of the planned survey activity, and SaveLBI provides no information to the contrary. We also refer SaveLBI to the GARFO 2021 Programmatic Consultation, which finds that these survey activities are, in general, not likely to adversely affect ESA-listed marine mammal species (*i.e.,* GARFO's analysis conducted pursuant to the ESA finds that marine mammals are not likely to be taken at all, as that term is defined under the ESA, much less be taken by serious injury or mortality). That document is found here: *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.*

Comment: SaveLBI states that use of the 120-dB harassment criterion is more appropriate for use in evaluating potential effects of non-impulsive, intermittent sources than is the 160-dB criterion.

Response: First, we clarify that the primary source to which take is attributed here (the sparker) is in fact an impulsive source, and therefore, the 160-dB harassment criterion is appropriate. However, we further address the commenter's suggestion that the 120-dB continuous noise criterion should be used for evaluation of non-impulsive, intermittent sources.

First, we provide some necessary background on implementation of acoustic thresholds. NMFS has historically used generalized acoustic thresholds based on received levels to predict the occurrence of behavioral harassment, given the practical need to use a relatively simple threshold based on information that is available for most activities. Thresholds were selected in consideration largely of measured avoidance responses of mysticete whales to airgun signals and to industrial noise sources, such as drilling. The selected thresholds of 160 dB rms SPL and 120 dB rms SPL, respectively, have been extended for use since then for estimation of behavioral harassment associated with noise exposure from sources associated with other common activities as well.

Sound sources can be divided into broad categories based on various criteria or for various purposes. As discussed by Richardson *et al.* (1995), source characteristics include strength of signal amplitude, distribution of sound frequency and, importantly in context of these thresholds, variability over time. With regard to temporal properties, sounds are generally considered to be either continuous or transient (*i.e.,* intermittent). Continuous sounds, which are produced by the industrial noise sources for which the 120-dB behavioral harassment threshold was selected, are simply those whose sound pressure level remains above ambient sound during the observation period (American National Standards Institute (ANSI), 2005). Intermittent sounds are defined as sounds with interrupted levels of low or no sound (National Institute for Occupational Safety and Health (NIOSH), 1998). Simply put, a continuous noise source produces a signal that continues over time while an intermittent source produces signals of relatively short duration having an obvious start and end with predictable patterns of bursts of sound and silent periods (*i.e.,* duty cycle) (Richardson and Malme, 1993). It is this fundamental temporal distinction that is most important for categorizing sound types in terms of their potential to cause a behavioral response. For example, Gomez *et al.* (2016) found a significant relationship between source type and marine mammal behavioral response when sources were split into continuous (*e.g.,* shipping, icebreaking, drilling) versus intermittent (*e.g.,* sonar, seismic, explosives) types. In addition, there have been various studies noting differences in responses to intermittent and continuous sound sources for other species (*e.g.,* Neo *et al.,* 2014; Radford *et al.,* 2016; Nichols *et al.,* 2015).

Sound sources may also be categorized based on their potential to cause physical damage to auditory structures and/or result in threshold shifts. In contrast to the temporal distinction discussed above, the most important factor for understanding the differing potential for these outcomes across source types is simply whether the sound is impulsive or not. Impulsive sounds, such as those produced by airguns, are defined as sounds which are typically transient, brief (<1 sec), broadband, and consist of a high peak pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998). These sounds are generally considered to have greater potential to cause auditory injury and/or result in threshold shifts. Non-impulsive sounds can be broadband, narrowband or tonal, brief or prolonged, continuous or intermittent, and typically do not have the high peak pressure with rapid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998). Because the selection of the 160-dB behavioral threshold was focused largely on airgun signals, it has historically been commonly referred to as the ''impulse noise'' threshold (including by NMFS). However, this longstanding confusion in terminology—*i.e.,* the erroneous impulsive/continuous dichotomy—presents a narrow view of the sound sources to which the thresholds apply and inappropriately implies a limitation in scope of applicability for the 160-dB behavioral threshold in particular.

An impulsive sound is by definition intermittent; however, not all

intermittent sounds are impulsive. Many sound sources for which it is generally appropriate to consider the authorization of incidental take are in fact either impulsive (and intermittent) (*e.g.,* impact pile driving) or continuous (and non-impulsive) (*e.g.,* vibratory pile driving). However, non-impulsive, intermittent acoustic sources present a less common case where the sound produced is considered intermittent but non-impulsive. The simple argument presented by commenters regarding non-impulsive, intermittent sources has been that, because such sources are not impulsive sound sources, they must be assessed using the 120-dB behavioral threshold appropriate for continuous noise sources. However, given the existing paradigm—dichotomous thresholds appropriate for generic use in evaluating the potential for behavioral harassment resulting from exposure to continuous or intermittent sound sources—the comments do not adequately explain why potential harassment from an intermittent sound source should be evaluated using a threshold developed for use with continuous sound sources. Consideration of the preceding factors leads to a conclusion that the 160-dB threshold is more appropriate for use than is the 120-dB threshold in evaluation of potential effects due to use of non-impulsive, intermittent sound sources.

Comment: SaveLBI suggests that NMFS should use more conservative information related to the acoustic output of the sources planned for use (*i.e.,* a higher source level and a lower transmission loss coefficient) and perform its own analysis of these alternative scenarios. SaveLBI notes that these changes would increase the size of the estimated Level B harassment zone and as a result, increase the expected take numbers. Based on their reanalysis, SaveLBI asserts that NMFS' negligible impact and small numbers determinations are not accurate.

Response: As previously stated in the 2022 **Federal Register** notice (87 FR 24103, April 22, 2022), NMFS continues to disagree with SaveLBI's suggested changes and does not believe they are appropriate. We have addressed use of the alternate source level and the recommendation of lower assumed propagation loss in previous responses to comments herein. While NMFS acknowledges that if one assumes the most conservative values at every opportunity, the analysis will produce higher estimates of harassment zone size and of incidental take. However, SaveLBI's assumptions are not realistic, and SaveLBI does not adequately justify the assumptions made in its overly conservative analysis. As such, NMFS finds its analysis, findings, and determinations to be accurate and based on the best available scientific information.

Comment: SaveLBI recommended increasing the Exclusion Zone to 2,500 m, respectively, for NARWs, based on their reanalysis.

Response: NMFS notes that the 500 m Exclusion Zone for NARWs exceeds the modeled distance to the largest 160 dB Level B harassment isopleth distance (141 m during sparker use) by a substantial margin. The commenter does not provide a compelling rationale for why the Exclusion Zone should be even larger beyond their described reanalysis, which NMFS has already stated it considers flawed and not realistic. Given that these surveys are relatively low impact and that, regardless, NMFS has prescribed a NARW Exclusion Zone that is significantly larger (500 m) than the conservatively estimated largest harassment zone (141 m), NMFS has determined that the Exclusion Zone is appropriate. Further, no Level A harassment is expected to result even in the absence of mitigation, given the characteristics of the sources planned for use. As described in the Mitigation section, NMFS has determined that the prescribed mitigation requirements are sufficient to effect the least practicable adverse impact on all affected species or stocks. As such, we are not adopting SaveLBI's recommendation.

Comment: SaveLBI suggests Atlantic Shores' survey activities should be prohibited from January through April as well as in November. Furthermore, SaveLBI suggests that an annual Seasonal Management Area (SMA) be established in and adjacent to the survey area to mitigate against any vessel strike.

Response: NMFS assumes this is regarding the NARW and shares concern with SaveLBI regarding the status of the NARW, given that a UME has been in effect for this species since June 2017 and that there have been 6 counts of NARW UME mortality, serious injury, and morbidity cases in 2023. Five of these cases have been from entanglement and vessel strike, and one case was perinatal. NMFS appreciates the value of seasonal restrictions under some circumstances. However, in this case, we have determined seasonal restrictions are not warranted, and reiterate that only Level B harassment has been authorized in this case. NARW occurrence in this area is generally low most of the year. Furthermore, NMFS has already stated that this area consists only of migratory habitat for the NARW, consisting of no primary foraging habitat (which is found much further north off the New England region), which further reduces the risks of exposure and impacts. Further, NMFS is requiring Atlantic Shores to comply with restrictions associated with identified SMAs, and they must comply with DMAs if any DMAs are established near the survey area. Finally, significantly shortening Atlantic Shores work season is impracticable given the number of survey days planned for the specified activity for this IHA.

NMFS wishes to clarify that existing and permanent SMAs have been previously established under a different rulemaking (73 FR 60173) and can also be found on NMFS' website at *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales#speedlimit*).

Comment: SaveLBI asserts that the notice of proposed IHA does not address compliance with the ESA and goes on to provide a number of concerns regarding NMFS GARFO's 2021 programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions.

Response: NMFS refers the commenter to page 19088 of the notice of proposed IHA (88 FR 19075), in which NMFS' compliance with the ESA is discussed. NMFS determined that this activity falls within the scope of activities analyzed in the 2021 GARFO programmatic consultation and therefore, this action is compliant with the ESA.

Comment: SaveLBI states that the proposed survey may not be consistent with the New Jersey Coastal Zone Management (CZM) rules, specifically NJAC 7:E–3.38, the provision that protects against adverse impacts occurring to New Jersey coastal resources, including endangered wildlife habitats. They state that NMFS should have sought a CZM consistency determination from New Jersey.

Response: SaveLBI's contention that the proposed survey may not be consistent with the New Jersey Coastal Zone Management is rejected because, as explained herein, Atlantic Shores' IHA was and is not subject to Federal consistency review. NMFS was not required to submit a Federal consistency determination to the State of New Jersey because this is not a ''Federal Agency activity'' proposed by NMFS, as that term is defined in 15 CFR 930.31. Therefore, section 307(c)(1)(A) of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456(c)(1)(A), and the implementing regulations codified at

15 CFR part 930, subpart C, are not applicable.

NMFS was an agency reviewing an application for an IHA relevant to Atlantic Shores' survey activities. As such, whether Federal consistency review is required is determined by section 307(c)(3)(A) of the CZMA, 16 U.S.C. 1456 (c)(3)(A) and the implementing regulations at 15 CFR part 930, subpart D, which authorizes states with federally approved coastal management programs to review applications for Federal licenses or permits to conduct activities in, or outside of, the coastal zone that has reasonably foreseeable effects on coastal use (land or water) or natural resources within the coastal zone to ensure the activity is fully consistent with the enforceable policies of the state's approved management program. In this instance, Atlantic Shores was not required to submit a CZMA Federal consistency certification to the State of New Jersey under 15 CFR part 930, subpart D, of the implementing regulations, because the NMFS MMPA IHA is not, pursuant to 15 CFR 930.53, listed in the State's federally-approved coastal management program, the State of New Jersey has not described a geographic location in Federal waters where Federal effects from the NMFS MMPA IHA are reasonably foreseeable, and the State of New Jersey has not submitted and the Director of NOAA's Office of Coastal Management has not approved an unlisted activity review request.

Under the regulations governing the CZMA Federal consistency review of unlisted activities, an unlisted activity (such as the one described herein) is only subject to Federal consistency review if the state timely requests review within thirty days after publication of the notice of proposed IHA in the **Federal Register** and the Director of NOAA's Office for Coastal Management approves such request (15 CFR 930.54). Here, NMFS published the **Federal Register** notice for Atlantic Shores' MMPA IHA application on March 30, 2023 (88 FR 19075). The State of New Jersey then had 30 days from the date of that publication to notify Atlantic Shores, NMFS and the Director of NOAA's Office for Coastal Management that the State was seeking approval to review the activity as an unlisted activity. The State of New Jersey did not make such a request, the 30-day period ended on April 29, 2023, and the time period to make an unlisted activity review request has expired. Accordingly, Atlantic Shores' IHA application is not subject to Federal consistency review under the CZMA.

Description of Marine Mammals in the Areas of Specified Activities

A description of the marine mammals in the area of the activities can be found in the previous documents and notices for the 2022 IHA (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022), which remains applicable to this 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 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. More general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

NMFS notes that, since issuance of the 2022 IHA, a new SAR was made available with new information presented for the NARW (see *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*). We note that the 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 Atlantic Shores 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.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger & L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth, 2013). For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Fifteen marine mammal species (comprising 16 total stocks; 13 cetacean (14 stocks) and 2 pinniped (both phocid) species) have the reasonable potential to co-occur with the survey activities. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), seven are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the 2022 IHA (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022). At present, there is no new information on potential effects that would impact 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 4200, January 27, 2022; 87 FR 24103, April 22, 2022). The methods of estimating take are identical to those used in the 2022 IHA. We updated the marine mammal densities based on new information (Roberts *et al.,* 2016; Roberts *et al.,* 2023), available online at: *https://seamap.env.duke.edu/models/Duke/EC/.* We refer the reader to Table 4 in the ITA Request from Atlantic Shores for specific density values used in the analysis. The ITA 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 has authorized can be found in Table 3 below. Table 3 presents the results of Atlantic Shores' density-based calculations for the combined Lease Area (0499 and 0549) and the two ECRs (North and South). For comparative purposes, we have provided the 2022 IHA authorized take (87 FR 24103, April 22, 2022; 87 FR 26726, May 5, 2022). NMFS notes that take by Level A harassment was not requested nor does NMFS anticipate that it could occur. Therefore, NMFS has not authorized any take by Level A harassment. Mortality or serious injury is neither anticipated to occur nor authorized.

TABLE 3—TOTAL ESTIMATED TAKE, BY LEVEL B HARASSMENT ONLY, RELATIVE TO POPULATION SIZE FOR THE 2023 HRG SURVEYS

Marine mammal species	Scientific name	Stock	Estimated population	Location-specific calculated take			Total calculated take	AMAPPS group size adjustments	Take authorized under previous 2022 IHA	Authorized 2023 IHA	
				Lease area	ECR north	ECR south				Authorized take	Percentage of population authorized to be taken
Mysticetes											
North Atlantic right whale.	*Eubalaena glacialis.*	Western North Atlantic.	338	1.1	1.3	0.7	3.1	2	17	3	0.89
Humpback whale	*Megaptera novaeangliae.*	Gulf of Maine	1,396	1.8	2.8	0.8	5.4	2	8	5	0.36
Fin whale	*Balaenoptera physalus.*	Western North Atlantic.	6,802	2.8	2.5	0.7	6	1	5	6	0.09
Sei whale	*Balaenoptera borealis.*	Nova Scotia	6,292	0.9	0.8	0.2	1.9	1	2	2	0.03
Minke whale	*Balaenoptera acutorostrata.*	Canadian East Coast.	21,968	10.4	11.5	2.0	23.9	1	2	24	0.11
Odontocetes											
Sperm whale	*Physeter macrocephalus.*	North Atlantic	4,349	0.1	0.1	0.0	[a] 0.2	2	1	2	0.05
Long-finned pilot whale [b].	*Globicephala melas.*	Western North Atlantic.	39,215	0.3	0.1	0.0	0.4	[f] 8	20	20	0.05
Bottlenose dolphin [c].	*Tursiops truncatus.*	Western North Atlantic, Northern Migratory Coastal.	6,639	154.2	359.5	714.2	1,227.9	10	385	1,228	18.5

TABLE 3—TOTAL ESTIMATED TAKE, BY LEVEL B HARASSMENT ONLY, RELATIVE TO POPULATION SIZE FOR THE 2023 HRG SURVEYS—Continued

Marine mammal species	Scientific name	Stock	Estimated population	Location-specific calculated take			Total calculated take	AMAPPS group size adjustments	Take authorized under previous 2022 IHA	Authorized 2023 IHA	
				Lease area	ECR north	ECR south				Authorized take	Percentage of population authorized to be taken
		Western North Atlantic, Offshore.	62,851	15.2	359.5	714.2	1,088.9		1,175	1,089	1.73
Common dolphin	*Delphinus delphis.*	Western North Atlantic.	172,974	48.1	46.4	5.2	99.7	30	560	100	0.06
Atlantic white-sided dolphin.	*Lagenorhynchus acutus.*	Western North Atlantic.	93,233	9.0	6.8	0.8	16.6	12	17	17	0.02
Atlantic spotted dolphin.	*Stenella frontalis*	Western North Atlantic.	39,921	1.0	1.0	0.2	2.2	24	100	50	0.06
Risso's dolphin ...	*Grampus griseus*	Western North Atlantic.	35,215	0.6	0.4	0.0	1.0	7	30	30	0.09
Harbor porpoise	*Phocoena phocoena.*	Gulf of Maine/Bay of Fundy.	95,543	67.3	61.2	13.7	142.2	3	282	142	0.15
Phocid pinniped											
Gray seal	*Halichoerus grypus.*	Western North Atlantic.	[e] 27,300	277.2	333.9	124.7	735.8	[d] n/a	426	736	0.16
Harbor seal	*Phoca vitulina*	Western North Atlantic.	61,336	277.2	333.9	124.7	735.8	[d] n/a	426	736	1.2

[a] Although the calculated take rounds to zero, to be conservative in the event a lone sperm whale is observed in the area, NMFS has authorized take assuming a group size of 2 animals.
[b] All pilot whales that may be encountered are assumed to be long finned. Roberts *et al.* (2023) density information does not distinguish between species. However, pilot whales encountered off of New Jersey and points north are likely to be long finned, as the species has a more northerly distribution.
[c] Takes of bottlenose dolphins were attributed to stock based on the 20-m isobath. All animals shoreward of the 20-m isobath were assumed to belong to the coastal stock and all bottlenose dolphins seaward of the 20-m isobath were assumed to be from the offshore stock.
[d] No AMAPPS data was available for seals.
[e] NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,600. This value was used in the percentage of stock abundance estimated to be taken by the proposed project.
[f] A group size adjustments for long-finned pilot whales (n=20) used sighting data collected by Atlantic Shores during past surveys (Atlantic Shores Offshore Wind, 2021). This value was used instead of the AMAPPS data.

Mitigation

The required mitigation measures are identical to those included in the **Federal Register** notice announcing the final 2022 IHA (87 FR 24103, April 22, 2022; 87 FR 26726, May 5, 2022) and the discussion of the least practicable adverse impact included in that document remains accurate. The measures are found below.

Atlantic Shores must also abide by all the marine mammal relevant conditions in the GARFO programmatic consultation (specifically Project Design Criteria (PDC) 4, 5, and 7) 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*), pursuant to Section 7 of the Endangered Species Act.

Marine Mammal Exclusion Zones and Level B Harassment Zones

Marine mammal Exclusion Zones will be established around the HRG survey equipment and monitored by PSOs. These PSOs will be NMFS-approved visual PSOs. Based upon the acoustic source in use (impulsive: sparkers; non-impulsive: non-parametric sub-bottom profilers), a minimum of one PSO must be on duty, per source vessel, during daylight hours and two PSOs must be on duty, per source vessel, during nighttime hours. These PSO will monitor Exclusion Zones based upon the radial distance from the acoustic source rather than being based around the vessel itself. The Exclusion Zone distances are as follows:

- A 500 m Exclusion Zone for NARWs during use of specified acoustic sources (impulsive: sparkers; non-impulsive: non-parametric sub-bottom profilers).
- A 100 m Exclusion Zone for all other marine mammals (excluding NARWs) during use of specified acoustic sources (except as specified below).

All visual monitoring must begin no less than 30 minutes prior to the initiation of the specified acoustic source and must continue until 30 minutes after use of specified acoustic sources ceases.

If a marine mammal were detected approaching or entering the Exclusion Zones during the HRG survey, the vessel operator will adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements will be included in the site-specific training to be provided to the survey team.

Ramp-Up of Survey Equipment and Pre-Clearance of the Exclusion Zones

When technically feasible, a ramp-up procedure will be used for HRG survey equipment capable of adjusting energy levels at the start or restart of survey activities. A ramp-up of sources will begin with the powering up of the smallest acoustic HRG equipment at half power for 5 minutes and then proceed to full power. The ramp-up procedure will be used in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power. When technically feasible, the power will then be gradually turned up and other acoustic sources would be added. All ramp-ups shall be scheduled so as to minimize the time spent with the source being activated.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective Exclusion Zone. Ramp-up will continue if the animal has been observed exiting its respective Exclusion Zone or until an additional

time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals; 30 minutes for all other species).

Atlantic Shores will implement a 30 minute pre-clearance period of the Exclusion Zones prior to the initiation of ramp-up of HRG equipment. 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. This will allow the PSOs to monitor the Exclusion Zones for 30 minutes prior to the initiation of ramp-up. Prior to ramp-up beginning, Atlantic Shores must receive confirmation from the PSO that the Exclusion Zone is clear prior to proceeding. During this 30 minute pre-start clearance period, the entire applicable Exclusion Zones must be visible. The exception to this would be in situations where ramp-up may 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 may only occur at night where operational planning cannot reasonably avoid such circumstances.

During this period, the Exclusion Zone will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective Exclusion Zone. If a marine mammal is observed within an Exclusion Zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective Exclusion Zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and pinnipeds; 30 minutes for all other species). If a marine mammal enters the Exclusion Zone during ramp-up, ramp-up activities must cease and the source must be shut down. 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.

The pre-clearance zones will be:

- 500 m for all ESA-listed species (North Atlantic right, sei, fin, sperm whales); and
- 100 m for all other marine mammals.

If any marine mammal species that are listed under the ESA are observed within the clearance zones, the 30 minute clock must be paused. If the PSO confirms the animal has exited the zone and headed away from the survey vessel, the 30 minute clock that was paused may resume. The pre-clearance clock will reset to 30 minutes if the animal dives or visual contact is otherwise lost.

If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of marine mammals have occurred within the applicable Exclusion Zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

Activation of survey equipment through ramp-up procedures may not occur when visual detection of marine mammals within the pre-clearance zone is not expected to be effective (*e.g.,* during inclement conditions such as heavy rain or fog).

The acoustic source(s) must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source shall be avoided.

Shutdown Procedures

An immediate shutdown of the impulsive HRG survey equipment will be required if a marine mammal is sighted entering or within its respective Exclusion Zone(s). Any PSO on duty has the authority to call for a shutdown of the acoustic source if a marine mammal is detected within the applicable Exclusion Zones. Any disagreement between the PSO and vessel operator should be discussed only after shutdown has occurred. The vessel operator would 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.

The shutdown requirement is waived for small delphinids (belonging to the genera of the Family *Delpinidae: Delphinus, Lagenorhynchus, Stenella, or Tursiops*) and pinnipeds if they are visually detected within the applicable Exclusion Zones. 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 applicable Level B harassment zone, shutdown will occur. In the event of uncertainty regarding the identification of a marine mammal species (*i.e.,* such as whether the observed marine mammal belongs to *Delphinus, Lagenorhynchus, Stenella, or Tursiops* for which shutdown is waived, PSOs must use their best professional judgment in making the decision to call for a shutdown.

Specifically, if a delphinid from the specified genera or a pinniped is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required.

Upon implementation of a shutdown, the source may be reactivated after the marine mammal has been observed exiting the applicable Exclusion Zone or following a clearance period of 15 minutes for harbor porpoises and 30 minutes for all other species where there are no further detections of the marine mammal.

Shutdown, pre-start clearance, and ramp-up procedures are not required during HRG survey operations using only non-impulsive sources (*e.g.,* parametric sub-bottom profilers) other than non-parametric sub-bottom profilers (*e.g.,* compressed high-intensity radiated pulses (CHIRPs)). Pre-clearance and ramp-up, but not shutdown, are required when using non-impulsive, non-parametric sub-bottom profilers.

Seasonal Operating Requirements

As described in the **Federal Register** notice announcing the final 2022 IHA (87 FR 24103, April 22, 2022; 87 FR 26726, May 5, 2022), a section of the survey area partially overlaps with a portion of a NARW seasonal management area (SMA) off the port of New York/New Jersey. This SMA is active from November 1 through April 30 of each year. All survey vessels, regardless of length, would be required to adhere to vessel speed restrictions (<10 knots) when operating within the SMA during times when the SMA is active. In addition, between watch shifts, members of the monitoring team would consult NMFS' NARW reporting systems for the presence of NARWs throughout survey operations. Members of the monitoring team would also monitor the NMFS NARW reporting systems for the establishment of Dynamic Management Areas (DMA). NMFS may also establish voluntary right whale Slow Zones any time a right whale (or whales) is acoustically detected. Atlantic Shores should be aware of this possibility and remain attentive in the event a Slow Zone is established nearby or overlapping the survey area (Table 4).

TABLE 4—NORTH ATLANTIC RIGHT WHALE DYNAMIC MANAGEMENT AREA (DMA) AND SEASONAL MANAGEMENT AREA (SMA) RESTRICTIONS WITHIN THE SURVEY AREAS

Survey area	Species	DMA restrictions	Slow zones	SMA restrictions
Lease Area	North Atlantic right whale (*Eubalaena glacialis*).	If established by NMFS, all of Atlantic Shores' vessels will abide by the described restrictions.		N/A.
ECR North.				November 1 through July 31 (Raritan Bay).
ECR South.				N/A.

Note: More information on Ship Strike Reduction for the North Atlantic right whale can be found at NMFS' website: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales.*

There are no known marine mammal rookeries or mating or calving grounds in the survey area that would otherwise potentially warrant increased mitigation measures for marine mammals or their habitat (or both). The survey activities would occur in an area that has been identified as a biologically important area (BIAs) for migration for NARWs. However, given the small spatial extent of the survey area relative to the substantially larger spatial extent of the right whale migratory area and the relatively low amount of noise generated by the survey, the survey is not expected to appreciably reduce the quality of migratory habitat nor to negatively impact the migration of NARWs, thus mitigation to address the survey's occurrence in NARW migratory habitat is not warranted.

Vessel Strike Avoidance

Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Survey vessel crewmembers responsible for navigation duties will receive site-specific training on marine mammals sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures would include the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- Atlantic Shores will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down, stop their vessels, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of additional submerged animals in the vicinity of the vessel; therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (species-specific distances detailed below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammal from other phenomena, and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammals. All vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of NARWs from vessel strikes, including seasonal management areas (SMAs) and dynamic management areas (DMAs) when in effect. See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.
- All vessels must reduce their speed to 10-knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.
- All vessels must maintain a minimum separation distance of 500 m (1,640 ft) from right whales and other ESA-listed species. If an ESA-listed species is sighted within the relevant separation distance, the vessel must steer a course away at 10-knots or less until the 500 m separation distance has been established. If a whale is observed but cannot be confirmed as a species that is not ESA-listed, the vessel operator must assume that it is an ESA-listed species and take appropriate action.
- All vessels must maintain a minimum separation distance of 100 m (328 ft) from non-ESA-listed baleen whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m (164 ft) from all other marine mammals, with an understanding that, at times, this may not be possible (*e.g.,* for animals that approach the vessel, bow-riding species).
- When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area, reduce speed and shift the engine to neutral). This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Members of the monitoring team will consult NMFS NARW reporting system and WhaleAlert, daily and as able, for the presence of NARWs throughout survey operations, and for the establishment of a DMA. If NMFS should establish a DMA in the survey area during the survey, the vessels will abide by speed restrictions in the DMA.

Training

All PSOs must have completed a PSO training program and received NMFS approval to act as a PSO for geophysical surveys. Documentation of NMFS approval and most recent training certificates of individual PSOs' successful completion of a commercial PSO training course must be provided upon request. Further information can be found at *www.fisheries.noaa.gov/national/endangered-species-conservation/protected-species-observers.*

Atlantic Shores shall instruct relevant vessel personnel with regard to the authority of the marine mammal monitoring team, and shall ensure that relevant vessel personnel and the marine mammal monitoring team participate in a joint onboard briefing (hereafter PSO briefing), led by the vessel operator and lead PSO, prior to beginning survey activities to ensure that responsibilities, communication procedures, marine mammal monitoring protocols, safety and operational procedures, and IHA requirements are clearly understood. This PSO briefing

must be repeated when relevant new personnel (*e.g.,* PSOs, acoustic source operator) join the survey operations before their responsibilities and work commences.

Survey-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. All vessel crew members must be briefed in the identification of protected species that may occur in the survey area and in regulations and best practices for avoiding vessel collisions. Reference materials must be available aboard all survey vessels for identification of listed species. The expectation and process for reporting of protected species sighted during surveys must be clearly communicated and posted in highly visible locations aboard all survey vessels, so that there is an expectation for reporting to the designated vessel contact (such as the lookout or the vessel captain), as well as a communication channel and process for crew members to do so. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Monitoring and Reporting

The monitoring and reporting requirements are identical to those included in the **Federal Register** notice announcing the final 2022 IHA (87 FR 24103, April 22, 2022; 87 FR 26726, May 5, 2022). The measures are described below.

Monitoring Measures

Atlantic Shores must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammal and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course for geophysical surveys. Visual monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

PSO names must be provided to NMFS by the operator for review and confirmation of their approval for specific roles prior to commencement of the survey. For prospective PSOs not previously approved, or for PSOs whose approval is not current, NMFS must review and approve PSO qualifications. Resumes should include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training.

NMFS may approve PSOs as conditional or unconditional. A conditionally-approved PSO may be one who is trained but has not yet attained the requisite experience. An unconditionally-approved PSO is one who has attained the necessary experience. For unconditional approval, the PSO must have a minimum of 90 days at sea performing the role during a geophysical survey, with the conclusion of the most recent relevant experience not more than 18 months previous.

At least one of the visual PSOs aboard the vessel must be unconditionally-approved. One unconditionally-approved visual PSO shall be designated as the lead for the entire PSO team. This lead should typically be the PSO with the most experience, would coordinate duty schedules and roles for the PSO team, and serve as primary point of contact for the vessel operator. To the maximum extent practicable, the duty schedule shall be planned such that unconditionally-approved PSOs are on duty with conditionally-approved PSOs.

PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; and (3) previous work experience as a PSO (PSO must be in good standing and demonstrate good performance of PSO duties).

PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

PSOs must coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars or night-vision equipment and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 2 hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period.

Any observations of marine mammal by crew members aboard any vessel associated with the survey shall be relayed to the PSO team.

Atlantic Shores must work with the selected third-party PSO provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals, and to ensure that PSOs are capable of calibrating equipment as necessary for accurate distance estimates and species identification. Such equipment, at a minimum, shall include:

- At least one thermal (infrared) imagine device suited for the marine environment;
- Reticle binoculars (*e.g.,* 7 x 50) of appropriate quality (at least one per PSO, plus backups);
- Global Positioning Units (GPS) (at least one plus backups);
- Digital cameras with a telephoto lens that is at least 300 millimeter (mm) or equivalent on a full-frame single lens reflex (SLR) (at least one plus backups). The camera or lens should also have an image stabilization system;
- Equipment necessary for accurate measurement of distances to marine mammal;
- Compasses (at least one plus backups);
- Means of communication among vessel crew and PSOs; and
- Any other tools deemed necessary to adequately and effectively perform PSO tasks.

The equipment specified above may be provided by an individual PSO, the third-part PSO provider, or the operator, but Atlantic Shores is responsible for ensuring PSOs have the proper

equipment required to perform the duties specified in the IHA.

During good conditions (*e.g.,* daylight hours; Beaufort sea state 3 or less), PSOs shall conduct observations when the specified acoustic sources are not operating for comparison of sighting rates and behavior with and without use of the specified acoustic sources and between acquisition periods, to the maximum extent practicable.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including Exclusion Zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established Exclusion Zones during survey activities. It will be the responsibility of the PSO(s) on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

Atlantic Shores plans to utilize 6 PSOs across each vessel to account for shift changes, with a total of 18 during these surveys (6 PSOs per vessel × 3 vessels). At a minimum, during all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 2 hours between watches and may conduct a maximum of 12 hours of observation per 24-hr period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to Exclusion Zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team. Data on all PSO observations would be recorded based on standard PSO collection requirements (see *Reporting Measures*). This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances).

Reporting Measures

Atlantic Shores shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammals sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced, time-stamped vessel tracklines for all time periods during which acoustic sources were operating. Tracklines should include points recording any change in acoustic source status (*e.g.,* when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). GIS files shall be provided in Environmental Systems Research Institute, Inc. (ESRI) shapefile format and include the Coordinated Universal Time (UTC) date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize the information submitted in interim monthly reports (if required) as well as additional data collected. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Potlock@noaa.gov.*

PSOs must use standardized electronic data forms to record data. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of marine mammal to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

1. Vessel names (source vessel and other vessels associated with survey), vessel size and type, maximum speed capability of vessel;
2. Dates of departures and returns to port with port name;
3. The lease number;
4. PSO names and affiliations;
5. Date and participants of PSO briefings;
6. Visual monitoring equipment used;
7. PSO location on vessel and height of observation location above water surface;
8. Dates and times (Greenwich Mean Time) of survey on/off effort and times corresponding with PSO on/off effort;
9. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;
10. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;
11. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;
12. Water depth (if obtainable from data collection software);
13. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
14. Factors that may contribute to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,*

vessel traffic, equipment malfunctions); and

15. Survey activity information (and changes thereof), such as acoustic source power output while in operation, number and volume of airguns operating in an array, tow depth of an acoustic source, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, *etc.*).

Upon visual observation of any marine mammal, the following information must be recorded:

1. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

2. Vessel/survey activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);

3. PSO who sighted the animal;

4. Time of sighting;

5. Initial detection method;

6. Sightings cue;

7. Vessel location at time of sighting (decimal degrees);

8. Direction of vessel's travel (compass direction);

9. Speed of the vessel(s) from which the observation was made;

10. Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level or unidentified); also note the composition of the group if there is a mix of species;

11. Species reliability (an indicator of confidence in identification);

12. Estimated distance to the animal and method of estimating distance;

13. Estimated number of animals (high/low/best);

14. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);

15. Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars, or markings, shape and size of dorsal fin, shape of head, and blow characteristics);

16. Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior before and after point of closest approach);

17. Mitigation actions; description of any actions implemented in response to the sighting (*e.g.,* delays, shutdowns, ramp-up, speed or course alteration, *etc.*) and time and location of the action;

18. Equipment operating during sighting;

19. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and

20. Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a NARW is observed at any time by PSOs or personnel on any survey vessels, during surveys or during vessel transit, Atlantic Shores must report the sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System (866–755–6622) within 2 hours of occurrence, when practicable, or no later than 24 hours after occurrence. NARW sightings in any location may also be reported to the U.S. Coast Guard via channel 16 and through the WhaleAlert app (*https://www.whalealert.org*).

In the event that personnel involved in the survey activities discover an injured or dead marine mammal, Atlantic Shores must report the incident to NMFS as soon as feasible by phone (866–755–6622) and by email (*nmfs.gar.incidental-take@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

2. Species identification (if known) or description of the animal(s) involved;

3. Condition of the animal(s) (including carcass condition if the animal is dead);

4. Observed behaviors of the animal(s), if alive;

5. If available, photographs or video footage of the animal(s); and

6. General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Atlantic Shores must report the incident to NMFS by phone (866–755–6622) and by email (*nmfs.gar.incidental-take@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report would include the following information:

1. Time, date, and location (latitude/longitude) of the incident;

2. Species identification (if known) or description of the animal(s) involved;

3. Vessel's speed during and leading up to the incident;

4. Vessel's course/heading and what operations were being conducted (if applicable);

5. Status of all sound sources in use;

6. Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;

7. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

8. Estimated size and length of animal that was struck;

9. Description of the behavior of the marine mammal immediately preceding and/or following the strike;

10. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

11. Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and

12. To the extent practicable, photographs or video footage of the animal(s).

Determinations

When issuing the 2022 IHA (87 FR 24103, April 22, 2022), NMFS found Atlantic Shores' HRG surveys would have a negligible impact to species or stocks annual rates of recruitment and survival and the amount of taking would be small relative to the population size of such species or stocks (less than 6 percent). Atlantic Shores' 2023 HRG survey activities are identical to those analyzed in support of the 2022 IHA. Additionally, the potential effects of the activity, taking into consideration the required mitigation and related required monitoring and reporting measures, are identical to those evaluated in support of the 2022 IHA. NMFS notes that there is a minor increase in estimated take numbers for six marine mammal species and/or stocks (refer back to Table 3). However, the total amount of takes authorized is small relative to the best available population size of each species or stock (less than 1 percent for 13 stocks; less than 2 percent for 2 stocks; and less than 19 percent for the remaining stock (Western North Atlantic Migratory Coastal stock of common bottlenose dolphins)). Additionally, only Level B harassment is authorized, which NMFS expects would be of a lower severity, predominantly in the form of avoidance of the sound sources that may cause a temporary abandonment of the location during active source use that may result in a temporary interruption of foraging activities for some species. NMFS does not expect that the 2023 survey activities will have long-term or permanent impacts as the acoustic source would be mobile and would leave the area within a specific amount of time for which the animals could return to the area. 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 are expected to result.

As previously discussed in the 2022 IHA (87 FR 24103, April 22, 2022), impacts from the survey are expected to be localized to the specific area of activity and only during periods of time where Atlantic Shores' acoustic sources are active. While areas of biological importance to fin whales, humpback whales, and harbor seals can be found off the coast of New Jersey and New York, NMFS does not expect these activities to affect these specific areas. This is due to the combination of the mitigation and monitoring measures being required of Atlantic Shores, as well as the location of these biologically important areas. All of these important areas are found outside of the range of this survey area, as is the case with fin whales and humpback whales (BIAs found further north), and, therefore, are not expected to be impacted by Atlantic Shores' 2023 survey activities. Three major haulout sites exist for harbor seals within ECR North along New Jersey, including at Great Bay, Sandy Hook, and Barnegat Inlet (Conserve Wildlife Foundation of New Jersey (CWFNJ), 2015). As hauled out seals would be out of the water, no in-water effects are expected.

Atlantic Shores' project would occur in a small fraction of the migratory corridor for the NARW and impacts are expected to be limited to low levels of behavioral harassment, resulting in temporary and minor behavioral changes during any brief period of exposure. As noted for the 2022 IHA (87 FR 24103, April 22, 2022), the size of the survey area (5,868 km^2) in comparison with the entire migratory habitat for the NARW (BIA of 269,448 km^2) is small, representing 2.11 percent of the entire migratory corridor. Given the transitory nature of NARWs in this area and due to the lack of year-round ''core'' NARW foraging habitat (Oleson *et al.,* 2020) (such habitat is located much further north in the southern area of Martha's Vineyard and Nantucket Islands where both visual and acoustic detections of NARWs indicate a nearly year-round presence), it is unlikely for any exposure to cause chronic effects as any exposure would be short and intermittent. Furthermore, given the small size of the Level B harassment zones (141 m) and the robust suite of required mitigation and monitoring measures, with specific note on the mitigation zones for NARWs (exclusion zone; 500 m), NMFS does not expect adverse impacts on this species. Lastly, NMFS notes the reduction in requested take from the 2022 IHA (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022) due to the revised Duke University density data (Roberts *et al.,* 2023). Under the 2022 IHA, NMFS authorized 17 instances of take for NARWs. Here, NMFS has authorized only three takes by Level B harassment representing less than 1 percent of the overall species abundance. Given the updates to the density for this species in particular during the periods where project activities are expected to be ongoing, NMFS expects low-level impacts (*e.g.,* temporary avoidance of the area) from the 2023 project on NARWs.

We also note that our findings for other species with active UMEs or species where BIAs or haulouts have been previously described in the 2022 IHA remain applicable to this project. 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 determined the following: (1) the required mitigation measures will effect the least practicable adverse impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Atlantic Shores' 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

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 Office of Protected Resources (OPR) consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS OPR is authorizing 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 these activities fall within the scope of activities analyzed in 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). The consultation concluded that NMFS' issuance of incidental take authorization related to these activities are not likely to adversely affect ESA-listed marine mammals.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our 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 determined that the issuance of the final IHA qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS has issued an IHA to Atlantic Shores for conducting site characterization surveys off New Jersey and New York from June 9, 2023 through June 8, 2024, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The final IHA and Atlantic Shores' IHA application can be found on NMFS' website at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Dated: June 7, 2023.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–12532 Filed 6–9–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD080]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of a permit.

SUMMARY: Notice is hereby given that a permit has been issued to the following entity under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Sara Young (Permit No. 26254) at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notice was published in the **Federal Register** on the date listed below that a request for a permit had been submitted by the below-named applicant. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to *https://www.federalregister.gov* and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMITS

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
26254	0648–XB798	Alaska Department of Fish & Game, 1300 College Road, Fairbanks, AK 99701 (Responsible Party: Lori Quakenbush).	87 FR 8235, February 14, 2022.	May 16, 2023.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of this permit was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Authority: The requested permit has been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: June 9, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–12705 Filed 6–13–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Antarctic Marine Living Resources Conservation and Management Measures

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 February 13, 2023 (88 FR 9253) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Antarctic Marine Living Resources Conservation and Management Measures.

OMB Control Number: 0648–0194.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 86.

Average Hours per Response: One hour to apply for a CEMP research permit; 1 hour to report on research; 28 hours to supply information on potential new or exploratory fishing; 2 hours to apply for a harvesting permit; 2 minutes to transmit information by radio; 4 hours to install a vessel monitoring device (VMS); 2 hours for annual VMS maintenance; 5 minutes for installation checklist; 15 minutes to mark a vessel; 5 minutes to mark buoys; 10 hours to mark pot gear; 2 minutes to mark trawl nets; 15 minutes to provide notice of transshipment within the Convention Area; 5 minutes to request for observer; 15 minutes to apply for a permit to be a first receiver of Antarctic marine living resources; 15 minutes to apply for pre-approval of toothfish imports; 30 minutes to complete a fresh toothfish reporting form; 15 minutes to complete and submit re-export catch documents; 15 minutes to submit import tickets.

Total Annual Burden Hours: 382.

Needs and Uses: This request is for extension of a currently approved information collection. The 1982 Convention on the Conservation of Antarctic Marine Living Resources (Convention) established the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). The United States is a Contracting Party to the Convention. The Antarctic Marine Living Resources Convention Act (AMLRCA) directs and authorizes the United States to take actions necessary to meet its treaty obligations as a Contracting Party to the Convention. The regulations

implementing AMLRCA are at 50 CFR part 300, subpart G. The record keeping and reporting requirements at 50 CFR part 300 form the basis for this collection of information. This collection of information concerns research in, and the harvesting and importation of, marine living resources from waters regulated by CCAMLR related to ecosystem research, U.S. harvesting permit application and/or harvesting vessel operators and to importers and re-exporters of Antarctic marine living resources. The collection is necessary in order for the United States to meet its treaty obligations as a contracting party to the Convention.

Affected Public: Business or other for profit organizations; not-for-profit institutions; individuals or households.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

Legal Authority: Public Law 98–623, Sec. 2439 Antarctic Marine Living Resources Convention Act.

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 0648–0194.

Sheleen Dumas,

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

[FR Doc. 2023–12691 Filed 6–13–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–C–2023–0022]

Request for Comments on Southeast Regional Office and Community Outreach Office Locations

AGENCY: United States Patent and Trademark Office, U.S. Department of Commerce.

ACTION: Request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is seeking information to inform the planning and design of the USPTO satellite offices (regional offices) and newly-authorized community outreach offices (COOs). The USPTO is also seeking information on potential locations for a future USPTO regional office in the southeast region of the United States (Southeast Regional Office or SERO) and a COO in the northern New England (NNE) region (Northern New England Community Outreach Office) that the USPTO was directed to establish under the Unleashing American Innovators Act of 2022 (UAIA), signed into law as part of the Consolidated Appropriations Act, 2023 on December 29, 2022.

DATES: To ensure consideration, written comments must be received by 5 p.m. ET on or before July 17, 2023, and should be submitted in accordance with the instructions in the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections. No public hearing will be held.

ADDRESSES: For reasons of government efficiency, comments must be submitted electronically by completing the form at *https://tinyurl.com/27srysh4.* Complete the required fields using the pre-formatted response form that will allow you to comment on each topic of interest or question you choose to address. You may enter your responses directly into the form or cut and paste your responses from a MICROSOFT WORD® or ADOBE® portable document format (PDF) document into the field provided for each question. You must submit any attachments that provide additional support to a question through the electronic form. Attachments to the form will be accepted as ADOBE® PDF or MICROSOFT WORD® documents. To be considered, comments must be submitted through the electronic form. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

If submission of comments through the electronic form is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions regarding how to submit comments by mail or by hand delivery, based on the public's ability to obtain access to USPTO facilities at the time.

FOR FURTHER INFORMATION CONTACT: Shirin Bidel-Niyat, Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, at 571–272–8600 or *NewOffices@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Enabled by the 2011 America Invents Act (AIA), the USPTO currently has four regional offices that are located in Detroit, Michigan; San Jose, California (Silicon Valley); Denver, Colorado; and Dallas, Texas. The purposes of the regional offices (ROs), as originally defined in the AIA and amended by the UAIA, are to:

- *RO1:* Better connect patent filers and innovators with the Office, including by increasing outreach activities to individual innovators, small businesses, veterans, low-income populations, students, rural populations, and any geographic group of innovators that the Director may determine to be underrepresented in patent filings;
- *RO2:* Enhance patent examiner and administrative patent judge retention, including patent examiners and administrative patent judges from economically, geographically, and demographically diverse backgrounds;
- *RO3:* Improve recruitment of patent examiners;
- *RO4:* Decrease the number of patent applications waiting for examination; and
- *RO5:* Improve the quality of patent examination.

The USPTO has been focused on outreach and impact, and is working on ways to better support those new to the innovation ecosystem, bringing more people in America into the fold. The USPTO is also studying the role of the regional offices in serving both the public and the needs of our colleagues across the agency.

The UAIA supports the USPTO's expanded outreach efforts by requiring the USPTO to establish, within three years of enactment (*i.e.,* no later than December 29, 2025), a Southeast Regional Office in the geographic region comprised of the states of Virginia, North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, Mississippi, Louisiana, and Arkansas. The UAIA requires the Office to consider the following when selecting the site for the SERO:

- *SERO1:* Number of patent-intensive industries that are located near the site;
- *SERO2:* How many research-intensive institutions, including higher education institutions, are located near the site;
- *SERO3:* Governmental and business frameworks, at both the State and local levels, that support intellectual property-intensive industries that are located near the site; and
- *SERO4:* The proximity of the office to anchor institutions (such as hospitals

primarily serving veterans and institutions of higher education), individual inventors, small businesses, veterans, low-income populations, students, rural populations, and any geographic group of innovators that the Director may determine to be underrepresented in patent filings.

The Act also requires the USPTO to report out within two years on whether additional offices are necessary to further increase participation in the patent system by individuals who have historically been underrepresented in patent filings.

In addition to regional offices, the UAIA requires the USPTO to establish at least four COOs within five years from enactment of the Act (*i.e.,* no later than December 29, 2027). The purposes of the COOs are to:

- *COO1:* Further achieve the purposes described above for the regional offices;
- *COO2:* Develop partnerships with local community organizations, institutions of higher education and/or research, and businesses to create tailored community-based programs that provide education regarding the patent system and promote the career benefits of innovation and entrepreneurship; and
- *COO3:* Educate prospective inventors, including individual inventors, small businesses, veterans, low-income populations, students, rural populations, and any geographic group of innovators that the Director may determine to be underrepresented in patent filings, about all public and private resources available to potential patent applicants, including the patent pro bono programs.

The UAIA prohibits the establishment of a COO in the same state as the principal location of the USPTO (Virginia), or in a state that has a regional office (California, Colorado, Michigan, or Texas). The UAIA also requires that at least one of the COOs be established in the NNE region and serve the states of Vermont, New Hampshire, and Maine. Under the Act, the Office must give preference to locations where:

- *NNECOO1:* There is at least one private institution of higher education and at least one public institution of higher education;
- *NNECOO2:* There are no more than 15 registered patent attorneys based on information from the USPTO's Office of Enrollment and Discipline; and
- *NNECOO3:* According to data from the 2012 Survey of Business Owners conducted by the U.S. Census Bureau, less than 45% of the firms are owned by women, minorities, or veterans.

The USPTO will use quantitative metrics and criteria to inform the location selection for future ROs and COOs. The Office plans to consider the following classes of data (D) at a minimum:

- *D1:* Business demographics.
- *D2:* Concentration of research- and IP-intensive industries.
- *D3:* Socioeconomic and demographic metrics of the regional/local population.
- *D4:* Availability and concentration of existing business development resources.
- *D5:* Overall geographic diversity of office locations.

The USPTO welcomes input from all stakeholders on any matter that they believe is relevant to the overall planning and design of the USPTO RO and COOs, or the selection of locations for the new SERO or NNECOO. Commenters are encouraged to address any or all of the statutory considerations listed in the UAIA and summarized above, any other considerations they believe the USPTO should consider, and the questions listed below.

Commenting Instructions: To be considered, comments must be submitted through the electronic form available at *https://tinyurl.com/27srysh4.* Please cite any public data that relates to or supports your responses. If data is available but non-public, describe such data to the extent permissible.

II. Specific Request for Comments: Planning and Design of Regional Offices and Community Outreach Offices

With the addition of COOs to the agency's footprint, the USPTO envisions the joint mission of the ROs and COOs to be the cultivation and expansion of a vibrant and inclusive innovation and entrepreneurship ecosystem supported by intellectual property across the United States. To accomplish this mission, the offices will conduct broad stakeholder engagement with innovators ranging from individual inventors to multinational business entities; establish and leverage partnerships and relationships to scale the USPTO's work; incentivize regional innovation and entrepreneurship, especially in key emerging areas; and promote full participation by innovators and entrepreneurs of all backgrounds, including in rural areas and from our military, to support U.S. innovation and jobs.

The USPTO invites responses to the following questions:

Regional offices

1. Considering the envisioned mission above, what essential services—including outreach, education, customer service, convening space, and employee support—should a RO provide to achieve the statutory purposes?

a. Do you prefer to have the services you identified delivered virtually? Why or why not?

b. Do you prefer to have the services you identified delivered in person? Why or why not?

2. What types of organizations should the RO pursue relationships and collaborations with to better leverage and scale its services?

Community Outreach Offices

3. Considering the envisioned mission above, what essential services—including outreach, education, and customer service—should a COO provide to achieve the statutory purposes?

a. Do you prefer to have the services you identified delivered virtually? Why or why not?

b. Do you prefer to have the services you identified delivered in person? Why or why not?

4. What types of organizations should the COO pursue relationships and collaborations with to better leverage and scale its services?

5. Would you support a COO being co-located with other public sector entities/services?

a. If so, please describe the added value of having a shared location.

b. Which public sector entities/services would you suggest for the shared location(s)?

c. If not, please describe the benefit of having a unique location for a COO.

General Comments Regarding Regional and Community Outreach Offices

6. What unique services should the ROs and COOs individually provide, and how should the full range of services complement each other?

7. Considering the potential classes of data listed in part I above, what additional key indicators or data would support future RO and COO site selection?

8. What else should the USPTO consider when planning for the ROs and COOs?

III. Specific Request for Comments: Location of the Southeast Regional Office

Given the statutory purposes and considerations of ROs, including those specific to the SERO, as discussed in part I, and the planning and design considerations identified in part II:

9. What data would assist in assessing potential locations for the SERO site?

10. What is an ideal location for the SERO? Describe how this location meets

the statutory purposes and considerations.

11. What State or local government, legal, and business frameworks that support intellectual property-intensive industries are located near the recommended site?

12. What else should the USPTO consider when determining the ideal location for the SERO?

IV. Specific Request for Comments: Location of the Northern New England Community Outreach Office

Given the statutory purposes and considerations of COOs, including those specific to the NNECOO, as discussed in part I, and the planning and design considerations identified in part II:

13. What data would assist in assessing potential locations for the NNECOO site?

14. What is an ideal location for the NNECOO? Describe how this location meets the statutory purposes and considerations.

15. What community organizations/businesses near the recommended office location could the USPTO collaborate with to help provide intellectual property education and promote the career benefits of innovation and entrepreneurship?

16. What else should the USPTO consider when determining the ideal NNECOO?

While the Office welcomes and values all comments from the public in response to this request, the comments submitted do not bind the Office to any further actions related to the comments, and the Office may not respond to any or every comment that is submitted. The Office will, however, consider all written submissions.

Any and all decisions made with regard to the future locations of the RO and COOs will be made consistent with the criteria outlined in the UAIA and the goals and mission of the USPTO.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2023–12824 Filed 6–13–23; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[23–RI–L–04]

Notice of Intent To Grant an Exclusive Patent License

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant an exclusive patent license to Datalytica, LLC. duly organized, validly existing, and in good standing in the State of Delaware having a place of business at 8823 Boulder Hill, Laurel, MD 20723.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this notice.

ADDRESSES: Submit written objections to Stephen Colenzo, AFRL/RI, 525 Brooks Road, Rome, New York 13441; or email: *stephen.colenzo@us.af.mil.* Include Docket No. 23–RI–L–04 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Stephen Colenzo, AFRL/RI, 525 Brooks Road, Rome, New York 13441; or email: *stephen.colenzo@us.af.mil;* Office: 315–330–7665.

SUPPLEMENTARY INFORMATION:

Abstract of Patent Application(s)

Method and apparatus for object or event of interest detection which minimizes the level of false alarms and maximizes the level of detections as defined on a per event or object basis by the analyst. The invention allows for the minimization of false alarms for objects or events of interest which have a close resemblance to all other objects or events mapped to the same multidimensional feature space, and allows for the per event or per object adjustment on false alarms for objects or events of higher interest.

Intellectual Property

—BLOWERS ET AL, U.S. Patent No. 8,732,100, issued on 20 May 2014, and entitled ''*Method and Apparatus for Event Detection Permitting per Event Adjustment of False Alarm Rate.*''

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Authority: 35 U.S.C. 209; 37 CFR 404.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2023–12654 Filed 6–13–23; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2023–HQ–0012]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Air Force announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 14, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions:: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to AF Information Collections Office, 1800 Air Force Pentagon, Suite 4C146, Washington, DC 20330, ATTN: Ms. Mia Day, or call 703–697–4593.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Cargo Movement Operations System; OMB Control Number 0701–0165.

Needs and Uses: CMOS is used by the DoD to plan, manage, and execute the movement of cargo and personnel. In addition to the deployment of active military personnel, the passenger manifest capability supports military retirees and military family members traveling on a ''Space A CAT VI'' basis.

Affected Public: Individuals or households.

Annual Burden Hours: 18.

Number of Respondents: 180.

Responses per Respondent: 1.

Annual Responses: 180.

Average Burden per Response: 6 minutes.

Frequency: On occasion.

Dated: June 7, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–12651 Filed 6–13–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting

AGENCY: General Counsel of the Department of Defense, Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC–IPAD) will take place.

DATES: Tuesday, June 13, 2023—Open to the public from 12:55 p.m. to 5:30 p.m. EST and Wednesday, June 14, 2023—Open to the public from 8:25 a.m. to 4:30 p.m.

ADDRESSES: Renaissance Arlington Capital View Hotel, 2800 S Potomac Ave., Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dwight Sullivan, 703–695–1055 (Voice), 703–693–3903 (Facsimile), *dwight.h.sullivan.civ@mail.mil* (Email). Mailing address is DAC–IPAD, One Liberty Center, 875 N Randolph Street, Suite 150, Arlington, Virginia 22203. Website: *http://dacipad.whs.mil/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer (DFO), the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its June 13–14, 2023 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of chapter 10 of title 5 (formerly the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. App.)), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: In section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), Congress tasked the DAC–IPAD to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces. This will be the thirtieth public meeting held by the DAC–IPAD. On Day 1, the Committee will receive testimony from military criminal investigators; military and civilian prosecutors; and senior enlisted leaders. Prior to adjournment, the Committee will hear public comment. On Day 2, the Committee will receive testimony from military special victims' counsel organizations and civilian advocacy organizations. The Committee will hear observations from members' attendance at an Office of Special Trial Counsel course. After a lunch break, the Committee will hear from the DoD Office of Diversity, Equity, and Inclusion and then receive an update on the bi-annual *Collateral Misconduct Report.* The DAC–IPAD Special Projects, Case Review, and Policy subcommittees will update the Committee on their on-going projects. The Committee will conduct deliberations regarding information received during the public meeting. Prior to adjournment, the Committee will hear public comment and then conduct a meeting wrap-up and preview of its next public meeting.

Agenda: Day 1: 12:55 p.m.–1 p.m. Welcome and Introduction to Public Meeting; 1–2 p.m. Military Criminal Investigative Organizations; 2–3 p.m. Prosecutors (Experience Working with Special Victims' Counsel); 3–3:15 p.m. Break; 3:15–4:15 p.m. Prosecutors (Military and Civilian Experience); 4:15–5:15 p.m. Senior Enlisted Leaders; 5:15–5:30 p.m. Public Comment; 5:30 p.m. Public Meeting Adjourns; Day 2: 8:25–8:30 a.m. Welcome and Overview; 8:30–9:30 a.m. Military Special Victims' Counsel Organizations; 9:30–10:15 a.m. Civilian Advocacy Organizations (Victim Services); 10:15–10:30 a.m. Break; 10:30–11:30 a.m. Civilian Advocacy Organizations (Diversity); 11:30 a.m.–12 p.m. Office of Special Trial Counsel Course Observation Feedback; 12–1 p.m. Lunch; 1–2:15 p.m. DoD Office of Diversity, Equity, and Inclusion; 2:15–2:20 p.m. Break; 2:20–2:35 p.m. Collateral Misconduct Report Update; 2:35–2:50 p.m. Special Projects Subcommittee Update; 2:50–3:05 p.m. Case Review Subcommittee Update; 3:05–3:20 p.m. Policy Subcommittee Update; 3:20–4:00 p.m. Committee Deliberations; 4:05–4:15 p.m. Public Comment; 4:15–4:30 p.m. Meeting Wrap-up/Preview of Next Meeting; 4:30 p.m. Public Meeting Adjourned.

Meeting Accessibility: Pursuant to 41 CFR 102–3.140 and 5 U.S.C. 1009(a)(1), the public or interested organizations may submit written comments to the DAC–IPAD about its mission and topics pertaining to this public meeting. Written comments must be received by the DAC–IPAD at least five (5) business days prior to the meeting date so that they may be made available to the DAC–IPAD members for their consideration prior to the meeting. Written comments should be submitted via email to the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the DAC–IPAD operates under the provisions of the FACA, all written comments will be treated as public documents and will be made available for public inspection.

Written Statements: Pursuant to 41 CFR 102–3.140 and 5 U.S.C. 1009(a)(3), interested persons may submit a written statement to the DAC–IPAD. Individuals submitting a statement must submit their statement no later than 5 p.m. EST,

Monday, June 12, 2023, to Dwight Sullivan, 703–695–1055 (Voice), 703–693–3903 (Facsimile), *dwight.h.sullivan.civ@mail.mil* (Email). If a statement pertaining to a specific topic being discussed at the planned meeting is not received by Monday, June 12, 2023, then it may not be provided to, or considered by, the Committee during the June 13, 2023, meeting. The DFO will review all timely submissions with the DAC–IPAD Chair and ensure such submissions are provided to the members of the DAC–IPAD before the meeting. Any comments received by the DAC–IPAD prior to the stated deadline will be posted on the DAC–IPAD website (*https://dacipad.whs.mil/*).

Dated: June 9, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–12727 Filed 6–13–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0102]

Agency Information Collection Activities; Comment Request; Survey on Use of Funds Under Title II, Part A

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before August 14, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0102. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov*. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Elizabeth Witt, (202) 260–5585.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Survey on Use of Funds under Title II, Part A.

OMB Control Number: 1810–0756.

Type of Review: Extension without change of a currently approved ICR.

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

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 416.

Abstract: The U.S. Department of Education (the Department) is requesting an extension of the 1810–0756 information collection to continue collecting data from states annually about how title II, part A funds are used; how funds are used to improve equitable access to teachers for-low income and minority students; and where applicable, evaluation and retention data for teachers, principals, and other school leaders. The reporting requirements are outlined in section 2104(a) of the Elementary and Secondary Education Act (ESEA), as authorized by the Every Student Succeeds Act of 2015 (ESSA). The survey will include the universe of states, the District of Columbia, and Puerto Rico. The information obtained from the survey will provide the Department with a description of how title II, part A State activities funds are used by each State. In addition, the survey will provide data on teacher, principal, and other school leader evaluation and retention. The survey will be sent to State title II, part A coordinators in each of the 50 states, District of Columbia, and Puerto Rico. The survey will be administered using an electronic instrument.

Dated: June 8, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–12657 Filed 6–13–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–491–000]

Florida Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on June 1, 2023, Florida Gas Transmission Company, LLC (FGT) filed a prior notice request for authorization, in accordance with sections 157.205, 157.208, 157.210 and 157.211, of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act and East Tennessee's blanket certificate issued in Docket No. CP82–553–000,[1] to increase certificated capacity, and construct/modify, own, maintain and operate certain natural gas compression and lateral facilities in Polk and Hillsborough Counties, Florida.

FGT is proposing to move incremental firm volume for the City of Lakeland to a proposed lateral and existing lateral system, for delivery to the new/

[1] *Florida Gas Transmission Company, LLC.,* 21 FERC ¶ 62,235 (1982).

modernized Lakeland Electric McIntosh Power Plant. Additionally, FGT proposes to perform a minor uprating of two existing compressor unit turbines and increase throughput at the FGT's existing Compressor Station 30. This proposed Project will enable FGT to provide up to 55,000 million British thermal units per day of incremental transportation service for delivery to the proposed delivery points for the City of Lakeland. FGT estimates the cost of the Project to be approximately $17 million, all as more fully set forth in its request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to: Blair Lichtenwalter, Senior Director of Certificates, Florida Gas Transmission Company, LLC, 1300 Main St., Houston, Texas 77002, or call (713) 989–2605, or fax (713) 989–1205, or via email to *Blair.Lichtenwalter@energytransfer.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on August 7, 2023. How to file protests, motions to intervene, and comments is explained below.

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.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is August 7, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is August 7, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before August 7, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–491–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–491–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Blair Lichtenwalter, Senior Director of Certificates, Florida Gas Transmission Company, LLC, 1300 Main St., Houston, Texas 77002, or call (713) 989–2605, or fax (713) 989–1205, or via email to *Blair.Lichtenwalter@energytransfer.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: June 8, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12729 Filed 6–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–186–000.

Applicants: Earthrise Gibson City Interconnection, LLC.

Description: Earthrise Gibson City Interconnection, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 6/8/23.

Accession Number: 20230608–5052.

Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: EG23–187–000.

Applicants: Earthrise Lincoln Interconnection, LLC.

Description: Earthrise Lincoln Interconnection, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/8/23.

Accession Number: 20230608–5053.

Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: EG23–188–000.

Applicants: Earthrise Shelby County Interconnection, LLC.

Description: Earthrise Shelby County Interconnection, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/8/23.

Accession Number: 20230608–5076.

Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: EG23–189–000.

Applicants: Earthrise Tilton Interconnection, LLC.

Description: Earthrise Tilton Interconnection, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/8/23.

Accession Number: 20230608–5078.

Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: EG23–190–000.

Applicants: Earthrise Crete Interconnection, LLC.

Description: Earthrise Crete Interconnection, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/8/23.

Accession Number: 20230608–5081.

Comment Date: 5 p.m. ET 6/29/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–75–000.

Applicants: CPV Maryland, LLC and Competitive Power Ventures Holdings, LP v. PJM Interconnection, L.L.C.

Description: Complaint of CPV Maryland, LLC and Competitive Power Ventures Holdings, LP v. PJM Interconnection, L.L.C.

Filed Date: 6/7/23.

Accession Number: 20230607–5151.

Comment Date: 5 p.m. ET 7/7/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2374–016; ER17–2059–011.

Applicants: Puget Sound Energy, Inc., Puget Sound Energy, Inc.

Description: Supplement to June 30, 2022, Triennial Market Power Analysis for the Northwest Region of Puget Sound Energy, Inc.

Filed Date: 5/3/23.

Accession Number: 20230503–5175.

Comment Date: 5 p.m. ET 6/28/23.

Docket Numbers: ER14–1818–026.

Applicants: Boston Energy Trading and Marketing LLC.

Description: Updated Market Power Analysis for Northwest Region of Boston Energy Trading and Marketing LLC.

Filed Date: 6/6/23.

Accession Number: 20230606–5230.

Comment Date: 5 p.m. ET 8/7/23.

Docket Numbers: ER20–1435–003.

Applicants: Energy Harbor LLC.

Description: Compliance filing: Informational Filing Regarding Planned Transfer to be effective N/A.

Filed Date: 6/8/23.

Accession Number: 20230608–5136.

Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER20–2259–002.

Applicants: New York Transco, LLC, New York Independent System Operator, Inc.

Description: Compliance filing: New York Transco, LLC submits tariff filing per 35: NY Transco Response to May 9, 2023 Deficiency Letter on Order No. 864 Compliance to be effective 1/27/2020.

Filed Date: 6/8/23.

Accession Number: 20230608–5063.

Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER21–385–005

Applicants: Upper Missouri G. & T. Electric Cooperative, Inc.

Description: Compliance filing: Compliance Filing—Second Partial Settlement (ER21–385) to be effective 4/1/2023.

Filed Date: 6/8/23.

Accession Number: 20230608–5054.

Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–959–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to WMPA, SA No. 6154 re: Effective Date in Docket No. ER23–959 to be effective 3/28/2023.

Filed Date: 6/8/23.

Accession Number: 20230608–5072.

Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–1741–001.

Applicants: ISO New England Inc., The Narragansett Electric Company.

Description: Tariff Amendment: ISO New England Inc. submits tariff filing per 35.17(b): Amendment to Filing of Second Revised LGIA–ISONE/NEP–15–01 to be effective 1/1/2023.

Filed Date: 6/8/23.

Accession Number: 20230608–5107.
Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–1773–001.
Applicants: Pomona Energy Storage 2 LLC.
Description: Tariff Amendment: Amendment to be effective 7/1/2023.
Filed Date: 6/8/23.
Accession Number: 20230608–5135.
Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–2094–000.
Applicants: RE Gaskell West 3 LLC.
Description: Initial rate filing: Certification of Concurrence to LGIA CTA to be effective 6/8/2023.
Filed Date: 6/7/23.
Accession Number: 20230607–5162.
Comment Date: 5 p.m. ET 6/28/23.

Docket Numbers: ER23–2095–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii: Niagara Mohawk 205: CRA between Niagara Mohawk, City of Sherrill SA2784 to be effective 5/9/2023.
Filed Date: 6/8/23.
Accession Number: 20230608–5014.
Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–2096–000
Applicants: PJM Interconnection, L.L.C.
Description:§ 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6582; Queue No. AE2–333 to be effective 8/8/2023.
Filed Date: 6/8/23.
Accession Number: 20230608–5019.
Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–2097–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5608; Queue No. AE1–218 re: Milestones to be effective 8/7/2023.
Filed Date: 6/8/23.
Accession Number: 20230608–5020.
Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–2098–000.
Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.
Description: Tariff Amendment: PPL Electric Utilities Corporation submits tariff filing per 35.15: Notice of Cancellation of ISA, SA No. 5750 to be effective 8/8/2023.
Filed Date: 6/8/23.
Accession Number: 20230608–5030.
Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–2099–000.
Applicants: Astoria Gas Turbine Power LLC.
Description: Tariff Amendment: Notice of Cancellation to be effective 6/9/2023.
Filed Date: 6/8/23.
Accession Number: 20230608–5033.
Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–2100–000.
Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.
Description: Tariff Amendment: PPL Electric Utilities Corporation submits tariff filing per 35.15: Notice of Cancellation of ISA, SA No. 5770 to be effective 8/8/2023.
Filed Date: 6/8/23.
Accession Number: 20230608–5036.
Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–2101–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2198R33 Kansas Power Pool NITSA NOA to be effective 6/1/2023.
Filed Date: 6/8/23.
Accession Number: 20230608–5037.
Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–2102–000.
Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.
Description: Tariff Amendment: PPL Electric Utilities Corporation submits tariff filing per 35.15: Notice of Cancellation of ISA, SA No. 5771 to be effective 8/8/2023.
Filed Date: 6/8/23.
Accession Number: 20230608–5038.
Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–2103–000.
Applicants: Midcontinent Independent System Operator, Inc., Great River Energy.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023–06–08_SA 3668 GRE–WMU T–T & T–L and Amendment No. 1 to be effective 6/17/2021.
Filed Date: 6/8/23.
Accession Number: 20230608–5049.
Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–2104–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: PowerSouth NITSA Amendment (Revise OATT Capacity Credit Provision) to be effective 1/1/2023.
Filed Date: 6/8/23.
Accession Number: 20230608–5061.
Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–2105–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: SEPA Amended and Restated Network Agreement Amendment Filing (Revision No. 12) to be effective 5/9/2023.

Filed Date: 6/8/23.

Accession Number: 20230608–5062.

Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: ER23–2106–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 6922; Queue No. AF1–158 & Cancellation of IISA, SA No. 6443 to be effective 5/9/2023.

Filed Date: 6/8/23.

Accession Number: 20230608–5067.

Comment Date: 5 p.m. ET 6/29/23.

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 8, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12737 Filed 6–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2091–000]

Goleta Energy Storage, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Goleta Energy Storage, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 28, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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 8, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12732 Filed 6–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–487–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on May 31, 2023, Transcontinental Pipe Line Company, LLC (Transco), Post Office Box 1396, Houston, Texas 77251, filed a prior notice application pursuant to sections 157.205, 157.208 and 157.210 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act, and Transco's blanket certificate issued in Docket No. CP82–426–000. Transco requests authorization to construct, install, modify, operate, and maintain, its Carolina Market Link Project (hereinafter referred to as Project). The Project will enable Transco to provide 78,000 dekatherms per day of incremental firm transportation capacity for Patriots Energy Group and Duke Energy Carolinas from Station 165 to the York Road Meter Station located in Cherokee County, South Carolina, all as more fully set forth in the application, which is open to the public for inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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 TYY, (202) 502–8659.

Any questions regarding this application should be directed to Jordan Kirwin, Director, Rates & Regulatory, Transcontinental Gas Pipe Line Company, LLC, Post Office Box 1396, Houston, Texas, 77251–1396, at (713) 215–3723 or by email to *Jordan.Kirwin@Willams.com.* Questions may also be directed to Nicole M Turpen, Senior Counsel, Transcontinental Gas Pipe Line Company, LLC, Post Office Box 1396, Houston, Texas, 77251–1396, at (346) 415–5242 or by email to *Nicole.Turpen@Williams.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of

[1] 18 CFR (Code of Federal Regulations) 157.9.

the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on August 7, 2023. How to file protests, motions to intervene, and comments is explained below.

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.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is August 7, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is August 7, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before August 7, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–487–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–487–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To send via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Jordan Kirwin, Director, Rates & Regulatory, Transcontinental Gas Pipe Line Company, LLC, Post Office Box 1396, Houston, Texas, 77251–1396, or by email to *Jordan.Kirwin@Williams.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: June 8, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12735 Filed 6–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–836–000.

Applicants: Southeast Supply Header, LLC.

Description: § 4(d) Rate Filing: Duke Energy FL K840007 Termination Cleanup to be effective 7/8/2023.

Filed Date: 6/8/23.

Accession Number: 20230608–5000.

Comment Date: 5 pm ET 6/20/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 8, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12736 Filed 6–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL03–3–013]

Energy Intelligence Group, Inc.; Notice of Filing

Take notice that on June 7, 2023, Energy Intelligence Group, Inc. filed a formal application to the Federal Energy Regulatory Commission (Commission) for re-approval as a price index developer fully or substantially in compliance with the Commission's April 2022 *Actions Regarding the Commission's Policy on Price Index Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs (Revised Policy Statement).*[1]

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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 20, 2023.

Dated: June 8, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12734 Filed 6–13–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 179 FERC ¶ 61,036 (2022).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–489–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on June 1, 2023, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed in the above referenced docket a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and National Fuel's blanket certificate issued in Docket No. CP83–4–000, for authorization to abandon in-place approximately 12 miles of its 12-inch-diameter Line FM120 and related appurtenances in Elk and Cameron Counties, Pennsylvania. The project will allow National Fuel to eliminate the need for capital expenditures associated with the maintenance and repair of the 1950s vintage facilities that are no longer needed for transportation service. National Fuel states that the proposed abandonment will not result in the

reduction of system capacity, termination of any services, nor the quality of service to any of its customers, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to Meghan Emes, Senior Attorney, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221, by telephone at (716) 857–7004 or by email at *emesm@natfuel.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on August 7, 2023. How to file protests, motions to intervene, and comments is explained below.

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.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is August 7, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is August 7, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before August 7, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–489–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–489–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Meghan Emes, Senior Attorney, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 1422, by email at *emesm@natfuel.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: June 8, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12730 Filed 6–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL23–73–000]

Idaho Power Company; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On June 8, 2023, the Commission issued an order in Docket No. EL23–73–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether Idaho Power Company's market-based rate authority in the Idaho Power balancing authority area is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful and to establish a refund effective date. *Idaho Power Company,* 183 FERC ¶ 61,168 (2023).

The refund effective date in Docket No. EL23–73–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL23–73–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2022), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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 8, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12731 Filed 6–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14876–002]

Western Minnesota Municipal Power Agency; Notice of Effective Date of Withdrawal of Notice of Intent

On June 28, 2022, Western Minnesota Municipal Power Agency (Western Minnesota Power) filed a Notice of Intent (NOI) for the proposed 1,800-megawatt Gregory County Pumped Storage Project. The project would have been located at the U.S. Army Corps of Engineers' Lake Francis Case on the Missouri River in Gregory and Charles Mix Counties, South Dakota. On May 23, 2023, Western Minnesota Power filed a letter informing the Commission that it was withdrawing its NOI for the above-referenced project.

Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure,[1] a withdrawal of a pleading is effective at the end of 15 days from the date of filing the notice of withdrawal. No motion in opposition to the notice of withdrawal has been filed, and the Commission has taken no action to disallow the withdrawal; thus, the withdrawal is effective on June 7, 2023.

Dated: June 8, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–12733 Filed 6–13–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2023–0310; FRL–11030–01–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 section 113(g) of the Clean Air Act, as amended (CAA or the Act), the Environmental

[1] 18 CFR 385.216(b) (2022).

Protection Agency (EPA or the Agency) is providing notice of a proposed consent decree in *East Yard Communities for Environmental Justice* v. *EPA,* No. 22–cv–0094 (D.D.C.). On January 13, 2022, Plaintiffs East Yard Communities for Environmental Justice, Ironbound Community Corporation, and Sierra Club (collectively Plaintiffs) filed a complaint in the United States District Court for the District of Columbia alleging that the EPA failed to perform its non-discretionary duty under to review and, if appropriate, revise new source performance standards and emissions guidelines for large municipal solid waste incinerators (LMWCs) at five-year intervals. In addition, Plaintiffs filed a separate petition on December 21, 2021, in the United States Court of Appeals for the District of Columbia seeking a writ of mandamus relating to a 2008 order of that court remanding to the EPA performance standards for LMWCs. EPA is providing notice of this proposed consent decree, which would resolve all claims in both cases by establishing deadlines for EPA to issue proposed and final rulemakings to review and, if necessary, revise emissions standards for LMWCs.

DATES: Written comments on the proposed consent decree must be received by July 14, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0310, 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: Matthew McNerney, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 564–1049; email address *mcnerney.matthew@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–2023–0310) 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 January 13, 2022, Plaintiffs East Yard Communities for Environmental Justice, Ironbound Community Corporation, and Sierra Club (collectively Plaintiffs) filed a complaint in the United States District Court for the District of Columbia alleging that the EPA failed to perform its non-discretionary duty under CAA section 129(a)(5) to review and, if appropriate, revise emissions standards for large municipal solid waste incinerators (LMWCs) at five-year intervals. In addition, on December 21, 2021, Plaintiffs filed a separate petition in the United States Court of Appeals for the District of Columbia seeking a writ of mandamus relating to a 2008 order of that court remanding to the EPA performance standards for LMWCs (Petition Matter).

The proposed consent decree, if finalized, would establish deadlines for the EPA to take proposed and final actions under CAA section 129(a)(5) to review, and if appropriate, revise new source performance standards and emissions guidelines for LMWCs. Specifically, the EPA would be required to sign the proposed action by December 31, 2023, and final action by November 30, 2024. Further, Plaintiffs agree to withdraw the related Petition Matter shortly after the entry of this Consent Decree.

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–2023–0310, 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. 2023–12671 Filed 6–13–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2023–0306; FRL–11024–01–OGC]

Proposed Consent Decree, Unreasonable Delay Claim Regarding Petition Seeking Revised Testing Requirements of Pesticides Prior to Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's March 18, 2022, Memorandum entitled Consent Decrees and Settlement Agreements to Resolve Environmental Claims Against the Agency, notice is hereby given of a proposed consent decree that resolves *Center for Food Safety, et al.* v. *U.S. Environmental Protection Agency,* a case in the United States District Court for the Northern District of California (4:22–cv–6001–JST) that alleges EPA unreasonably delayed responding to a petition for rulemaking, submitted to EPA on or around July 10, 2017, relating to the revision of testing requirements of pesticides prior to registration.

DATES: Written comments on the proposed consent decree must be received by July 14, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0306, 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, see the ''Additional Information about Commenting on the Proposed Consent Decree'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Allison Payne, Pesticides and Toxic Substances Law Office; telephone (202) 564–8501; email address: *payne.allison@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–2023–0306) 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

Prior to this lawsuit being filed, EPA received a petition on or around July 10, 2017, requesting that EPA (1) revise pesticide registration regulations to take into account all pesticide ingredients (active, inert and adjuvant) and their effects on the environment; (2) revise pesticide registration regulations to require whole pesticide formulation and tank mixture testing to take into account synergistic effects; (3) revise pesticide registration regulations to require inert ingredients and whole pesticide formulations testing for chronic toxicological effects and degradation; (4) revise pesticide registration regulations to require Endangered Species Act (ESA) consultation on the effects of whole pesticide formulations and tank mixtures on threatened and endangered species; and (5) assuming the regulations were revised as petitioners have requested, petitioners also request that EPA apply those revised regulations in conducting statutorily-mandated registration reviews of pesticides (hereinafter, these requests will be referred to as the ''2017 Petition Requests''). EPA sought public comment on the 2017 Petition. *See* Petition Seeking Revised Testing Requirements of Pesticides Prior to Registration; Request for Comment, 83 FR 65672 (December 21, 2018) (the ''Request for Comment''). EPA received approximately 564 comments. Plaintiffs filed a Complaint on October 12, 2022, alleging that EPA's failure to respond to the petition constitutes an unreasonable delay under Section 706(1) of the Administrative Procedure Act, 5 U.S.C. 706(1).

This proposed consent decree states that no later than September 29, 2023, the appropriate EPA official shall, by letter, either grant, deny, or grant in part and deny in part each of the 2017 Petition Requests. Court approval of this proposed consent decree would resolve all claims in this case except for the claim for the costs of litigation, including reasonable attorneys' fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties to the litigation in question. 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 APA or FIFRA. Unless EPA or the Department of Justice determines that consent should be withdrawn, the terms of the proposed consent decree will be affirmed and entered with the Court.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0306 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.

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.

Randolph L. Hill,

Associate General Counsel.

[FR Doc. 2023–12672 Filed 6–13–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2023–0228, FRL–10820–02–OLEM]

Draft National Strategy To Prevent Plastic Pollution: Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the *Draft National Strategy to Prevent Plastic Pollution,* which can be found at *https://www.epa.gov/circulareconomy/draft-national-strategy-prevent-plastic-pollution.* The EPA published the Notice of Availability in the **Federal Register** on May 2, 2023, and the public comment period was scheduled to end on June 16, 2023. However, the EPA has received several requests for additional time to develop and submit comments. In response to the request for additional time, the EPA is extending the comment period for an additional 45 days through July 31, 2023.

DATES: The comment period for the *Draft National Strategy to Prevent Plastic Pollution* published on May 2, 2023 at 88 FR 27502, is extended. Comments must be received on or before July 31, 2023.

ADDRESSES: To review the *Draft National Strategy to Prevent Plastic Pollution,* please visit *https://www.epa.gov/circulareconomy/draft-national-strategy-prevent-plastic-pollution.* Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2023–0228. Comments submitted in response to this notice may be submitted through the following:

- *Federal eRulemaking Portal:* Go to *https://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. 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.*

Instructions: All submissions received must include the Docket ID No. OLEM–2023–0228 for this notice. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the Request for Information process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions concerning this document, contact Tameka Taylor at 202–564–1510, Resource Conservation and Sustainability Division, Office of Resource Conservation and Recovery, Office of Land and Emergency Management, Mail Code 5306T, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20004; Email: *CircularPlastics@epa.gov.* For more information on this strategy and others developed as part of EPA's Series on Building a Circular Economy for All, please visit *https://www.epa.gov/circular-economy.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Response to this request for public comment is voluntary. Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2023–0228, at *https://www.regulations.gov/* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Responses to this request for public comment may be submitted by a single party or a team. Responses will only be accepted using Microsoft Word (.docx) or Adobe PDF (.pdf) file formats. The response document should contain the following:

- Two clearly delineated sections: (1) Cover page with company name and contact information; and (2) responses by topic and/or that address specific EPA questions.
- 1-inch margins (top, bottom, and sides).
- Times New Roman and 12-point font.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links to the referenced materials. Do not submit to EPA's docket at *https://www.regulations.gov/* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit: *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments. No confidential and/or business proprietary information, copyrighted information, or personally identifiable information should be submitted in response to this notice.

Privacy Note: All comments received from members of the public will be available for public viewing on *Regulations.gov*. In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Federal Government to form a binding contract. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation.

II. General Information

A. What is the purpose of this request for public comment?

Section 301 of the Save our Seas 2.0 Act charges EPA, in consultation with stakeholders, with developing a strategy to improve post-consumer materials management and infrastructure to reduce plastic waste and other post-consumer materials in waterways and oceans. The *Draft National Strategy to Prevent Plastic Pollution,* satisfies Congress' direction to EPA in section 301 of the Save Our Seas 2.0 Act to develop a strategy to improve post-consumer materials management and infrastructure for the purpose of reducing plastic waste and other post-consumer materials in waterways and oceans. EPA's *National Recycling Strategy* was published in November 2021 and primarily focuses on enhancing and advancing the national municipal solid waste recycling system, including plastic products in municipal solid waste. This strategy, the *Draft National Strategy to Prevent Plastic Pollution,* builds upon the *National Recycling Strategy* by focusing on actions to reduce, reuse, collect, and capture plastic waste.

The *Draft National Strategy to Prevent Plastic Pollution,* provides voluntary actions that can be implemented in the United States aimed at eliminating the release of plastic waste from land-based sources into the environment by 2040. This is a domestic strategy that identifies strategic objectives and voluntary actions where EPA can work collaboratively with U.S. stakeholders to prevent plastic pollution and reduce, reuse, collect, and capture plastic and other waste from land-based sources. The proposed actions under each objective create opportunities to shift from a linear approach in plastic materials management to a more circular system that is restorative or regenerative by design, enables resources to maintain their highest value for as long as possible, and aims for the elimination of waste. Sea-based sources are not in the scope of this strategy.

With input from stakeholders, EPA has identified three draft objectives for the strategy: (A) Reduce Pollution During Plastic Production; (B) Improve post-use materials management; and (C) Prevent trash and microplastics from entering waterways and remove escaped trash from the environment. The proposed actions under each objective support the United States' shift to a circular approach that is restorative or regenerative by design, enables resources to maintain their highest value for as long as possible, and aims to eliminate waste in the management of plastic products. EPA is seeking information about the objectives and voluntary actions identified in this draft strategy. Public comments will inform the Agency's efforts to finalize the strategy and further work with stakeholders to implement actions to reduce plastic waste and other post-consumer materials in waterways and oceans. This Notice follows in sequence, a previous public comment period for the EPA's *National Recycling Strategy,* which collectively satisfies the charge given to EPA by Congress under the SOS 2.0 Act.

III. Request for Information

In November 2021, EPA held multiple stakeholder feedback sessions with Federal agencies, states, territories, tribes, industry, and non-profit organizations to inform the development of this strategy. Between November 2021 and July 2022, EPA hosted virtual meetings across the country with interested stakeholders to inform the development of new grant programs established by the Infrastructure Investment and Jobs Act, which further informed the development of this strategy. This Notice and any future notices aim to supplement stakeholder engagement sessions and, provide all interested individuals and organizations with the opportunity to offer valuable input on the voluntary actions identified in this strategy. In addition to receiving general feedback on the draft strategy, EPA is interested in receiving feedback on the following:

- Which actions are the most important and would have the greatest positive impact at the local, regional, national, and global level?
  - Which actions can best protect human health and environmental quality?
  - Which actions are most important to address environmental justice and climate change?
  - What are the key steps and milestones necessary to successfully implement the actions in the draft strategy?
- What are the most important roles and/or actions for Federal agencies to lead?
- Is your organization willing to lead an action or collaborate with others to implement actions?
  - What factors would your organization consider when determining whether to lead an action?
- What are potential unintended consequences of the proposed actions that could impact communities considered overburdened or vulnerable, such as shifts in production or management methods?
- What are the key metrics and indicators that EPA should use to measure progress in reducing plastic and other waste in waterways and oceans?
- What criteria should processes other than mechanical recycling meet to be considered ''recycling activities'' (*e.g.,* ''plastics-to-plastics outputs are 'recycling' if the output is a product that could again be recycled into another product or to extent that it can achieve viable feedstock for new plastic materials'')? How should health and environmental impacts be considered in these criteria?
- Are there other actions that should be included in this strategy?

○ Should EPA expand the scope of the strategy to include sea-based sources?

○ Should specific types of plastic products be targeted for reduction or reuse in this strategy?

• Do you have any additional information or recommendations for EPA regarding these or other proposed actions in this draft strategy?

IV. Disclaimer and Important Note

This request for public comment is issued solely for information, research and planning purposes and does not constitute a Request for Proposals (RFP) or a Request for Applications (RFA). Responding to this notice will not give any advantage to or preclude any organization or individual in any subsequently issued solicitation, RFP, or RFA. Any future development activities related to this activity will be announced separately. This notice does not represent any award commitment on the part of the U.S. Government, nor does it obligate the Government to pay for costs incurred in the preparation and submission of any responses.

Dated: June 8, 2023.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2023–12684 Filed 6–13–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than June 29, 2023.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) One Memorial Drive, Kansas City, Missouri. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org.*

1. *Michael Taylor, Sundance, Wyoming;* to join the Richard Durfee Family Control Group, a group acting in concert, to retain voting shares of Sundance Bankshares, Inc., and thereby indirectly retain voting shares of Sundance State Bank, both of Sundance, Wyoming.

2. *Charles and Loretta Durfee Revocable Trust, Loretta Durfee and Charles Durfee, as co-trustees, all of Sundance, Wyoming; Gerald and Peggy Hyatt Living Trust, Gerald Hyatt and Peggy Hyatt, as co-trustees, all of Bar Nunn, Wyoming; Moline Revocable Trust, Brett R. Moline and Judy Moline, as co-trustees, all of Laramie, Wyoming; and Tranas Family Revocable Trust, Donald Tranas and Shirley Tranas, as co-trustees, all of Greybull, Wyoming;* to join the James R. Durfee Family Control Group, a group acting in concert, to retain voting shares of Sundance Bankshares, Inc., and thereby indirectly retain voting shares of Sundance State Bank, both of Sundance, Wyoming.

B. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org.*

1. *Lambert Lynn Marshall, Little Rock, Arkansas;* to retain voting shares of MNB Bancshares, Inc., and thereby indirectly retain voting shares of The Malvern National Bank, both of Malvern, Arkansas.

C. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, IL 60604. Comments can also be sent electronically to *Comments.applications@chi.frb.org.*

1. *Dairyland Bank Holding Corporation, and William Bosshard, Andrew Bosshard, Joseph Bosshard, Makenzie Bosshard, Carlista Bosshard, and John Bosshard as Tenants in Common, all of La Crosse, Wisconsin;* to join the Bosshard Family Control Group, a group acting in concert, to acquire voting shares of Bosshard Financial Group, Inc., La Crosse, Wisconsin, and thereby indirectly acquire voting shares of One Community Bank, Oregon, Wisconsin, and Farmers State Bank-Hillsboro, Hillsboro, Wisconsin.

D. Federal Reserve Bank of San Francisco (Joseph Cuenco, Assistant Vice President) 101 Market Street, San Francisco, California. 94105–1579. Comments can also be sent electronically to: *sf.fisc.comments.applications@sf.frb.org.*

1. *BlackRock, Inc., New York, New York, on behalf of itself, its subsidiaries and affiliates, and the accounts, portfolios, registered and unregistered investment companies, collective investment vehicles, and other pooled investment vehicles that are sponsored, managed, or advised by BlackRock;* to acquire additional voting shares of Banner Corporation, and thereby indirectly acquire additional voting shares of Banner Bank, both of Walla Walla, Washington.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–12745 Filed 6–13–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Evaluation of Dietary Protein Intake Requirements

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Evaluation of Dietary Protein Intake Requirements,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before July 14, 2023.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality,

ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kelly Carper, Telephone: 301–427–1656 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Evaluation of Dietary Protein Intake Requirements.* AHRQ is conducting this systematic review pursuant to section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on Evaluation of Dietary Protein Intake Requirements, including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/dietary-protein-intake/protocol.*

This is to notify the public that the EPC Program would find the following information on Evaluation of Dietary Protein Intake Requirements helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

KQ 1: What is the average daily dietary protein intake requirements of apparently healthy individuals by life stage and sex?

KQ 2: What is the average daily dietary individual indispensable amino acid intake requirements of apparently healthy individuals by life stage and sex?

POPULATION, INTERVENTION, COMPARATOR, OUTCOME, TIMING, SETTING/STUDY DESIGN (PICOTS)

Element	Inclusion criteria	Exclusion criteria
Population KQ1 & 2	• Participants who are healthy and/or have chronic diseases or chronic disease risk factors, including those with obesity • Studies that enroll some participants diagnosed with a disease or hospitalized or in a long-term care facility with an illness or injury • Studies that enroll some participants diagnosed with a disease or with the health outcome of interest • Participants who are pregnant and lactating. • Age at intervention exposure: ○ Infants, children, adolescents (0–18 years). ○ Adults (19–64). ○ Older adults (65 years and older).	• Studies that exclusively enroll participants diagnosed with a disease, hospitalized, or in a long-term care facility with an illness or injury (for this criterion, studies that exclusively enroll participants with obesity will not be excluded). • Studies that aim to treat participants who have already been diagnosed with the outcome of interest (except weight loss interventions in overweight or obese subjects). • Studies that exclusively enroll undernourished participants. • Studies that exclusively enroll participants with a baseline diet deficient in protein. • Studies that exclusively enroll preterm infants. • Studies that exclusively enroll post-bariatric surgery subjects. • Studies that exclusively recruit elite athletes. • Participants with existing conditions that clearly are known to alter nutrient metabolism or requirements, or those being treated with medications that alter nutrient metabolism.
Interventions KQ1 & 2	• Total daily protein intake level • Total daily intake of indispensable AAs (Histidine, Isoleucine, Leucine, Lysine, Methionine, Phenylalanine, Threonine, Tryptophan, Valine)	• Studies that only assess protein intake via infusions (rather than the GI tract). • Studies that examine food products or dietary supplements not widely available to U.S. consumers.

POPULATION, INTERVENTION, COMPARATOR, OUTCOME, TIMING, SETTING/STUDY DESIGN (PICOTS)—Continued

Element	Inclusion criteria	Exclusion criteria
		• Multi-component interventions that do not isolate the effect or association of protein (including protein and exercise combinations).
Comparison KQ1 & 2	• Different total daily protein intake level • Different total daily intake of indispensable AAs	• No comparator.
Outcomes KQ1	Total protein requirement * as defined by the following indicators or criterion of adequacy, including but not limited to: • Nitrogen balance method • Factorial method • Indicator AA oxidation method • Mean protein intake of infants fed principally human milk (0–6 months) • Mean protein content of human milk (0–6 months) • Body composition (lean mass) • Linear growth for infants, children, adolescents (0–18 years) • Activities of daily living for older adults (65 years and older)	
Outcomes KQ2	Indispensable AA requirement* as defined by the following indicators of adequacy, including but not limited to: • Plasma AA response method • Direct AA oxidation method • 24-hour AA balance method • Indicator AA oxidation method • Mean AA intake of infants fed principally human milk (0–6 months) • Mean protein content of human milk (0–6 months)	
Timing KQ1 & 2	• All duration and follow up	
Setting KQ1 & 2	• All settings	
Study Design KQ1 & 2	• Randomized controlled trials • Non-randomized controlled trials, including quasi-experimental and controlled before-and-after studies • Prospective cohort studies • Nested case-control studies	• International and government reports. • Narrative reviews. • Systematic reviews, meta-analyses, umbrella reviews, scoping reviews. • Uncontrolled trials. • Case-control studies. • Uncontrolled before-and-after studies. • Retrospective cohort studies.
Study Size KQ1 & 2		• N < 6 participants and without power for crossover studies. • Other studies with N < 50 participants (for RCTs—25 participants analyzed per study arm), and without power calculations.
Language KQ1 & 2	• English only (due to resource limitations)	
Geographic Location KQ1 & 2.	• Locations with food products or dietary supplements widely available to U.S. consumers, including those rated very high on the Human Development Index	
Publication Date KQ1 & 2	• 2000 to present	
Publication Status KQ1 & 2	• Articles published in peer-reviewed journals	• Articles that have not been peer reviewed and are not published in peer-reviewed journals (e.g., unpublished data, manuscripts, pre-prints, reports, abstracts, conference proceedings).

* Requirement is defined as the lowest daily intake value for a nutrient that will meet the need as defined by a specified indicator or criterion of adequacy, of apparently healthy individuals.

Dated: June 8, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–12677 Filed 6–13–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on The Effect of Protein Intake on Health

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Supplemental Evidence and Data Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *The Effect of Protein Intake on Health,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before July 14, 2023.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kelly Carper, Telephone: 301–427–1656 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *The Effect of Protein Intake on Health.* AHRQ is conducting this systematic review pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on The Effect of Protein Intake on Health, including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/effect-protein-intake/protocol.*

This is to notify the public that the EPC Program would find the following information on The Effect of Protein Intake on Health helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the ClinicalTrials.gov trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

KQ 1: What is the association between dietary protein intake and risk of bone disease?

KQ 2: What is the association between dietary protein intake and risk of kidney disease?

KQ 3: What is the association between dietary protein intake and risk of sarcopenia?

POPULATION, INTERVENTION, COMPARATOR, OUTCOME, TIMING, SETTING/STUDY DESIGN (PICOTS)

Element	Inclusion	Exclusion
Population KQ1	Participants who are healthy and/or have chronic diseases or chronic disease risk factors, including those with obesity. Participants who are pregnant and lactating. Age of participants (at intervention or exposure): ○ Infants, children, and adolescents (0–18 years). ○ Adults (19–64 years). ○ Older adults (65 years and older).	Participants sample exclusively diagnosed with a disease or hospitalized or in a long-term care facility with an illness or injury. Participants who have already been diagnosed with bone disease. Participants with existing conditions that clearly are known to alter nutrient metabolism or requirements, or those being treated with medications that alter nutrient metabolism. Participant sample exclusively undernourished. Participant sample exclusively with a baseline diet deficient in protein. Participant sample exclusively pre-term infant. Participant sample exclusively post-bariatric surgery subjects. Participant sample exclusively elite athletes. Non-human participants (*e.g.,* animal studies, in-vitro models).
Population KQ2&3	Participants who are healthy and/or have chronic diseases or chronic disease risk factors, including those with obesity. Participants who are pregnant and lactating. Age of participants (at intervention or exposure): ○ Adults (19–64 years). ○ Older adults (65 years and older).	Participants sample exclusively diagnosed with a disease or hospitalized or in a long-term care facility with an illness or injury Participants who have already been diagnosed with kidney disease and/or sarcopenia. Participants with existing conditions that clearly are known to alter nutrient metabolism or requirements, or those being treated with medications that alter nutrient metabolism. Participant sample exclusively undernourished. Participant sample exclusively with a baseline diet deficient in protein. Participant sample exclusively post-bariatric surgery subjects. Participant sample exclusively elite athletes. Non-human participants (*e.g.,* animal studies, in-vitro models).
Interventions KQ1–3	Total dietary protein intake from food, beverages, and dietary supplements.	No specification on the amount of protein intake (*e.g.,* only the type of protein or source of protein reported). Assessment of %AMDR, but no description of the entire macronutrient distribution of the diet (*i.e.,* examination a single macronutrient in relation to outcomes). Protein intake via infusions (rather than the GI tract). Food products or dietary supplements not widely available to U.S. consumers. Protein intake evaluated with exercise.
Comparison KQ1–3	• Consumption of different levels of total dietary protein intake. • No comparator.	Comparison of different sources of protein (*i.e.,* animal versus plant protein) without specification on the levels of total dietary protein intake
Outcomes KQ1	Bone outcomes: ○ Osteoporosis. ○ Osteopenia. ○ Fracture. ○ Bone mass including bone mineral density, bone mineral content.	
Outcomes KQ2	Kidney outcomes: ○ Incidence of kidney stones or ureteral stones. ○ Incidence of CKD (including evaluations from estimated glomerular filtration (eGFR) rate with or without a parameter for race). ○ Kidney insufficiency.	
Outcomes KQ3	Aging associated sarcopenia and its diagnostic indicators, including but not limited to muscle mass, muscle function, muscle strength.	
Timing KQ1–3	All duration and follow up.	
Setting KQ1–3	All settings.	

POPULATION, INTERVENTION, COMPARATOR, OUTCOME, TIMING, SETTING/STUDY DESIGN (PICOTS)—Continued

Element	Inclusion	Exclusion
Study design KQ1–3	• Randomized controlled trials (RCTs) • Non-randomized controlled trials, including quasi-experimental and controlled before-and-after studies. • Prospective cohort studies with or without comparison group with appropriate analytic technique. • Nested case-control studies.	• Narrative reviews. • Systematic reviews, meta-analyses, umbrella reviews, scoping reviews. • Systematic reviews or meta-analyses that exclusively include cross-sectional and/or uncontrolled studies. • Retrospective cohort studies. • All other study designs.
Language KQ1–3	English only (due to resource limitations)	
Geographic Location KQ1–3	Locations with food products or dietary supplements widely available to U.S. consumers, including those rated very high on the Human Development Index.	
Study size KQ1–3		Studies with N < 50 participants (for RCTs—25 participants analyzed per study arm), and without power calculation.
Publication date KQ1–3	2000 to present.	
Publication status KQ1–3	Articles published in peer-reviewed journals	Articles that have not been peer reviewed and are not published in peer-reviewed journals (*e.g.,* unpublished data, manuscripts, pre-prints, reports, abstracts, conference proceedings).

Abbreviations: AMDR = Acceptable macronutrient distribution range; GI = gastrointestinal; U.S. = United States; KQ = key question; CKD = chronic kidney disease; eGFR = estimated glomerular filtration rate; RCT = randomized controlled trial.

Dated: June 8, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–12678 Filed 6–13–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) announces a Special Emphasis Panel (SEP) meeting on ''Implementing and Evaluating New Models for Delivering Comprehensive, Coordinated, Person-Centered Care to People with Long COVID (U18).'' This SEP meeting will be closed to the public.

DATES: July 27–28, 2023.

ADDRESSES: Agency for Healthcare Research and Quality, (Video Assisted Review), 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Jenny Griffith, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, Agency for Healthcare Research and Quality, (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 427–1557.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by AHRQ, and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in a particular review meeting which requires their type of expertise.

The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. 1009(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for ''Implementing and Evaluating New Models for Delivering Comprehensive, Coordinated, Person-Centered Care to People with Long COVID (U18)'' are to be reviewed and discussed at this meeting. 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.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: June 8, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–12675 Filed 6–13–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Town Hall Meeting Concerning Future Directions for the Regional Centers for Public Health Preparedness and Response

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces a town hall meeting regarding the history and future of CDC-funded public health preparedness and response centers.

DATES: The town hall meeting will be held on Wednesday, June 28, 2023, from 1 p.m. to 5 p.m. EDT.

ADDRESSES: The town hall meeting is a virtual meeting and is open to the public, limited only by the webcast lines available. Registration is required. For information about accessing the webcast, visit *https://www.cdc.gov/orr/science/research.htm.*

FOR FURTHER INFORMATION CONTACT: Mary Leinhos, Ph.D., Office of Readiness and Response, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–5, Atlanta, Georgia 30329–4018; Phone: (770) 488–8619; Email: *CPROAR@CDC.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The purpose of this town hall meeting is to provide an overview

and discussion of CDC-funded public health preparedness and response centers including the Centers for Public Health Preparedness and Response (CPHPs, 2004–2010), Preparedness and Response Learning Centers (PERLCs, 2010–2015), and Preparedness and Response Research Centers (PERRCs, 2008–2013). CDC seeks public input on opportunities and challenges for designing and implementing a network of regional centers for public health preparedness and response consistent with section 319F of the Public Health Service Act (42 U.S.C. 247d-6), as amended by the Consolidated Appropriations Act, 2023, sec. 2231 (*https://www.congress.gov/bill/117th-congress/house-bill/2617?r=1&s=3*).

How town hall meeting input will be used: As appropriate, future funding opportunities will use input from town hall participants, including the following: (1) examples of past successful activities and strategies; (2) potential partnership opportunities between CDC and awardees; and (3) types of technical assistance that would benefit funded projects.

Matters to be considered: The agenda will include presentations and discussions on three topic areas: (1) strengths and limitations of past CPHP, PERLC, PERRC and similar programs; (2) new program priorities as directed by sec. 2231 of the Consolidated Appropriations Act, 2023; and (3) discussion of how best to meet state, territorial, local, and tribal public health preparedness and response needs in the design, implementation, and coordination of regional centers under the new Consolidated Appropriations Act, 2023, sec. 2231 language. There will be prepared presentations, discussions among presenters and panelists, and a period for questions and public comments. Agenda items are subject to change as priorities dictate.

Specific questions for the public to consider: The goal of the new Consolidated Appropriations Act, 2023, sec. 2231 language is to implement a network of regional centers for public health preparedness and response for the purpose of increasing uptake of evidence-based preparedness and response programs. What have we learned from past CPHP, PERLC, PERRC and similar programs that will increase opportunities to reach this goal? How might CDC and funded regional centers leverage other initiatives and partners to enhance the evidence base and its implementation? Section 319F requires award recipients to coordinate with state, local, and tribal health departments and officials, health care facilities, and health care coalitions. Are there other entities that could be engaged at the regional level that members of the public recommend be included or informed about this work? What are the greatest public health preparedness and response needs that should be addressed to support the goals of section 319F in the regions?

Background: CDC's Office of Readiness and Response is hosting the town hall meeting with invited speakers representing public health and healthcare preparedness partners nationwide including from academia, government, and national associations to address new authorization language requiring the establishment and maintenance of a network of regional centers for public health preparedness and response.

CDC commissioned the National Academies of Sciences, Engineering, and Medicine to address a longstanding need for a comprehensive, systematic review and grading of public health emergency preparedness and response (PHEPR) evidence for practice. The resulting 2020 consensus study report, *Evidence-Based Practice for Public Health Emergency Preparedness and Response* (*https://doi.org/10.17226/25650*), reviews the status of evidence on PHEPR practices and the improvements needed to advance the field and strengthen the PHEPR system. The report provides recommendations seeking to strengthen PHEPR research and support effective and sound evidence-based PHEPR practice.

Section 2231 of the Consolidated Appropriations Act, 2023 amended section 319F to incorporate new requirements and priorities for establishing or maintaining a network of Centers for Public Health Preparedness and Response, including coordination of activities with partners and implementation of evidence-informed or evidence-based PHEPR practices.

The discussion and feedback generated during the town hall will assist CDC in developing program guidance related to workplan development and overall structure of regional coordinating bodies. Ultimately, feedback will be used to inform the establishment and maintenance of a network of regional centers. Participants may provide individual feedback or perspectives. CDC is not seeking consensus advice or recommendations from participants.

Dated: June 9, 2023.

Tiffany Brown,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2023–12741 Filed 6–13–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0775]

Content of Premarket Submissions for Device Software Functions; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Content of Premarket Submissions for Device Software Functions.'' This guidance document is intended to provide information regarding the recommended documentation sponsors should include in premarket submissions for FDA's evaluation of safety and effectiveness of device software functions, which are functions that meet the definition of a device under the Federal Food, Drug, and Cosmetic Act (FD&C Act). This document replaces FDA's ''Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices'' issued on May 11, 2005, and updates FDA's thinking related to the documentation FDA recommends sponsors include for the review of device software functions in premarket submissions.

DATES: The announcement of the guidance is published in the **Federal Register** on June 14, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances 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–2021–D–0775 for ''Content of Premarket Submissions for Device Software Functions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Content of Premarket Submissions for Device Software Functions'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Brendan O'Leary, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5530, Silver Spring, MD 20993–0002, 301–796–6898; Diane Maloney, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911; Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Hillandale Bldg., 4th Floor, Silver Spring, MD 20993–0002, 301–796–3400; or John Weiner, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5130 HFG–3, Silver Spring, MD 20993–0002, 301–796–8941.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this guidance is to describe FDA's thinking on the recommended documentation sponsors should include in premarket submissions for FDA's evaluation of the safety and effectiveness of device software functions. This thinking recognizes changes to the FD&C Act made by the 21st Century Cures Act (Cures Act), which amended section 520 of the FD&C Act (21 U.S.C. 360j) and excludes certain software functions from the device definition. It also considers the rapidly evolving nature of digital health and recent FDA recognized consensus standards related to software.

The recommendations in this guidance are intended to facilitate FDA's premarket review. This guidance describes information that would be typically generated and documented during software development, verification, and design validation. The least burdensome approach was applied to identify the minimum amount of information that, based on our experience, would generally be needed to support a premarket submission for a device that uses software. During premarket review, FDA may request additional information that is needed to evaluate the submission.

This document replaces FDA's ''Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices'' issued on May 11, 2005, and updates FDA's thinking related to the documentation FDA recommends sponsors include for the review of device software functions in premarket submissions.

A notice of availability of the draft guidance appeared in the **Federal Register** of November 4, 2021 (86 FR 60838). FDA considered comments received and revised the guidance as appropriate in response to the comments, including edits to clarify FDA's risk-based approach to determining a device's Documentation Level (including an expanded Appendix of examples that illustrate application of the Documentation Level risk-based approach) as well as edits to clarify the recommended documentation that should be included within a premarket submission. The guidance also clarifies that the recommendations generally apply to the device constituent part of a combination product when the device constituent part includes a device software function, including combination products assigned to FDA's Center for Drug Evaluation and Research (CDER) or Center for Biologics Evaluation and Research (CBER) regulated under drug or biological product market submission types. FDA also edited the document to further clarify the recommended utilization of FDA-recognized versions of consensus standards, where appropriate, within a premarket submission.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current

thinking of FDA on ''Content of Premarket Submissions for Device Software Functions.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics.* Persons unable to download an electronic copy of ''Content of Premarket Submissions for Device Software Functions'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number GUI00000337 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations, guidance, and forms have been approved by OMB as listed in the following table:

21 CFR part; guidance; or FDA form	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
812	Investigational Device Exemption	0910–0078
860, subpart D	De Novo classification process	0910–0844
601; Form FDA 356h	Biologics License; Application to Market a New or Abbreviated New Drug or Biologic for Human Use—Form FDA 356h.	0910–0338
''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program''.	Q-submissions	0910–0756
800, 801, and 809	Medical Device Labeling Regulations	0910–0485
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation	0910–0073

Dated: June 8, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–12723 Filed 6–13–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Be The Match® Patient Support Center Survey—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 14, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 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, email Samantha Miller, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Be The Match® Patient Support Center Survey

OMB No. 0906–0004—Revision

Abstract: The C.W. Bill Young Cell Transplantation Program was established by the Stem Cell Therapeutic and Research Act of 2005 (Pub. L. 109–129) and was reauthorized in 2010 (Pub. L. 111–264), 2015 (Pub. L. 114–104) and again in 2021 (Pub. L. 117–15). The C.W. Bill Young Cell Transplantation Program Office of Patient Advocacy (OPA) is operated by the National Marrow Donor Program® (NMDP). Through OPA, NMDP provides navigation services, education resources, and support to people in need of or who have received an allogeneic hematopoietic cell transplant (allo-HCT). As the contractor for OPA, NMDP is required to conduct surveys to evaluate patient satisfaction with the services provided. As such, NMDP will elicit feedback from HCT patients, caregivers, and family members who had contact with the NMDP/Be The Match® Patient Support Center (PSC) for service and support. The survey is administered through a web-based system. In addition to questions that measure satisfaction, the survey also includes demographic questions to determine the representativeness of findings.

A 60-day notice was published in the **Federal Register** on March 2, 2023, vol. 88, No. 41; pp. 13130–31. There were no public comments.

Need and Proposed Use of the Information: HCT is a complex medical

procedure that requires significant support before, during, and after the procedure. Many patients experience barriers that impede access to HCT. Barriers to HCT-related care and educational information are multi-factorial. The NMDP/Be The Match PSC offers many programs and services to support patients, caregivers, and family members throughout their HCT journey. Feedback from recipients of NMDP services is essential to understand the changing needs for services and information as well as to demonstrate the effectiveness of existing services. The primary use for information gathered through the survey is to determine the helpfulness of participants' initial contact with the PSC patient navigators and to identify areas for improvement in the delivery of services. Patient navigators are trained lay or licensed clinical patient navigators, who respond to requests for information and support. Program managers and NMDP leadership use this evaluation data to share patients' experiences as well as make program and resource allocation decisions.

Web-based surveys will be administered to all participants (patients, caregivers, and family members) who have contact with the PSC. All participants for whom an email address is known will be invited to complete the survey online. Survey respondents will be notified via email invitation and in the survey instructions that participation is voluntary, and responses will be kept confidential. A follow-up invitation will be sent within 2 weeks to non-respondents.

The survey will include these items to measure: (1) their experience, (2) if the contact helped the participant feel more confident in coping with treatment, (3) if the contact helped the participant feel more hopeful, (4) if the contact helped the participant feel less alone, (5) increased awareness of available resources, (6) if the contact helped the participant feel more informed about treatment options, (7) if their questions were answered, and (8) types of challenges faced by the participant. The survey data will be analyzed quarterly and annually, and results will be shared with program managers. Feedback indicating a need for improvement will be reviewed by program managers biannually and implementation of resulting program changes or additions will be documented.

Likely Respondents: Respondents will include all patients, caregivers, and family members who have contact with the Patient Support Center via phone or email for HCT navigation services and support (advocacy). The decision to survey all participants was made based on the historically low response rate (~20 percent) to this survey due to patients' frequent transitions in health status as well as transfer between home and the hospital for initial treatment and care for complications. Participants will receive the survey once in a 1-year cycle. If a participant contacts the Patient Support Center one or more years after the initial contact, they will receive a second survey. This is because it is anticipated that the participants' needs will likely change during the time lapse.

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

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Be The Match® Patient Support Center Survey	900	1	900	0.17	153
Total	900	1	900	0.17	153

The total respondent burden for the customer satisfaction surveys is estimated to be 153 hours. HRSA expects a total of 900 respondents to complete the Be The Match® Patient Support Center Survey.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–12666 Filed 6–13–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Data System for Organ Procurement and Transplantation Network, OMB No. 0915–0157—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with of 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 14, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 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, email Samantha Miller, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Data System for Organ Procurement and Transplantation Network, OMB No. 0915–0157—Revision.

Abstract: Section 372 of the Public Health Service Act requires that the Secretary of HHS, by contract, provide for the establishment and operation of a private, non-profit entity the Organ Procurement and Transplantation Network (OPTN), which on behalf of HRSA, operates the U.S. donation and transplantation system. The OPTN Board of Directors (BOD) determines what data must be collected to appropriately fulfill the OPTN responsibilities pursuant to the regulatory authority in 42 CFR 121.11 of the OPTN Final Rule. HRSA, on behalf of the OPTN BOD and in alignment with the Paperwork Reduction Act of 1995, submits OPTN BOD-approved data elements for collection to OMB for official federal approval.

A 60-day notice published in the **Federal Register** on September 29, 2022, vol. 87, No. 188; pp. 59103–59105. HRSA received one comment. The commenter supported the necessity and utility of the proposed information collection and the accuracy of the estimated burden. However, the commenter recommended that HRSA consider enhancements to the 'currently-used United Network for Organ Sharing data system' including the need for more real-time data for Organ Procurement Organizations (OPO) and a more advanced application programming interface which integrates with OPO's electronic medical record platforms. Since the requested changes were to the 'OPTN data system' and not the forms themselves, HRSA is not making any changes to the information collection request as a result of this comment. However, HRSA appreciates all public feedback and will consider data system changes in consultation with the OPTN members and the public.

Need and Proposed Use of the Information: HRSA and the OPTN BOD use data to develop transplant, donation, and allocation policies; to determine whether institutional members are complying with policy; to determine member-specific performance; to ensure patient safety, and to fulfill the requirements of the OPTN Final Rule. In addition, the regulatory authority in 42 CFR 121.11 of the OPTN Final Rule requires the OPTN data to be made available, consistent with applicable laws, for use by OPTN members, the Scientific Registry of Transplant Recipients, HHS, and members of the public for evaluation, research, patient information, and other important purposes.

This is a request to revise the current OPTN data collection which includes time-sensitive, life-critical data on transplant candidates and donors, the organ matching process, histocompatibility results, organ labeling, and packaging, and pre-and post-transplantation data on recipients and donors. This revision also includes OPTN BOD-approved changes to the existing OMB data collection forms. The OPTN collects these specific data elements from transplant hospitals, OPOs, and histocompatibility laboratories.

The OPTN uses this information to: (1) facilitate organ placement and match donor organs with recipients, (2) monitor compliance of member organizations with federal laws and regulations and with OPTN requirements, (3) review and report periodically to the public on the status of organ donation and transplantation in the United States, (4) provide data to researchers and government agencies to study the scientific and clinical status of organ transplantation, and (5) perform transplantation-related public health surveillance including the possible transmission of donor disease.

HRSA is requesting to make the following OPTN BOD-approved changes to improve the OPTN organ matching and allocation process and improve OPTN member compliance with OPTN requirements:

(1) Adding data collection forms from the OPTN donor management and organ matching system to the existing OMB-approved information collection. The system allows an OPO to add donors, run the donor/potential transplant recipients matches, and place a donated organ(s) with a computer-matched potential transplant recipient. Transplant centers will access the system to view posted donor information to assist them with accepting decisions, along with other donor/potential transplant recipient functions such as entering offer responses and verifying organ offer refusals. The OPTN donor management and organ matching system is comprised of eight data collection forms: initial donor registration, OPO notification limit administration, potential transplant recipient, death notification registration, deceased donor death referral, donor hospital registration, donor organ disposition, and transplant center contact management.

(2) The OPTN BOD-approved additional revisions to existing data collection forms to improve organ matching, allocation, and OPTN policy compliance.

(3) Existing OPTN data collection forms that collect a single race and ethnicity variable will be revised to collect separate race and ethnicity variables, following the minimum standards for collecting and presenting data on race and ethnicity for all federal reporting found within Revisions of Standards for the Classification of Federal Data on Race and Ethnicity, OMB Statistical Policy Directive No. 15 in **Federal Register**, 62 FR 58782 (Oct. 30, 1997). Improving data collection around race and ethnicity information of donors and candidates aligns with Executive Order 13985, which calls on agencies to advance equity through identifying and addressing barriers to equal opportunity that underserved communities may face due to government policies and programs.

Likely Respondents: Transplant Programs, OPOs, and Histocompatibility Laboratories.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

The total estimated burden hours for this collection increased by 217,361.30 hours from the previously OMB-approved data collection package from March 22, 2022. This increase is for the most part due to the addition of eight collection forms from the OPTN donor management and organ matching system to this data collection package, specifically the burden increases from the Potential Transplant Recipient form. While the data fields collected on the Potential Transplant Recipient form are limited, the volume of organ offer

responses is significant due to the large number of potential transplant recipients shown on the organ match run results. The organ match run results produce thousands of potential transplant recipients that require responses from OPOs and transplant hospitals. This volume of candidates significantly impacts the total burden hours for this form.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Deceased Donor Registration	57	243.56	13,883	1.20	16,659.60
Living Donor Registration	216	28.11	6,072	2.19	13,297.68
Living Donor Follow-up	216	90.55	19,559	1.52	29,729.68
Donor Histocompatibility	141	149.18	21,034	0.20	4,206.80
Recipient Histocompatibility	141	264.95	37,358	0.40	14,943.20
Heart Transplant Candidate Registration	145	34.59	5,016	0.90	4,514.40
Heart Transplant Recipient Registration	145	26.32	3,816	1.96	7,479.36
Heart Transplant Recipient Follow Up (6 Month)	145	24.40	3,538	0.40	1,415.20
Heart Transplant Recipient Follow Up (1–5 Year)	145	104.14	15,100	0.90	13,590.00
Heart Transplant Recipient Follow Up (Post 5 Year)	145	171.10	24,810	0.50	12,405.00
Heart Post-Transplant Malignancy Form	145	13.17	1,910	0.90	1,719.00
Lung Transplant Candidate Registration	72	42.97	3,094	0.90	2,784.60
Lung Transplant Recipient Registration	72	35.01	2,521	1.20	3,025.20
Lung Transplant Recipient Follow Up (6 Month)	72	33.63	2,421	0.50	1,210.50
Lung Transplant Recipient Follow Up (1–5 Year)	72	139.94	10,076	1.10	11,083.60
Lung Transplant Recipient Follow Up (Post 5 Year)	72	136.28	9,812	0.60	5,887.20
Lung Post-Transplant Malignancy Form	72	22.63	1,629	0.40	651.60
Heart/Lung Transplant Candidate Registration	70	0.96	67	1.10	73.70
Heart/Lung Transplant Recipient Registration	70	0.64	45	2.15	96.75
Heart/Lung Transplant Recipient Follow Up (6 Month)	70	0.60	42	0.80	33.60
Heart/Lung Transplant Recipient Follow Up (1–5 Year)	70	2.10	147	1.10	161.70
Heart/Lung Transplant Recipient Follow Up (Post 5 Year)	70	3.36	235	0.60	141.00
Heart/Lung Post-Transplant Malignancy Form	70	0.29	20	0.40	8.00
Liver Transplant Candidate Registration	143	96.92	13,860	0.80	11,088.00
Liver Transplant Recipient Registration	143	64.58	9,235	1.20	11,082.00
Liver Transplant Recipient Follow Up (6 Month—5 Year)	143	320.27	45,799	1.00	45,799.00
Liver Transplant Recipient Follow Up (Post 5 Year)	143	384.32	54,958	0.50	27,479.00
Liver Recipient Explant Pathology Form	143	7.30	1,044	0.60	626.40
Liver Post-Transplant Malignancy	143	19.06	2,726	0.80	2,180.80
Intestine Transplant Candidate Registration	21	6.86	144	1.30	187.20
Intestine Transplant Recipient Registration	21	4.57	96	1.80	172.80
Intestine Transplant Recipient Follow Up (6 Month—5 Year)	21	20.05	421	1.50	631.50
Intestine Transplant Recipient Follow Up (Post 5 Year)	21	40.19	844	0.40	337.60
Intestine Post-Transplant Malignancy Form	21	0.62	13	1.00	13.00
Kidney Transplant Candidate Registration	234	177.00	41,418	0.80	33,134.40
Kidney Transplant Recipient Registration	234	105.40	24,664	1.20	29,596.80
Kidney Transplant Recipient Follow Up (6 Month—5 Year)	234	517.12	121,006	0.90	108,905.40
Kidney Transplant Recipient Follow Up (Post 5 Year)	234	525.10	122,873	0.50	61,436.50
Kidney Post-Transplant Malignancy Form	234	24.47	5,726	0.80	4,580.80
Pancreas Transplant Candidate Registration	120	2.65	318	0.60	190.80
Pancreas Transplant Recipient Registration	120	1.19	143	1.20	171.60
Pancreas Transplant Recipient Follow Up (6 Month—5 Year)	120	6.68	802	0.50	401.00
Pancreas Transplant Recipient Follow Up (Post 5 Year)	120	17.82	2138	0.50	1,069.00
Pancreas Post-Transplant Malignancy Form	120	1.06	127	0.60	76.20
Kidney/Pancreas Transplant Candidate Registration	120	12.45	1,494	0.60	896.40
Kidney/Pancreas Transplant Recipient Registration	120	6.84	821	1.20	985.20
Kidney/Pancreas Transplant Recipient Follow Up (6 Month—5 Year)	120	39.44	4,733	0.50	2,366.50
Kidney/Pancreas Transplant Recipient Follow Up (Post 5 Year)	120	69.41	8,329	0.60	4,997.40
Kidney/Pancreas Post-Transplant Malignancy Form	120	2.49	299	0.40	119.60
Vascularized Composite Allograft (VCA) Transplant Candidate Registration	21	0.33	7	0.40	2.80
VCA Transplant Recipient Registration	21	0.19	4	1.36	5.44
VCA Transplant Recipient Follow Up	21	1.00	21	1.31	27.51
Organ Labeling and Packaging	57	247.72	14,120	0.18	2,541.60
Organ Tracking and Validating	308	19.49	6,003	0.08	480.24
Kidney Paired Donation Candidate Registration	159	1.20	191	0.29	55.39
Kidney Paired Donation Donor Registration	159	1.56	248	1.08	267.84
Kidney Paired Donation Match Offer Management	159	1.52	242	0.67	162.14
Disease Transmission Event	308	1.81	557	0.62	345.34
Living Donor Event	251	0.156	39	0.56	21.84

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Safety Situation	449	0.60	269	0.56	150.64
Potential Disease Transmission	57	8.72	497	1.27	631.19
Request to Unlock Form	449	42.40	19,038	0.02	380.76
Initial Donor Registration	57	335.72	19,136	3.00	57,408.00
OPO Notification Limit Administration	57	0.49	28	0.17	4.76
Potential Transplant Recipient	308	4718.48	1,453,292	0.05	72,664.60
Death Notification Registration	57	185.77	10,589	0.42	4,447.38
Deceased Donor Death Referral	57	53.84	3,069	0.50	1,534.50
Donor Hospital Registration	57	0.04	2	0.08	0.16
Donor Organ Disposition	57	335.72	19,136	0.17	3,253.12
Transplant Center Contact Management	251	637.50	160,013	0.06	9,600.78
Total = 70 forms	9,146	.....	2,352,737	.....	647,628.30

*The numbers of respondents and the numbers of total responses in the burden table were updated with 2021 OPTN data and reflect increases in the number of organ transplants and changes in the number of respondents (Transplant Programs, OPO, and Histocompatibility Labs).

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. 2023–12719 Filed 6–13–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcing the Annual Meeting of the President's Council on Sports, Fitness & Nutrition

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (HHS) is hereby giving notice that the President's Council on Sports, Fitness & Nutrition (PCSFN) will hold its annual meeting. The meeting will be open to the public.

DATES: This meeting will be held on June 27, 2023, from 1:30 p.m. to 5:00 p.m. ET.

ADDRESSES: The meeting will be held at the Hubert H. Humphrey Building, 200 Independence Ave SW, Washington, DC 20001. The meeting will also be accessible online via livestream and recorded for later viewing. Registrants will receive information on how to access the meeting, either in-person or via livestream, prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer for the PCSFN, Rachel Fisher, MS, MPH, RD; HHS/OASH/ODPHP, 1101 Wootton Parkway, Suite 420, Rockville, MD 20852, 240–453–8257; Email *fitness@hhs.gov.* Information about PCSFN, including details about the upcoming meeting, can be obtained at *https://health.gov/our-work/nutrition-physical-activity/presidents-council.*

SUPPLEMENTARY INFORMATION:

Authority and Purpose: The primary functions of the PCSFN include: (1) Advising the President, through the Secretary, concerning the progress made in carrying out the provisions of Executive Order 13265, as amended by Executive Order 14048, and recommending to the President, through the Secretary, actions to accelerate such progress; (2) recommending to the Secretary, actions to expand opportunities at the national, state, and local levels for participation in sports and engagement in physical fitness and activity (taking into account the HHS Physical Activity Guidelines for Americans, including consideration for youth with disabilities); and (3) functioning as liaisons and spokespersons on behalf of the PCSFN to relevant State, local, and private entities, and sharing information about the work of the PCSFN in order to advise the Secretary regarding opportunities to extend and improve physical activity, fitness, sports, and nutrition programs and services at the State, local, and national levels.

Purpose of the Meeting: At the June 2023 meeting, the PCSFN will discuss plans for future projects and programs that may address but are not limited to: (1) implementing the National Strategy on Hunger, Nutrition, and Health, including supporting the White House Challenge to End Hunger and Build Healthy Communities; (2) raising awareness about the importance of mental health as it pertains to physical fitness and nutrition; (3) promoting the implementation of the National Youth Sports Strategy; (4) revitalizing the Presidential Youth Fitness Program; and (5), the launch of the Physical Activity Guidelines Midcourse Report: Implementation Strategies for Older Adults.

Meeting Agendas: The meeting agenda is in development and will be posted at *https://health.gov/our-work/nutrition-physical-activity/presidents-council/council-meetings* when it is finalized.

Meeting Registration: The meeting is open to the public and the media. Members of the public who wish to attend the meeting are asked to pre-register at *https://www.eventbrite.com/e/2023-presidents-council-on-sports-fitness-nutrition-annual-meeting-tickets-642518348677.* HHS will also stream the meeting online via *HHS.gov/live.* Registration for in-person public attendance must be completed before 5:00 p.m. (ET) on Monday, June 19, 2023. Foreign nationals who wish to attend in person should register no later than Thursday, June 15, 2023, to ensure sufficient time for federal building security approval. To request a sign language interpreter or other special accommodations, please indicate this when registering online or by notifying

fitness@hhs.gov, no later than 5:00 p.m. (ET) on Friday, June 16, 2023.

Paul Reed,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

[FR Doc. 2023–12692 Filed 6–13–23; 8:45 am]

BILLING CODE 4150–32–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 Member Conflict: Cancer Biology Member SEP.

Date: July 11, 2023.

Time: 2:00 p.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: Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1256, *biesj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Aging and Aging-related Neurodegenerative Disorders and Dementia.

Date: July 12–13, 2023.

Time: 10:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Infectious Diseases and Immunology B.

Date: July 12–13, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Diana Maria Ortiz-Garcia, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–5614, *diana.ortiz-garcia@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR–22–131: Imaging, Biomarkers and Digital Pathomics for the Early Detection of Premetastatic Cancer and Precancerous Lesions Associated with Lethal Phenotypes.

Date: July 12, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Eleni Apostolos Liapi, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805–N, Bethesda, MD 20817, 301–402–5123, *eleni.liapi@nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group Aging, Injury, Musculoskeletal, and Rheumatologic Disorders Study Section.

Date: July 12–13, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nketi I. Forbang, MD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1006K1, Bethesda, MD 20892, (301) 594–0357, *forbangni@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: Resource Development for Animal Models.

Date: July 12, 2023.

Time: 10:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sulagna Banerjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (612) 309–2479, *sulagna.banerjee@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflicts: Substance Use and Addictive Behavior.

Date: July 12, 2023.

Time: 11:00 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: Stephanie Christine Nagle Emmens, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–6604, *nagleemmenssc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR–21–089: Specific Pathogen Free Macaque Colonies.

Date: July 12, 2023.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Latha Malaiyandi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812Q, Bethesda, MD 20892, (301) 435–1999, *malaiyandilm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Biomedical Sensing, Measurement and Instrumentation.

Date: July 13–14, 2023.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Steven Anthony Ripp, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3010, *steven.ripp@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Neurodevelopment, Oxidative Stress, and Synaptic Plasticity Fellowship Study Section (F03A).

Date: July 13–14, 2023.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street NW, Washington, DC 20037.

Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 8, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12673 Filed 6–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Resource Related Research Projects (R24 Clinical Trial Not Allowed).

Date: July 7, 2023.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G33, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Poonam Pegu, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G33, Rockville, MD 20852, 240–292–0719, *poonam.pegu@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 9, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12717 Filed 6–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–2023–0012]

Agency Information Collection Activities: Generic Clearance for Pretesting Instruments and Procedures for Evaluation, Research, and Evidence Building

AGENCY: Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; generic clearance for formative data collections for evaluations, research, and evidence building.

SUMMARY: The Department of Homeland Security, DHS will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. DHS previously published this information collection request (ICR) in the **Federal Register** on 03/14/2023, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until July 14, 2023. This process is conducted in accordance with 5 CFR 1320.10.

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.

SUPPLEMENTARY INFORMATION: The U.S. Department of Homeland Security (DHS) intends to request approval from OMB for a generic clearance to pretest data collection instruments and procedures with more than nine participants to identify and resolve any question or procedural problems in DHS's survey administration. The Generic Clearance for Pretesting Instruments and Procedures for Evaluation, Research, and Evidence-Building is a new information collection request.

The DHS studies its programs, and the populations they serve, through rigorous evaluation, research, and evidence-building activities. These include evaluations of existing programs, evaluations of innovative approaches to allow the Agency to respond to its evolving threat environment with effective strategies and operations that ensure a safe, secure, and prosperous Homeland, research syntheses, and descriptive and exploratory studies. To improve the development of its surveys used in evaluation, research, and evidence-building activities, the DHS intends to pretest data collection instruments and procedures through a variety of techniques including cognitive and usability laboratory and field techniques, behavior coding, exploratory interviews, respondent debriefing questionnaires, split sample experiments, focus groups, and pilot studies/pretests. These activities will allow the DHS to identify if and when a survey may be simplified for respondents, respondent burden may be reduced, and other possible improvements.

The DHS will use the results of information collections internally to inform subsequent information collection requests. The information collected is not intended to be used as the principal basis for a decision by a Federal decision-maker and is not expected to meet the threshold of influential or highly influential scientific information.

The DHS will test a variety of instruments and procedures under this clearance. The exact nature of the instruments and the samples is dependent on each individual project and details will be provided for each individual information collection requests submitted. The particular samples included in future generic information collection requests will vary based on the content of the instrument being tested. The DHS and its contractors will collect information electronically and/or use online collaboration tools, as appropriate, to reduce the burden. Specific information regarding the use of technology will be submitted with each individual information collection request. Following standard OMB requirements, the DHS will submit a change request for each individual data collection activity under this generic clearance. Each request will include the individual instrument(s), a justification specific to the individual information collection, and any supplementary documents. OMB should review within 10 days of receiving each change request.

Respondents include participants in DHS programs being evaluated; participants in DHS pilots and demonstrations; recipients of DHS grants and individuals served by DHS grantees; comparison group members; and other relevant populations, such as individuals eligible for DHS services. Small business or other small entities

may be involved in these efforts, but the DHS will minimize the burden on them of information collections approved under this clearance by sampling, asking for readily available information, and using short, easy-to-complete information collection instruments.

This may include one-time collections or iterative testing, based on the specific situation. In all cases, without the proposed information collection activities, the quality of the data collected for DHS studies would suffer. Pretesting of the scale envisioned here would not be done under other circumstances due to the time constraints of seeking clearance for each individual survey's pretesting plan. The efficient and timely pretesting and piloting efforts allow feedback to contribute directly to more targeted and improved study designs. Conversely, the failure to engage in pretesting and pilot data collection limits the DHS's ability to improve the quality of evidence about programs, pilots, initiatives, and services while reducing administrative burden to the public.

If the Privacy Act does apply to a collection, the DHS will provide a Privacy Act statement, System of Record Notices (SORN), or other associated documentation, as appropriate. Participation in any formative data collection effort will be voluntary, and personally identifiable information will only be collected to the extent necessary. Respondents will be informed of all planned data uses, that their participation is voluntary, and that their information will be kept private to the extent permitted by law. All data collection shall protect respondent privacy to the extent permitted by law and will comply with all Federal and Agency regulations for private information. If a confidentiality pledge is deemed necessary, the Agency will only include a pledge of confidentiality supported by authority established in statute or regulation, supported by disclosure and data security policies that are consistent with the pledge.

The primary purpose of data collected under this generic clearance is not for publication. However, because the pretesting and piloting data collection efforts are intended to inform the DHS's decision-making related to evidence-building and programmatic activities, results of these methodological studies may be made public through methodological appendices or footnotes, reports on instrument development, instrument user guides, descriptions of respondent behavior, and other publications or presentations describing findings of methodological interest. The results of these pretesting activities may be prepared for presentation at professional meetings or publication in professional journals. Although not anticipated, the DHS may receive requests to release the information (*e.g.,* congressional inquiry, Freedom of Information Act requests) and will disseminate the findings when appropriate, following the Agency's guidelines. Results will be labeled as exploratory in nature and any limitations will be described.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

There is no change or adjustment to the burden associated with the collection of information associated with the DHS complaint form. DHS is not proposing to make any changes to the DHS compliant form. This request is a renewal of the current ICR collection expiring in 60 days.

Analysis

Agency: Department of Homeland Security (DHS).

Title: Generic Clearance for Formative Data Collection for Evaluation, Research, and Evidence Building.

OMB Number: 1601–New.

Frequency: One-time collection.

Affected Public: Individuals and households.

Number of Respondents: 3,590.

Estimated Time Per Respondent: 64 minutes.

Total Burden Hours: 3,825.

Robert Dorr,

Executive Director, Business Management Directorate.

[FR Doc. 2023–12659 Filed 6–13–23; 8:45 am]

BILLING CODE 9112–FL–P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–2023–0011]

Agency Information Collection Activities: Generic Clearance for Formative Data Collections for Evaluations, Research, and Evidence Building

AGENCY: Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; generic clearance for formative data collections for evaluations, research, and evidence building.

SUMMARY: The Department of Homeland Security, DHS will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. DHS previously published this information collection request (ICR) in the **Federal Register** on 03/14/2023, for a 60-day public comment period. No comments submitted.

DATES: Comments are encouraged and will be accepted until July 14, 2023. This process is conducted in accordance with 5 CFR 1320.10.

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.

SUPPLEMENTARY INFORMATION: The U.S. Department of Homeland Security (DHS) intends to request approval from OMB for a generic clearance to pretest data collection instruments and procedures with more than nine participants to identify and resolve any question or procedural problems in DHS's survey administration. The Generic Clearance for Pretesting Instruments and Procedures for Evaluation, Research, and Evidence-Building is a new information collection request.

The DHS studies its programs, and the populations they serve, through rigorous evaluation, research, and evidence-building activities. These include evaluations of existing programs, evaluations of innovative approaches to allow the Agency to respond to its evolving threat environment with effective strategies and operations that ensure a safe, secure, and prosperous Homeland, research syntheses, and descriptive and exploratory studies. To improve the development of its surveys used in evaluation, research, and evidence-building activities, the DHS intends to pretest data collection instruments and procedures through a variety of techniques including cognitive and usability laboratory and field techniques, behavior coding, exploratory interviews, respondent debriefing questionnaires, split sample experiments, focus groups, and pilot studies/pretests. These activities will allow the DHS to identify if and when a survey may be simplified for respondents, respondent burden may be reduced, and other possible improvements.

The DHS will use the results of information collections internally to inform subsequent information collection requests. The information collected is not intended to be used as the principal basis for a decision by a federal decision-maker and is not expected to meet the threshold of influential or highly influential scientific information.

The DHS will test a variety of instruments and procedures under this clearance. The exact nature of the instruments and the samples is dependent on each individual project and details will be provided for each individual information collection requests submitted. The particular samples included in future generic information collection requests will vary based on the content of the instrument being tested. The DHS and its contractors will collect information electronically and/or use online collaboration tools, as appropriate, to reduce the burden. Specific information regarding the use of technology will be submitted with each individual information collection request. Following standard OMB requirements, the DHS will submit a change request for each individual data collection activity under this generic clearance. Each request will include the individual instrument(s), a justification specific to the individual information collection, and any supplementary documents. OMB should review within 10 days of receiving each change request.

Respondents include participants in DHS programs being evaluated; participants in DHS pilots and demonstrations; recipients of DHS grants and individuals served by DHS grantees; comparison group members; and other relevant populations, such as individuals eligible for DHS services. Small business or other small entities may be involved in these efforts, but the DHS will minimize the burden on them of information collections approved under this clearance by sampling, asking for readily available information, and using short, easy-to-complete information collection instruments.

This may include one-time collections or iterative testing, based on the specific situation. In all cases, without the proposed information collection activities, the quality of the data collected for DHS studies would suffer. Pretesting of the scale envisioned here would not be done under other circumstances due to the time constraints of seeking clearance for each individual survey's pretesting plan. The efficient and timely pretesting and piloting efforts allow feedback to contribute directly to more targeted and improved study designs. Conversely, the failure to engage in pretesting and pilot data collection limits the DHS's ability to improve the quality of evidence about programs, pilots, initiatives, and services while reducing administrative burden to the public.

If the Privacy Act does apply to a collection, the DHS will provide a Privacy Act statement, System of Record Notices (SORN), or other associated documentation, as appropriate. Participation in any formative data collection effort will be voluntary, and personally identifiable information will only be collected to the extent necessary. Respondents will be informed of all planned data uses, that their participation is voluntary, and that their information will be kept private to the extent permitted by law. All data collection shall protect respondent privacy to the extent permitted by law and will comply with all Federal and Agency regulations for private information. If a confidentiality pledge is deemed necessary, the Agency will only include a pledge of confidentiality supported by authority established in statute or regulation, supported by disclosure and data security policies that are consistent with the pledge.

The primary purpose of data collected under this generic clearance is not for publication. However, because the pretesting and piloting data collection efforts are intended to inform the DHS's decision-making related to evidence-building and programmatic activities, results of these methodological studies may be made public through methodological appendices or footnotes, reports on instrument development, instrument user guides, descriptions of respondent behavior, and other publications or presentations describing findings of methodological interest. The results of these pretesting activities may be prepared for presentation at professional meetings or publication in professional journals. Although not anticipated, the DHS may receive requests to release the information (*e.g.,* congressional inquiry, Freedom of Information Act requests) and will disseminate the findings when appropriate, following the Agency's guidelines. Results will be labeled as exploratory in nature and any limitations will be described.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

There is no change or adjustment to the burden associated with the collection of information associated with the DHS complaint form. DHS is not proposing to make any changes to the DHS compliant form. This request is a renewal of the current ICR collection expiring in 60 days.

Analysis

Agency: Department of Homeland Security (DHS).

Title: Generic Clearance for Formative Data Collection for Evaluation, Research, and Evidence Building.

OMB Number: 1601–New.

Frequency: One-time collection.

Affected Public: Individuals and households.

Number of Respondents: 22,750.

Estimated Time per Respondent: 33 minutes.

Total Burden Hours: 12,488.

Robert Dorr,

Executive Director, Business Management Directorate.

[FR Doc. 2023–12658 Filed 6–13–23; 8:45 am]

BILLING CODE 9112–FL–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6403–N–01]

Announcement of the Housing Counseling Federal Advisory Committee; Notice of Public Meeting

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of housing counseling federal advisory committee public meeting.

SUMMARY: This gives notice of a Housing Counseling Federal Advisory Committee (HCFAC) meeting and sets forth the proposed agenda. The HCFAC meeting will be held on Thursday, June 29, 2023. The meeting is open to the public and is accessible to individuals with disabilities.

DATES: The hybrid meeting (virtual and in-person meeting) will be held on Thursday, June 29, 2023, starting at 10:30 a.m. Pacific Daylight Time (PDT).

FOR FURTHER INFORMATION CONTACT: Virginia F. Holman, Housing Program Technical Specialist, Office of Housing Counseling, U.S. Department of Housing and Urban Development; telephone number 540–894–7790 (this is not a toll-free number); email *virginia.f.holman@hud.gov.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Individuals may also email *HCFACCommittee@hud.gov* for information.

SUPPLEMENTARY INFORMATION: HUD is convening a hybrid meeting (virtual and in-person meeting) of the HCFAC on Thursday, June 29, 2023, from 10:30 a.m. to 4:30 p.m. (PDT). The virtual meeting will be held via ZOOM. The in-person meeting will be held at the Japanese American National Museums 100 N Central Avenue Los Angeles, California 90012. This meeting notice is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. app. 10(a)(2).

Draft Agenda—Housing Counseling Federal Advisory Committee Meeting

Thursday, June 29, 2023

I. Welcome
II. Presentations and HCFAC Member Discussion
III. Public Comment
IV. Next Steps
V. Adjourn

Registration

The public is invited to attend this 5 hour hybrid meeting (virtual and in-person meeting) using ZOOM for the virtual meeting. Advance registration is required to attend. To register, please visit *https://us06web.zoom.us/webinar/register/WN_R8OCHT7RTdSdfcjX08rAyw* and complete the registration form no later than June 22, 2023. Registration will be closed after June 22, 2023. After submitting the registration form, registrants for the virtual meeting will receive a confirmation email with the meeting link and passcode needed to attend. Registrants asking to attend in-person will receive details about the meeting location and how to access the building. If you have any questions about registration, please email *HCFACCommittee@ajantaconsulting.com.*

Public Comments

The public will have an opportunity to give written and oral comments relative to agenda topics for the HCFAC's consideration. Written comments can be provided on the registration form or by emailing *HCFACCommittee@ajantaconsulting.com.* All written comments must be provided by June 22, 2023. Please note, written comments will not be read during the meeting, but will be provided to the HCFAC members.

Oral comments may be provided during the meeting. Comments from the public will be received at the end of the meeting to ensure all agenda items can be completed. Each person providing oral comments will be allocated two minutes. This time will be allocated on a first-come first-served basis by HUD. The meeting registration confirmation will contain additional instructions for providing oral comments, virtually or in-person. The HCFAC will not respond to individual written or oral statements during the meeting but will take all public comments into account in its deliberations.

Meeting Records

Records and documents discussed during the meeting, as well as other information about the work of the HCFAC, will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzvQAAQ.*

Information on the Committee is also available on *hud.gov* at *https://www.hud.gov/program_offices/housing/sfh/hcc* and on HUD Exchange at *https://www.hudexchange.info/programs/housing-counseling/federal-advisory-committee/.*

Julia R. Gordon,

Assistant Secretary for Housing—FHA Commissioner.

[FR Doc. 2023–12656 Filed 6–13–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7077–N–08]

Privacy Act of 1974; System of Records

AGENCY: Department of Housing and Urban Development, Office of Policy Development and Research.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended, the Department of Housing and Urban Development (HUD), Office of Policy Development and Research (PD&R), is modifying system of records, for the Administrative Dataset for the Evaluation of HUD's Supportive Services Demonstration Evaluation. The Supportive Services Demonstration (SSD) is a demonstration sponsored by HUD to test the impact of Integrated Wellness in Supportive Housing (IWISH), which is a new model of housing-based supportive services on the healthcare utilization and housing stability of low-income older adults. Phase 1 of the demonstration ran from 2017–2020 and the Continuing Appropriations Act, 2021 and Other Extensions Act and the Consolidated Appropriations Act, 2021 provided additional funds and authorization to extend the demonstration for an additional two years.

DATES: Comments will be accepted on or before July 14, 2023. This proposed action will be effective immediately upon publication. Routine uses will become effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office; Mr. LaDonne White, Chief Privacy Officer; Office of the Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: LaDonne White; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001; telephone number (202) 708–3054 (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.*

SUPPLEMENTARY INFORMATION: HUD's Office of PD&R contracted with Abt Associates Inc. (Abt) to evaluate the SSD through 2026. The evaluation entails matching administrative data already being collected on demonstration participants by HUD and the Centers for Medicare and Medicaid Services (CMS) in the Department of Health and Human Services (HHS). The administrative datasets will be matched to demonstration participants and linked using personally identifying information (PII) collected by HUD. The evaluation dataset that results from the administrative data matching will include PII and protected health information (PHI) and is included in the proposed system of records. The evaluation will include interviews with demonstration participants, including HUD-assisted older adults, property owners, property managers and staff who will be recorded in the system. The reason for this modification is because the Phase 1 evaluation of SSD has also been extended through 2026 (''Phase 2''). Modifications to the SORN are being made to reflect the updated purpose of the study, the data that will be collected in the new study phase, and changes to policies and practices for data storage, retrieval, disposal, and safeguards. Specific modifications include the following: (1) changes to categories of records in the system and sources categories to include name and contact information from interview respondents and to remove categories of records that are no longer part of the system; (2) updated routine uses and removal of those uses which are no longer relevant to the data collection; (3) updated purpose to reflect the additional phase of the study, updated record retention and disposal safeguards; and (4) updated policies and practices for storage and retrieval of records.

The System of Records will encompass data assembled by HUD's contractor, Abt Associates Inc., for evaluating the Supportive Services Demonstration (SSD). In January 2016, HUD solicited applications for the SSD for Elderly Households in HUD-Assisted Multifamily Housing. The Notice of Funding Availability (NOFA) offered grant funding to multifamily property owners to implement the Integrated Wellness in Supportive Housing (IWISH) model. A total of 124 HUD-assisted properties, housing approximately 13,000 elderly residents, are participating in the demonstration. These properties are in seven states: California, Illinois, Maryland, Massachusetts, Michigan, New Jersey, and South Carolina. Phase 1 of the demonstration ran from 2017–2020 and the evaluation was completed in 2022. Phase 2 of the demonstration will be completed in 2023 and the evaluation will conclude in 2026. Specific changes to the SORN include:

a. Changes to the categories of individuals covered by the system. In addition to residents, which were included in the original SORN, individuals covered by the system will also include property owners and managers and property staff (Resident Wellness Directors and Wellness Nurses) at the 124 HUD-Assisted Multifamily Housing properties in the demonstration. These new categories of individuals are being added to reflect the new research design for the Phase 2 evaluation.

b. Added new categories of records and categories of sources to include the addition of name and contact information to be collected from interview respondent sources. The new Phase 2 evaluation requires collecting this information to help with scheduling interviews.

c. Removed categories of records that are no longer part of the system. It is no longer required to obtain Medicaid data directly from states. This information can now be accessed through CMS's Research Data Assistance Center (''ResDAC'') and thus the State Medicaid Data category has been removed. Additionally, properties in Phase 2 are no longer required to use the same web-based client management system (Population Health Logistics, or PHL), so the PHL data category has been removed as well.

d. Updated routine uses and removal of those which are no longer relevant to this data collection. Original routine use 1, the routine use about utilizing new technology, was removed because it duplicates the routine use allowing for disclosure to contractors. Routine uses 2 and 3 remain the same. A routine use about statistical purpose was added (now routine use 1) because it is

essential to allow HUD to do research and statistical analysis on IWISH with outside researchers. Additionally, two other routine uses were added to cover a potential litigation event. The newly added routine use 4 allows for disclosure to a court if HUD is sued, and the newly added routine use 5 allows for disclosure to DOJ or another agency representing HUD in litigation.

e. Updated purpose to reflect the additional phase of the study. The original SORN was published in 2019 and did not forecast this new follow up information collection, thus the SORN is being revised to refer to this additional phase of the study. Updated record retention and disposal sections to reflect current retention requirements. The original SORN stated that records would be retained for three years. The new SORN states they will be destroyed upon verification of successful creation of the final document or file or when no longer needed for business use, whichever is later.

f. Updated safeguards sections to reflect current safeguard procedures for remote work. Because staff will work in their offices and remotely, additional language was added to clarify safeguarding procedures for hard copy data collected and maintained while staff are temporarily working outside of the office.

g. Updated policies and practices for storage to reflect current agency requirements. The original description of storage policies and practices was revised to clarify that records will be kept in both electronic and paper form as per Privacy Office guidance.

h. Updated policies and practices for retrieval of records to reflect this additional phase of the study. During Phase 2, electronic records may be retrieved by unique study ID, social security number, name, home address, telephone number, and personal email address.

SYSTEM NAME AND NUMBER:

Supportive Services Demonstration Evaluation, HUD/PD&R–05.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Abt Associates has headquarters at 6130 Executive Blvd., Rockville, MD 20852. HUD's Office of Policy Development and Research, Program Evaluation Division, 471 Seventh Street SW, Room 8120, Washington, DC 20410–0001.

SYSTEM MANAGER(S):

Carol S. Star, Program Evaluation Division, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–0001; telephone number (202) 402–6139 (this is not a toll-free number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 501 and 502 of the Housing and Urban Development Act of 1970 (Pub. L. 91–609) (12 U.S.C. 1701z–1; 1701z–2(d) and (g)).

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to allow the Department to study information gathered on Supportive Services Demonstration IWISH program participants in comparison to other participants receiving HUD-assisted elderly housing. The system will link, store, and analyze data collected through the SSD evaluation (HUD data, Medicare data, Medicaid data, and qualitative data). Use of this system is essential to successfully implementing the evaluation because analyzing person-level linked health and housing data is the main way the evaluation will measure the impacts of the demonstration on participating residents. Matching existing data from different federal and state government agencies is an innovative and cost-effective evaluation method that minimizes data collection burden on the public. The interview data is essential to understanding the participants' experiences with the program. HUD and policy makers will use the information collected through the evaluation to understand the effectiveness and outcomes of the IWISH model. The evaluation will provide insight to Congress, HUD, grantee states, and other interested parties on issues to consider in providing housing-based supportive services. It will also provide rigorous, quantitative data on the impact of housing-based supportive services on healthcare utilization and housing stability among older adults in HUD-assisted housing.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Residents, property owners and managers, Resident Wellness Directors (RWD) and Wellness Nurses (WN) of 124 HUD-Assisted Multifamily Housing properties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Age, race/ethnicity, sex, household size, salary, housing cost, length of tenure, home address, full name, date of birth, and social security number for data matching to Medicare and Medicaid data and demographic analysis. Protected health information from Medicare fee-for-service (FFS) claims data, Medicare encounter data, and Medicaid Transformed Medicaid Statistical Information System (T–MSIS) files, including data on gender. Responses to interview questions, including related to employment status, employment history, employment information, and place of birth; full name, phone number, email address, and home address to schedule interviews; Abt Study ID; audio recordings from interviews.

RECORD SOURCE CATEGORIES:

IWISH Demonstration property owners and managers, Resident Wellness Director (RWD), Wellness Nurse (WN), Tenant Rental Assistance Certification System (TRACS), Medicare and Medicaid claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or other agreement for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. Research reports and other analysis conducted under this routine use may not disclose identifiable information; all results must be reported in the aggregate and must ensure that no individual is identifiable.

(2)(a) To appropriate agencies, entities, and persons when: (1) HUD suspects or has confirmed that there has been a system of records; (2) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) The disclosure made to such agencies, entities, and persons is reasonably necessary to assist with HUD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(3)(b) To another Federal agency or Federal entity, when HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to suspected or confirmed breach, or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(4) To a court, magistrate, administrative tribunal, or arbitrator in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, mediation, or settlement negotiations, or in connection with criminal law proceedings; when HUD determines that use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where HUD has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

(5) To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Name, social security number, home address, telephone number, personal email address, and unique study ID.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Temporary. Destroy upon verification of successful creation of the final document or file, or when no longer needed for business use, whichever is later.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

For Electronic Records: All personal data will be maintained on a secure workstation or virtual server that is protected by a firewall and complex passwords in a directory that can only be accessed by the system administrators and the analysts actively working on the data; access rights to the data are granted to limited researchers on a need-to-know basis, and the level of access provided to each researcher is based on the minimal level required that individual to fulfill his research role; all systems used to process or store data have Federal security controls applied to them; the data will be backed up on a regular basis to safeguard against system failures or disasters; and, unencrypted data will not be stored on a laptop or on removable media such as CDs, diskettes, or USB flash drives.

For Paper Records: The site interviewers will securely store any hard copy forms with personal identifiers until they are shipped to the evaluation contractor via commercial mail services; all hard copy forms with personal identifying data (the participant agreement/informed consent form) will be stored securely in a locked cabinet or bag that can only be accessed by authorized individuals working on the data. All hard copy forms will be shipped to the evaluation contractor and stored in a locked cabinet in a locked office in a limited-access building. Additionally, permissions will be defined for each authorized user based on the user's role on the project. For example, the local site interviewer will be able to review data for study participants only for his or her own specific site. Study data will be aggregated or de-identified at the highest level possible for each required, authorized use.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development 451 7th Street SW Washington, DC 20410–0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th Street SW, Washington, DC 20410–0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This is a revision to the previously published notice published in the **Federal Register** on March 19, 2019 (84 FR 10113).

LaDonne L. White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2023–12710 Filed 6–13–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2023–N054; FXES11130600000–234–FF06E00000]

Endangered and Threatened 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, permit renewals, and/or permit amendments to conduct activities intended to enhance the propagation or 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 any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive written data or comments on the applications by July 14, 2023.

ADDRESSES:

Document availability and comment submission: Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* Smith, PER0123456 or Jones, ES–056001):

- *Email: permitsR6ES@fws.gov.*
- *U.S. Mail:* Tom McDowell, Division Manager, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Robert Krijgsman, Recovery Permits Coordinator, Ecological Services, 303–236–4347 (phone), or *permitsR6ES@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 review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

Background

With some exceptions, the ESA prohibits take of listed species unless a Federal permit is issued that authorizes such take. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to take endangered or threatened species while engaging in activities that are conducted for scientific purposes that promote recovery of species or for enhancement of propagation or survival of species. These activities often include the capture and collection of species, which would result in prohibited take if a permit were not issued. Our regulations implementing section 10(a)(1)(A) for these permits are found 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

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. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Permit No.	Applicant	Species	Location	Activity	Permit action
PER2247920 ...	SWCA Incorporated, Austin, TX.	• Lesser prairie-chicken (*Tympanuchus pallidicinctus*).	Colorado, New Mexico, Kansas, Oklahoma, and Texas.	Survey and monitor	New.
PER2006094 ...	Tetra Tech, Incorporated, Golden, CO.	• Lesser prairie-chicken (*Tympanuchus pallidicinctus*).	Colorado, New Mexico, Kansas, Oklahoma, and Texas.	Survey and monitor	New.
ES–106182	Denver Botanic Gardens, Inc., Denver, CO.	• Clay-loving wild buckwheat (*Eriogonum pelinophilum*). • Mancos milk-vetch (*Astragalus humillimus*). • North Park phacelia (*Phacelia formosula*). • Osterhout milkvetch (*Astragalus osterhoutii*). • Pagosa skyrocket (*Ipomopsis polyantha*). • Penland beardtongue (*Penstemon penlandii*).	Colorado, Montana, Nebraska, Utah, and Wyoming.	Remove and reduce to possession from lands under Federal jurisdiction.	Renew and amend.
ES–064680	Capitol Reef National Park, Torrey, UT.	• Barneby reed-mustard (*Schoenocrambe barnebyi*). • Wright fishhook cactus (*Sclerocactus wrightiae*).	Utah	Remove and reduce to possession from lands under Federal jurisdiction.	Renew.
ES–09941B	Felsburg Holt & Ullevig, Lincoln, NE.	• Indiana bat (*Myotis sodalis*). • Northern long-eared bat (*Myotis septentrionalis*).	Iowa, Kansas, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.	Survey, monitor, capture, handle, tag, release, and perform radio telemetry.	Renew and amend.
ES–080647	Wildlife Specialties, Lyons, CO.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	Nevada	Play taped vocalizations for surveys.	Amend.
PER0057787 ...	Western Ecosystems Technology, Fort Collins, CO.	Lesser prairie-chicken (*Tympanuchus pallidicinctus*).	Colorado, New Mexico, Kansas, Oklahoma, and Texas.	Survey and monitor	Amend.

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 ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to an 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.*).

Clinton Riley,

Acting Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2023–12722 Filed 6–13–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2023–0077; FXES11140400000–234–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Florida Scrub-Jay; Marion County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from TC Florida Development Inc. (Crossroads Industrial; applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed Florida scrub-jay (*Aphelocoma coerulescens*) incidental to the construction of a warehouse, loading docks, parking lots, and the associated stormwater systems, within an existing industrial park in Marion County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before July 14, 2023.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2023–0077; at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2023–0077;
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2023–0077; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin Gawera, by U.S. mail (see **ADDRESSES**), by telephone at 904–731–3121, or via email at *erin_gawera@fws.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: We, the Fish and Wildlife Service (Service), announce receipt of an application from TC Florida Development Inc. (Crossroads Industrial; applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) incidental to the construction and operation of a warehouse, loading docks, parking lots, and associated stormwater systems within an existing industrial park in Marion County, Florida. We request public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as low effect, and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 10-year ITP to take scrub-jays via the conversion of approximately 4.50 acres (ac) of occupied nesting, foraging, and sheltering scrub-jay habitat, incidental to the construction and operation of a warehouse, loading docks, parking lots, and the associated stormwater systems within an existing industrial park on 118.0 ac on parcel numbers 41205–001–01 and 41205–001–02 in Section 16, Township 17 South, Range 21 East, Marion County, Florida. The applicant proposes to mitigate for take of the scrub-jay by purchasing credits equivalent to 9.0 ac of scrub-jay occupied habitat within the Tippen Bay Conservation Bank or another Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in any construction phase of the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's proposed project—including the construction of a warehouse, loading docks, parking lots, and the associated stormwater systems and associated infrastructure (*e.g.,* electric, water, and sewer lines)—would individually and cumulatively have a minor effect on the scrub-jay and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a low-effect ITP that individually or cumulatively would have a minor effect on the scrub-jay and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA

regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A low-effect incidental take permit is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonably foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER0046853 to TC Florida Development Inc.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Robert L. Carey,

Manager, Division of Environmental Review, Florida Ecological Services Field Office.

[FR Doc. 2023–12713 Filed 6–13–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2023–0063; FXES11140400000–234–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink; Orange County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Unicorp National Developments, LLC (Sutton Lakes) (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink incidental to the construction of a residential development in Orange County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before July 14, 2023.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2023–0063 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2023–0063.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2023–0063; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin Gawera, by U.S. mail (see **ADDRESSES**), by telephone at 904–731–3121, or via email at *erin_gawera@fws.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: We, the Fish and Wildlife Service (Service), announce receipt of an application from Unicorp National Developments, LLC (Sutton Lakes) (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally threatened sand skink (*Neoseps reynoldsi*) (skink) incidental to the construction and operation of a residential development in Orange County, Florida. We request public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as low effect, and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 5-year ITP to take skinks via the conversion of approximately 3.49 acres (ac) of occupied nesting, foraging, and sheltering skink habitat incidental to the construction and operation of a residential development on 137.60 ac on parcel numbers 31–24–27–0000–00–009, 31–24–27–0000–00–010, 31–24–27–0000–00–038, and 31–24–27–0000–00–045 in sections 31 and 32, township 24 south, range 27 east, Orange County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing credits equivalent to 6.98 ac of skink-occupied habitat within the Collany Conservation Bank or another Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in any construction phase of the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's proposed project—including the construction of multiple single-family residences, driveways, parking spaces, green areas, stormwater ponds, and associated infrastructure (*e.g.,* electric, water, and sewer lines)—would individually and cumulatively have a minor or negligible effect on the skinks

and the environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a low-effect ITP and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A low effect incidental take permit is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonably foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER1097491 to Unicorp National Developments, LLC.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Robert L. Carey,

Manager, Division of Environmental Review, Florida Ecological Services Field Office.

[FR Doc. 2023–12714 Filed 6–13–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2023–0079; FXES11140400000EA–234–FF04EA1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Alabama Beach Mouse, Baldwin County, AL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from David Clampitt (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed Alabama beach mouse (*Peromyscus polionotus ammobates*) incidental to construction in the City of Orange Beach, Baldwin County, Alabama. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before July 14, 2023.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2023–0079 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2023–0079.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2023–0079; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Mr. William Lynn, Project Manager, by telephone at 251–441–5868 or via email at *william_lynn@fws.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: We, the Fish and Wildlife Service (Service), announce receipt of an application from David Clampitt (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM) incidental to the construction of a single-family home (project) in the City of Orange Beach, Baldwin County, Alabama. We request public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as low effect, and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 30-year ITP to take ABM by destroying approximately 0.160 acre (ac) of occupied ABM foraging and sheltering habitat incidental to the construction of a single-family home located on a 1.67-ac parcel in Baldwin County, Alabama. The previous single-family home that was located on the site was destroyed in 2004 by Hurricane Ivan.

The applicant proposes 1.10 ac of on-site mitigation through the restoration (0.01 ac), enhancement (0.41 ac), and protection (0.68 ac) of ABM habitat. This proposed onsite mitigation would be protected and maintained in the event of landfalling tropical cyclones for the duration of the permit. In addition to the on-site conservation measures, the applicant will purchase and dedicate to conservation a 0.232-ac platted lot that contains existing ABM habitat. This off-site mitigation area is near Federal lands and will remove the parcel from development pressure and future ITP processes. In total, the plan proposes restoring, enhancing, and protecting 1.332 ac of ABM habitat.

The standard mitigation and minimization measures to be implemented on the site include installing sea turtle-friendly lighting and tinted windows, landscaping with native vegetation, enhancing the frontal dune area, constructing a concrete

driveway that will not disperse in a storm surge, implementing refuse-control measures during construction and requiring that future residents utilize such measures, and restoring ABM habitat after tropical storms. Free-roaming cats and the use of exterior rodenticide would be prohibited within the parcel.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation and minimization measures, would individually and cumulatively have a minor effect on the Alabama beach mouse and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a low-effect ITP that individually or cumulatively would have a minor effect on the Alabama beach mouse and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A low-effect incidental take permit is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonable foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take on the species. We will consider the above in determining whether the permit issuance criteria of section 10(a)(l)(B) of the ESA have been met. If met, the Service will issue ITP number PER0284585 to David Clampitt.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

William J. Pearson,

Field Supervisor, Alabama Ecological Service Field Office.

[FR Doc. 2023–12718 Filed 6–13–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Memorandum of Incorporation of Most Favored Nation Amendments to the Tribal State Compact (Amendment) between the Kalispel Indian Community of the Kalispel Reservation (Tribe) and the State of Washington (State).

DATES: The Amendment takes effect on June 14, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment replaces Section III(O) with language to clearly establish which individuals will be allowed to carry firearms within the gaming facility, such as law enforcement, or other individuals authorized by the Tribe's ordinances and that the Tribe will maintain a list of all authorized persons. It also adds language regarding tort liability for negligent use of firearms. The Amendment adds Appendix T, Technical Requirements Governing the Gaming Data Environment and adds Appendix W, Rules Governing Wide Area Progressives. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–12681 Filed 6–13–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2341A2100DD/AAKC001030/A0A501010.999900]

Forthcoming FY 2024 NATIVE Act Tribal Tourism Cooperative Agreement

AGENCY: Bureau of Indian Affairs (BIA), Interior.

ACTION: Notice.

SUMMARY: The Office of the Assistant Secretary—Indian Affairs, through the Office of Indian Economic Development (OIED), will be soliciting proposals from Federally recognized Indian Tribes, Alaska Native Corporations, Native American Tribal Organizations, Tribal Colleges and Universities, and Native Hawaiian Organizations.

DATES: Proposals must be submitted to *Grants.gov* no later than 5 p.m. EST by the deadline indicated on *Grants.gov.*

ADDRESSES: Proposals must be submitted to *https://www.Grants.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Denise Litz, Division Chief, Division of Economic Development, Office of Indian Economic Development, telephone: (303) 710–0661; email: *katharine.litz@bia.gov.* If you have questions regarding the application process, please contact Ms. Jo Ann Metcalfe, Grant Officer, telephone (401) 703–3390; email *jo.metcalfe@bia.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. Additional Program information can be found at: *https://www.bia.gov/service/grants/ttgp.*

SUPPLEMENTARY INFORMATION: This OIED announcement for the forthcoming FY 2024 NATIVE Act Tribal Tourism Cooperative Agreement Notice of Funding Opportunity (NOFO) is intended to give interested applicants time to prepare their applications prior to the opening of the application period. The OIED expects the official NOFO solicitation to run for approximately 90 days on *Grants.gov*, from June 30, 2023,

through September 29, 2023, to receive applications. Additional information for the FY 2024 NATIVE Act Tribal Tourism Cooperative Agreement NOFO, as well as a link to the final NOFO posting on *Grants.gov*, will be available on OIED's website: Division of Economic Development | Indian Affairs (*bia.gov*).

The OIED will award one Cooperative Agreement for $2,000,000.00 in annual funding, for a five-year active period of performance. This opportunity supports the implementation of Section 4(d) of the Native American Tourism and Improving Visitor Experience Act (Pub. L. 114–221) (NATIVE Act) in partnership with the Federal government. The Department of the Interior, through Indian Affairs, has been engaged in significant regionally focused Tribal tourism efforts since the inception of the NATIVE Act. The NATIVE Act requires identification of a means for delivering and coordinating Federal technical assistance and resources in collaboration with Federal partners, including the Secretary of the Interior, Secretary of Commerce and other Federal agencies and entities with tourism expertise.

In 2019, the Bureau awarded a multi-year cooperative agreement which focused on strengthening collaboration and coordination of Federal assets and resources to build and promote Tribal travel and tourism capacity on Federal and Tribal lands. The awardee for this new solicitation will build upon past efforts and serve as the facilitator between the Secretary of the Interior, Secretary of Commerce, Federal agencies, Indian tribes, tribal organizations, and Native Hawaiian organizations. The awardee, through a cooperative agreement, will continue to build, enhance and expand Federal tribal tourism inclusive of technical assistance, assets, and other potential resources needed to empower tribes and organizations to participate fully in the tourism industry. In addition, the recipient of this award will support the Federal government-to-government relationships with Tribal governments.

The successful entity or organization will also support a five-zone implementation in Alaska, Hawaii, Southwest, Northwest, and Eastern zones. The five-zone approach may be implemented through sub-awards and partnerships with subject matter experts or consultants that may include, but are not limited to universities and colleges, private consulting firms, and non-academic non-profit entities.

While OIED will not accept applications at this time, interested applicants may submit questions to the program contacts. No project shall be funded that has comparable activities previously carried out under other Federal assistance programs. It is encouraged that applicants conduct the required registration activities for the System for Award Management (SAM), Unique Entity Identifier (UEI), and the Automated Standard Application for Payment (ASAP).

The required method of submitting proposals during the open solicitation period is through *Grants.gov*. For information on how to apply for grants in *Grants.gov*, see the instructions available at *https://www.grants.gov/help/html/help/Applicants/HowToApplyForGrants.htm*. Proposals must be submitted to *Grants.gov* no later than 5 p.m. EST by the deadline indicated on *Grants.gov*.

Eligible Applicants

Eligible applicants are Indian tribes and Tribal Organizations, as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (ISDEAA) (25 U.S.C. 5304), including Tribal Consortia. Tribal Colleges and Universities are those institutions cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Diné College, authorized in the Navajo Community College Act, Public Law 95–471, title II (25 U.S.C. 640a note). Native Hawaiian organization means a nonprofit organization: (A) that serves the interests of Native Hawaiians; (B) in which Native Hawaiians serve in substantive and policymaking positions, and; (C) that are recognized for having expertise in Native Hawaiian culture and heritage, including tourism. The cooperative agreement funding is to support the Native American Tourism and Improving Visitor Experience Act (Pub. L. 114–221) (NATIVE Act).

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–12680 Filed 6–13–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MO# 4500171161]

Notice of Application for Withdrawal Extension and Opportunity for Public Meeting, Langmuir Principal Research Site; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On behalf of the United States Department of Agriculture, the United States Forest Service (USFS) filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior extend Public Land Order (PLO) No. 7587 for an additional 20-year term. PLO No. 7587 withdrew 852 acres of National Forest System lands in Socorro County, New Mexico, from location and entry under the United States mining laws, subject to valid existing rights, to protect the USFS-managed research site for a period of 20 years. The withdrawal created by PLO No. 7587 will expire on October 26, 2023, unless extended. This notice announces to the public an opportunity to comment on the proposal and to request a public meeting.

DATES: Comments and requests for a public meeting regarding the withdrawal extension application must be received by September 12, 2023.

ADDRESSES: All written comments and meeting requests should be sent to the Cibola National Forest Supervisor's Office, Attn: Richard Wilhelm, 2113 Osuna NE, Albuquerque, NM 87113.

FOR FURTHER INFORMATION CONTACT: Carol Harris, BLM Socorro Field Office Realty Specialist by phone at 575–838–1298 or email at *caharris@blm.gov* or Richard Wilhelm by phone at (505) 346–3842 or by email at *richard.wilhelm@usda.gov*.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) 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: The USFS filed an application requesting extension of the withdrawal established by PLO No. 7587 (58 FR 11968), which is incorporated herein by reference. PLO No. 7587 withdrew 852 acres of National Forest System lands in Socorro County, New Mexico, from location and

entry under the United States mining laws, subject to valid existing rights, to protect the USFS-managed research site for a period of 20 years. The withdrawal created by PLO No. 7587 will expire on October 26, 2023, unless extended.

The purpose of the requested extension is to protect, as originally authorized under PLO No. 7587, the 852-acre area for the use of the Langmuir Principal Research Site on the Magdalena Ranger District of the Cibola National Forest for an additional 20-year term.

The use of a rights-of-way, interagency agreement, or cooperative agreement would not provide adequate protection for this site.

There are no suitable alternative sites available which would facilitate this type of research.

No water rights will be needed to fulfill the purpose of the requested withdrawal.

All interested persons who wish to submit comments, suggestions, or objections in connection with the withdrawal extension application, or to request a public meeting, may submit a written request to the Regional Forester by September 12, 2023, at the address in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask the BLM in your comment to withhold from your personal identifying information from the public review, we cannot guarantee that we will be able to do so.

This application will be processed in accordance with the regulations set-forth in 43 CFR 2310.4.

(Authority: 43 U.S.C. 1714)

Melanie G. Barnes,

State Director.

[FR Doc. 2023–12688 Filed 6–13–23; 8:45 am]

BILLING CODE 4331–23–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–D–COS–POL–35944; PPWODIREP0, PPMPSAS1Y.YP0000]

Notice of Public Meeting for the National Park System Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the National Park Service (NPS) is hereby giving notice that the National Park System Advisory Board (Board) will meet as noted below.

DATES: The Board will hold public meetings on Tuesday, August 15, 2023, from 8:00 a.m. until 5:00 p.m. (EASTERN) and Wednesday, August 16, 2023, from 8:00 a.m. until 5:00 p.m. (EASTERN). Individuals that wish to participate must contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than August 9, 2023, to receive instructions for accessing the meeting. The meetings are open to the public.

ADDRESSES: The Board will meet at the Stuart Lee Udall Department of the Interior Building, 1849 C St. NW, Washington, DC 20240. Electronic submissions of materials or requests are to be sent to *Joshua_winchell@nps.gov.* The meeting will also be accessible virtually via webinar and audio conference technology.

FOR FURTHER INFORMATION CONTACT: (a) For information concerning attending the Board meeting or to request to address the Board, contact Joshua Winchell, Staff Director for the Board, Office of Policy, National Park Service, telephone (202) 513–7053, or email *joshua_winchell@nps.gov.* (b) To submit a written statement specific to, or request information about, any NHL matter listed below, or for information about the National Historic Landmarks (NHL) Program or NHL designation process and the effects of designation, contact Lisa Davidson, Manager, NHL Program, email *lisa_davidson@nps.gov.* Written comments specific to any NHL matter listed below must be submitted by no later than August 11, 2023. (c) To submit a written statement specific to, or request information about, the National Natural Landmarks (NHL) matter listed below, or for information about the NNL Program or NNL designation process and the effects of designation, contact Heather Eggleston, Manager, NNL Program, email *heather_eggleston@nps.gov.* Written comments specific to any NNL matter listed below must be submitted by no later than August 11, 2023. 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: The Board has been established by authority of the Secretary of the Interior (Secretary) under 54 U.S.C. 100906 and is regulated by the Federal Advisory Committee Act.

Purpose of the Meeting: The Board will be briefed by NPS officials on the organization, programs, and priorities of the NPS, and will attend to housekeeping matters, including the establishment of committees and the designation of committee chairs. The Board will also receive NHL and NNL proposals for Board deliberation. There also will be an opportunity for public comment. The final agenda and briefing materials will be posted to the Board's website prior to the meeting at *https://www.nps.gov/resources/advisoryboard150.htm.*

The agenda may include the review of proposed actions regarding the NHL Program and NNL Program. Interested parties are encouraged to submit written comments and recommendations that will be presented to the Board. Interested parties also may attend the Board meeting and upon request may address the Board concerning an area's national significance.

A. National Historic Landmarks (NHL) Program

NHL Program matters will be considered, during which the Board may consider the following:

Nominations for NHL Designation

California

- POND FARM POTTERY, Sonoma County, CA
- WAYFARERS CHAPEL, Rancho Palos Verdes, CA

Colorado

- TEMPLE AARON, Trinidad, CO
- WINKS PANORAMA, Gilpin County, CO

Connecticut

- BARNUM INSTITUTE OF SCIENCE AND HISTORY, Bridgeport, CT

District of Columbia

- NATIONAL ARCHIVES BUILDING, Washington, DC

Idaho

- STRATEGIC AIR COMMAND GROUND ALERT FACILITY, Mountain Home AFB, Elmore County, ID

Illinois

- SAM AND RUTH VAN SICKLE FORD HOUSE, Aurora, IL

Indiana

- MONTGOMERY COUNTY JAIL AND SHERIFF'S RESIDENCE, Crawfordsville, IN

Iowa

- POTTAWATTAMIE COUNTY JAIL AND SHERIFF'S RESIDENCE, Council Bluffs, IA

Massachusetts

• SAMPSON–WHITE JOINER SHOP, Duxbury, MA

Tennessee

• FORT ARMISTEAD, Coker Creek, Monroe County, TN

Texas

• RIO VISTA BRACERO RECEPTION CENTER, Socorro, TX

West Virginia

• JEFFERSON COUNTY COURTHOUSE, Charlestown, WV

Wisconsin

• ROCK ISLAND SITE II, Door County, WI

Wyoming

• QUEBEC 01 LAUNCH CONTROL FACILITY, Laramie County, WY

Proposed Amendments to Existing NHL Designations

District of Columbia

• CARTER G. WOODSON HOUSE (updated documentation), Washington, DC

California

• JOHN MUIR HOME/STRENTZEL–MUIR RANCH (updated documentation, name change), Martinez, Contra Costa County, CA

Illinois

• RIVERSIDE HISTORIC DISTRICT (updated documentation), Riverside, IL

Pennsylvania

• HISTORIC MORAVIAN BETHLEHEM HISTORC DISTRICT (updated documentation), Bethlehem, PA

Tennessee

• HERMITAGE HOTEL (updated documentation), Nashville, TN

Virginia

• WATERFORD HISTORIC DISTRICT (updated documentation), Loudoun County, VA

Proposed Withdrawal of Existing Designations

Illinois

• GOLDENROD SHOWBOAT, Kampsville, Calhoun County, IL

Louisiana

• DELUGE (FIRE FIGHTING TUG), New Orleans, LA

Michigan

• STE. CLAIRE (PASSENGER STEAMBOAT), Wayne County, MI

B. National Natural Landmarks (NNL) Program

NNL Program matters will be considered, during which the Board may consider the following:

Nominations for NNL Designation

Colorado

• GLENWOOD CAVERNS AND IRON MOUNTAIN HOT SPRINGS, Garfield County, CO

New York

• JOHN BOYD THACHER STATE PARK, Albany County, NY

Interested persons may choose to make oral comments at the meeting during the designated time for this purpose. Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited. Interested parties should contact the Staff Director (see **FOR FURTHER INFORMATION CONTACT**) for advance placement on the public speaker list for this meeting. Members of the public may also choose to submit written comments by emailing them to *joshua_winchell@nps.gov.* Due to time constraints during the meeting, the Board is not able to read written public comments submitted into the record. All comments will be made part of the public record and will be electronically distributed to all Board members. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Meeting Accessibility/Special Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. ch. 10.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2023–12650 Filed 6–13–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–075 (Second Monitoring)]

Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Monitoring Developments in the Domestic Industry

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission has instituted investigation No. TA–201–075 (Second Monitoring), Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Monitoring Developments in the Domestic Industry, for the purpose of preparing the report to the President and the Congress required by section 204(a)(2) of the Trade Act of 1974 on its monitoring of developments in the domestic industry following the President's decision to impose a safeguard measure on imports of certain crystalline silicon photovoltaic (''CSPV'') cells, whether or not partially or fully assembled into other products (including, but not limited to, modules, laminates, panels, and building-integrated materials) (''CSPV products''), as described in Proclamation 10339 of February 4, 2022.

DATES: June 8, 2023.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136) or Andres Andrade (202–205–2078), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On January 23, 2018, the President, pursuant to section 203 of the Trade Act of 1974 (19 U.S.C. 2253) (Trade Act), issued Proclamation 9693, imposing a safeguard measure on imports of CSPV products, in the form of (a) a tariff-rate quota on imports of solar cells not partially or fully

assembled into other products and (b) an increase in duties on imports of modules. The proclamation was published in the **Federal Register** on January 25, 2018 (83 FR 3541). The measure took effect on February 7, 2018, for a period of four years, or through February 7, 2022. The President imposed the measure following receipt of a report from the Commission in November 2017 under section 202 of the Trade Act (19 U.S.C. 2252) that contained an affirmative determination, remedy recommendations, and certain additional findings (see Crystalline Silicon Photovoltaic Cells (Whether or not Partially or Fully Assembled into Other Products), Investigation No. TA–201–75, USITC Publication 4739, November 2017).

On February 7, 2020, the Commission issued its report, pursuant to section 204(a)(2) of the Trade Act (19 U.S.C. 2254(a)(2)), on the results of its monitoring of developments with respect to the domestic solar industry (see Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Monitoring Developments in the Domestic Industry, Investigation No. TA–201–075 (Monitoring), USITC Publication 5021, February 2020). On March 6, 2020, the Commission issued an additional report pursuant to a request from the United States Trade Representative under section 204(a)(4) of the Trade Act (19 U.S.C. 2254(a)(4)), regarding the probable economic effect on the domestic CSPV cell and module manufacturing industry of modifying the safeguard measure (see Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Advice on the Probable Economic Effect of Certain Modifications to the Safeguard Measure, No. TA–201–075 (Modification), USITC Publication 5032, March 2020). Subsequently, the President issued Proclamation 10101, determining that the domestic industry had begun to make a positive adjustment to import competition and modifying in part the action applicable to imports covered by the safeguard measure (85 FR 65639, October 16, 2020).

On December 8, 2021, in response to a petition seeking extension of the safeguard measure filed on behalf of Auxin Solar Inc. and Suniva and a petition filed on behalf of Hanwha Q CELLS USA, Inc., LG Electronics USA, Inc., and Mission Solar Energy LLC, the Commission issued its determination and report pursuant to section 204(c) of the Act (19 U.S.C. 2254(c)), finding that the safeguard measure continued to be necessary to prevent or remedy the serious injury to the domestic industry, and that there was evidence that the domestic industry was making a positive adjustment to import competition (see Crystalline Silicon Photovoltaic Cells (Whether or not Partially or Fully Assembled into Other Products): Extension of Action, Investigation No. TA–201–075 (Extension), USITC Publication 5266, December 2021). On February 4, 2022, the President issued Proclamation 10339 (87 FR 7357, February 9, 2022), pursuant to section 203(e)(1)(B) of the Act (19 U.S.C. 2253(e)(1)(B)), extending the safeguard measure on CSPV and parts thereof for an additional period of four years, or through February 6, 2026.

Section 204(a)(1) of the Trade Act (19 U.S.C. 2254(a)(1)) requires the Commission to monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition, as long as any action under section 203 of the Trade Act remains in effect. Whenever the initial period of such an action exceeds 3 years, or if an extension of such action exceeds 3 years, section 204(a)(2) requires the Commission to submit a report on the results of the monitoring to the President and the Congress no later than the mid-point of the initial period of the relief, and of each such extension, during which the action is in effect—in this case by February 6, 2024. Section 204(a)(3) requires the Commission to hold a hearing in the course of preparing such a report.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 206, subparts A and F (19 CFR part 206).

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of confidential business information (CBI) under an administrative protective order (APO) and CBI service list.—Pursuant to section 206.17 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 CFR 206.17(a)(3)(iii)) under the APO issued in the investigation, provided that the application is made not later than 21 days after the publication of this notice in the **Federal Register**. The Secretary will maintain a separate service list for those parties authorized to receive CBI under the APO.

The Commission may include CBI in the report it sends to the President and to the United States Trade Representative. Additionally, all information, including CBI, submitted in this investigation may be disclosed to and used by (i) the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes.

The Commission will not release information which the Commission considers to be CBI unless the party submitting the CBI had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. The Commission will not otherwise disclose any CBI in a manner that would reveal the operations of the firm supplying the information.

Hearing.—As required by statute, the Commission has scheduled a hearing in connection with this investigation. The hearing will be held beginning at 9:30 a.m. on November 14, 2023. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 7, 2023. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the review, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

All persons desiring to appear at the hearing and make an oral presentation should participate in a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on November 9, 2023. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00 p.m. on November 13, 2023. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is November 6, 2023. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is November 21, 2023. In addition, any person who has not entered an appearance as a party to the investigation may submit, on or before November 21, 2023, a written statement concerning the matters to be addressed in the Commission's report to the President. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain CBI must also conform with the requirements of section 201.6 of the Commission's rules. Any CBI that is provided will be subject to limited disclosure under the APO (see above) and may be included in the report that the Commission sends to the President and the U.S. Trade Representative. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's rules with respect to electronic filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, will not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 204(a) of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.

Issued: June 8, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–12685 Filed 6–13–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1607–1611 (Preliminary)]

Boltless Steel Shelving Units Prepackaged for Sale From India, Malaysia, Taiwan, Thailand, and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of boltless steel shelving units prepackaged for sale (''boltless steel shelving'') from Malaysia, Taiwan, Thailand, and Vietnam, and that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of boltless steel shelving from India, provided for in subheading 9403.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'').[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under § 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under § 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On April 25, 2023, Edsal Manufacturing Co., Inc., Chicago, Illinois, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of boltless steel shelving from India, Malaysia, Taiwan, Thailand, and Vietnam. Accordingly, effective April 25, 2023, the Commission instituted antidumping duty investigation nos. 731–TA–1607–1611 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 2, 2023 (88 FR 27529). The Commission gave notice that it would hold its staff conference via video conference in a notice published in the **Federal Register** of May 3, 2023 (88 FR 27923). The Commission conducted its conference on May 16, 2023. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to § 733(a) of the Act (19 U.S.C. 1673b(a)). It completed and filed its determinations in these investigations on June 9, 2023. The views of the Commission are contained in USITC Publication 5434 (June 2023), entitled *Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand, and Vietnam: Investigation Nos. 1607–1611 (Preliminary).*

By order of the Commission.

Issued: June 9, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–12740 Filed 6–13–23; 8:45 am]

BILLING CODE 7202–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 88 FR 32188 (May 19, 2023).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1327]

Certain Solar Power Optimizers, Inverters, and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation in Its Entirety; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 16) of the presiding chief administrative law judge (''CALJ'') granting a joint motion to terminate the investigation in its entirety based upon settlement.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On September 2, 2022, the Commission instituted this investigation based on a complaint filed by Ampt, LLC of Fort Collins, Colorado (''Ampt''). 87 FR 54262–63 (Sept. 2, 2022). The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain solar power optimizers, inverters, and components thereof by reason of infringement of one or more of claims 1–3, 9, 10, and 12 of U.S. Patent No. 11,289,917 (''the '917 patent'') and claims 1, 3–5, 7–10, and 17 of U.S. Patent No. 9,673,630 (''the '630 patent''). The Commission's notice of investigation named SolarEdge Technologies, Inc. of Milpitas, California and SolarEdge Technologies, Ltd. of Herzliya, Israel (together, ''SolarEdge'') as the respondents. *Id.* The Office of Unfair Import Investigations was not named as a party in the investigation. *Id.*

On February 9, 2023, the CALJ issued an ID granting a motion to terminate the investigation as to (1) claims 1–3, 9, and 10 of the '917 patent and (2) claims 1, 3, 5, and 7–9 of the '630 patent based upon withdrawal of the allegations in the complaint as to these claims. Order No. 10 (June 9, 2023), *unreviewed by* Comm'n Notice (Mar. 13, 2023).

On May 11, 2023, Ampt and SolarEdge jointly moved to terminate the investigation in its entirety based upon reaching a settlement agreement.

On May 22, 2023, the CALJ issued the subject ID granting the motion. Commission Rule 210.21(a)(2) provides that ''[a]ny party may move at any time to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement . . . .'' 19 CFR 210.21(a)(2). The ID found that in compliance with 19 CFR 210.21(b)(1), ''the motion contains a statement that there are no other agreements, written or oral, express or implied, between the private parties concerning the subject matter of the investigation.'' ID at 1. The parties also submitted confidential and public versions of the settlement agreement. *Id.* The ID further found that ''any effect the proposed termination of this investigation may have on the public interest factors set forth in Commission Rule 210.50(b)(2) does not counsel against termination of the investigation'' and that ''termination of the investigation will preserve Commission resources and avoid unnecessary litigation.'' *Id.* at 2. No one petitioned for review of the subject ID.

The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

The Commission vote for this determination took place on June 8, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 9, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–12739 Filed 6–13–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB 1140–0039]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Federal Firearms Licensee Firearms Inventory/Firearms in Transit Theft/Loss Report—ATF Form 3310.11/3310.11A

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 14, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Neil Troppman, ATF National Tracing Center, either by mail at 244 Needy Road, Martinsburg, West Virginia 25405, by email at *neil.troppman@atf.gov,* or telephone at 304–260–3643.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: Thefts or losses of firearms from the inventory of a Federal Firearms Licensee and from the collection of a licensed collector must be reported to the Attorney General and the appropriate local authorities within 48 hours of discovery.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Federal Firearms Licensee Firearms Inventory/Firearms in Transit Theft/Loss Report.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 3310.11/3310.11A. *Component:* Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond: Affected Public:* Business or other for-profit, Federal Government. The obligation to respond is mandatory. The statutory requirements are implemented in title 18 U.S.C. 923(g)(6).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 4,000 respondents will utilize the form annually, and it will take each respondent approximately 24 minutes to complete their responses.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 1,600 hours, which is equal to 4,000 (total respondents) * 1 (# of response per respondent) * .4 (24 minutes).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* There is no startup cost to the respondent. Respondents can electronically submit their responses or mail them to the National Tracing Center. The cost of postage is now $.63 cents. Therefore, the total cost is $2,520, which is equal to 4,000 (# of respondents) × $.63 cents (mailing cost per respondent).

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min.)	Total annual burden (hours)
ATF Form 3310.11/3310.11A	4,000	1/annually	4,000	24	1,600

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: June 9, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–12721 Filed 6–13–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number L–11989]

Proposed Exemption for Certain Prohibited Transactions Involving the Association of Washington Business (AWB) HealthChoice Employee Benefits Trust Located in Olympia, Washington

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document gives notice of a proposed individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA). The exemption would permit the trustee of a plan funded by the AWB HealthChoice Employee Benefits Trust to hire entities affiliated with AWB to provide services to the plan for a fee, subject to conditions designed to safeguard the interests of the plan and its participants and beneficiaries.

DATES: Comments due: Written comments and requests for a public hearing on the proposed exemption must be received by the Department by July 31, 2023. Exemption date: If granted, the exemption will be in effect as of the date of publication of the final exemption in the **Federal Register**.

ADDRESSES: All written comments and requests for a hearing should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. L–11989 via email to *e-OED@dol.gov* or online through *https://www.regulations.gov.* Any such comments or requests should be sent by the end of the scheduled comment period. The application for the exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. Comments and hearing requests will also be available online at *https://www.regulations.gov* at no charge. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Susan Wilker, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8557 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Comments

Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall

be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment.

Additionally, the *http://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Background

AWB HealthChoice Employee Benefits Trust

According to its website, the Association of Washington Business (AWB) is Washington State's largest statewide business association.[1] As described in the exemption application, AWB members can offer medical, dental, vision, and life insurance benefits to their eligible employees by participating in a fully-insured ERISA-covered employee welfare benefit plan (the Plans). The Plans are funded through multiple industry trusts (Industry Trusts) that comprise the AWB HealthChoice Employee Benefits Trust. The trustee for each Industry Trust (the Trustee) is a representative (*e.g.,* employee, officer, or director) of an employer participating in the Plan (Participating Employer) that is in a specific industry classification.[2] The Trustees are Plan fiduciaries under ERISA, responsible for performing a wide range of activities in administering the Plans, including selecting service providers.

Two wholly-owned subsidiaries of AWB, Forterra and ProPoint, have provided services to the Plans since the Plans' inception in 2013. Forterra provides administrative services to the Plans, such as preparing the Form 5500 and other notices and disclosures and negotiating contracts with insurance carriers. ProPoint is an insurance producer that provides quotes for insurance products and assists in annual renewal of insurance coverage for the Plans. In a limited number of cases, ProPoint also acts as the insurance broker of record for individual employers and receives an additional fee for these services that is paid by the Plan.[3] In addition to Forterra's and ProPoint's fees, the Plans pay fees for billing and recordkeeping services to Vimly Benefits Solutions, Inc. (Vimly), a service provider that is unaffiliated with AWB.

Fees to Forterra and ProPoint and other service provider fees are paid out of trust assets, which are composed of employer and employee contributions. At the time of initial and annual enrollment, Participating Employers receive a quote for the ''total premium,'' covering insurance premiums and services, and a ''Related Party Fee Disclosure and Services Agreement'' disclosing the services provided by AWB affiliates to the Plans and the fees paid to them. For purposes of the exemption, the Department assumes that the fees are for legitimate Plan purposes and payment for actual services provided to the Plans and not for services provided to the Participating Employers and insurance companies.

Pathway I Associations

Under ERISA, an employee welfare benefit plan must be established or maintained by an ''employer'' or an ''employee organization'' or both.[4] ERISA section 3(5) defines an ''employer'' as ''. . . any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.'' As stated in sub-regulatory guidance on this definition, the Department will evaluate all of the relevant facts and circumstances to determine whether a group or association is a ''bona fide group or association of employers, acting in the interest of its employer members to provide benefits for their employees.'' [5] The Department's sub-regulatory guidance on bona fide employer groups and associations is sometimes referred to as ''Pathway 1,'' to distinguish it from a group or association described in the Department's regulation at 29 CFR 2510.3–5, which was vacated by court order.[6]

AWB, Forterra and ProPoint (the Applicants) represent that each Industry Trust is an ''employer'' within the meaning of ERISA section 3(5). The Applicants further represent that the Arrangement is sponsored by ''one or more bona fide 'Pathway 1' associations as defined by applicable legal authority in accordance with ERISA and applicable guidance issued by the United States Department of Labor.'' [7] The Department has relied on these representations to propose this exemption, and this background discussion does not reflect factual findings or opinions of the Department.

Prohibited Transactions

ERISA prohibits fiduciaries with respect to employee welfare benefit plans from engaging in certain transactions, including transactions that involve self-dealing, unless an exemption applies.[8] In this case, the Applicants represent that the Trustees are vested with fiduciary authority to select service providers for the Plans. Because of the Plans' close relationship with AWB (*e.g.,* the Plans are available only to AWB member employers, and AWB affiliates Forterra and ProPoint have provided services to the Plans

[1] *https://www.awb.org/about-us/who-we-are/* (''Formed in 1904, the Association of Washington Business is Washington's oldest and largest statewide business association, and includes nearly 7,000 members representing 700,000 employees.'')

[2] The industry classifications are: manufacturing, professional services, retail/wholesale, hospitality, construction, agriculture, communications, technology, and transportation.

[3] When ProPoint acts as a broker of record for an employer, it provides services such as presenting quotes to the employer, helping the employer select plans, employee/employer enrollment meetings and individualized support to employees with questions regarding their coverage. When ProPoint is not the broker of record, these same services are provided by brokers that are not affiliated with AWB.

[4] ERISA section 3(1).

[5] Advisory Opinion 2019–01A (July 8, 2019).

[6] *State of New York* v. *United States Department of Labor,* 363 F.Supp.3d 109, (March 28, 2019).

[7] The Applicant made these representations in a draft trust agreement provided to the Department.

[8] *See* ERISA section 406.

since their inception), there is cause for concern that, in the absence of appropriate safeguards, Forterra's and ProPoint's relationship with AWB could affect the Trustees' exercise of their best judgment as fiduciaries with respect to the selection of plan service providers.

The Department has authority under ERISA section 408(a) to grant an exemption from the prohibited transaction rules only if the Department finds that the exemption is administratively feasible, in the interests of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. This proposed exemption includes conditions designed to ensure that each Trustee is fully informed of their fiduciary obligations with respect to the Plan, possesses sole fiduciary authority over Plan service provider selection and monitoring, and exercises their authority in accordance with ERISA's fiduciary standards. Although this exemption was requested by AWB, Forterra and ProPoint, the prohibited transaction relief would extend only to the Plan Trustees and provide no relief for AWB or its affiliates. AWB, Forterra and ProPoint represent that (i) the Plans are established or maintained by the Industry Trusts, as associations acting indirectly in the interests of the Participating Employers, and (ii) the Trustees of the Industry Trusts have sole fiduciary authority over the selection of service providers for the Plans.

The proposed exemption would provide relief from ERISA section 406(b)(1), which prohibits fiduciary self-dealing. Each Trustee is a fiduciary, subject to the provisions of ERISA sections 403 and 404. This means that each Plan's assets must be used for the exclusive purpose of providing benefits to participants and beneficiaries covered by that Plan and defraying reasonable expenses of administering the Plan. The Trustees that are part of the Arrangement are permitted to confer with each other and collectively enter into service provider agreements or otherwise act collectively on behalf of all the Plans. However, each Trustee is a fiduciary with respect to the Plan for which it is a trustee. Each Plan must always have a Trustee in order to satisfy the conditions of the exemption, and that Trustee may not permit the assets, management, or operation of any Plan to be used to benefit participants and beneficiaries of another Plan. The proposed exemption would not provide relief from ERISA section 406(b)(2), which prohibits fiduciaries from acting on behalf of a party whose interests are adverse to the interests of the plan. This ensures that Trustees may not act on behalf of anyone with interests adverse to a Plan and its participants and beneficiaries.

The proposed exemption also would not provide relief from ERISA section 406(a)(1)(C), which prohibits fiduciaries from engaging parties in interest as service providers; that relief is available under the statutory exemption provided in ERISA section 408(b)(2). To the extent the Trustees fail to comply with ERISA section 408(b)(2) in connection with hiring AWB or any of its affiliates as service providers to the Plans, for example, by paying fees that exceed reasonable compensation, AWB or its affiliates may be subject to liability for knowing participation in a prohibited transaction.[9]

Description of the Proposed Exemption

Covered Transactions

If the proposed exemption is granted, it would provide relief from the restrictions of ERISA section 406(b)(1) only for the Trustee of each Plan to select AWB or any Affiliate,[10] including Forterra and ProPoint (each an AWB-Affiliated Service Provider), to provide services to the Plan, provided that the applicable conditions of Sections III and IV are satisfied, subject to the definitions of terms in Section I.[11]

Conditions

The proposal sets forth conditions regarding the following aspects of each Plan's structure: each Trustee's role and fiduciary duties in selecting AWB or any Affiliate as a service provider for the Plan; the Trustee's authorization to pay fees to AWB or any Affiliate; the content of required disclosures the Trustees must provide to Participating Employers; and the Trustees' recordkeeping requirements. Several of the conditions in the proposal are based on sections of ERISA other than the prohibited transaction provisions. For example, ERISA section 404 requires plan fiduciaries to act with prudence and loyalty, and ERISA section 408(b)(2)(B) requires specific disclosures from service providers.[12]

The Department is proposing the following phased implementation of the exemption. The conditions in Section III are based on current practices of the Arrangement that the Applicant has represented in its exemption application and that the Department intends to formalize to protect Plan participants and beneficiaries. These conditions would apply as of the date a final exemption is published in the **Federal Register** (the Grant Date). The conditions in Section IV would apply beginning on the first day of the first plan year that starts after the Grant Date, because those conditions may require changes to existing practices or contractual provisions.

Plan Structure and Role of A Trustee

Section III(a) of the proposed exemption addresses the structure for each Plan. Section III(a)(1) would require each Plan to be a fully-insured employee welfare benefit plan, and Section III(a)(2) would require each Plan to be established or maintained by an employer within the meaning of ERISA section 3(5). These conditions are consistent with the Applicants' representations regarding the structure of the Arrangement.

Section III(a)(3) would impose several requirements regarding each Trustee, intended to ensure that each Trustee is independent of the AWB and its Affiliates. First, the Trustee would be required to be an employee, officer, director, or owner of a current Participating Employer in the industry classification associated with the Plan. Second, the Trustee must be nominated by a Participating Employer in the industry classification associated with the Plan and elected by a majority vote of Participating Employers in the industry classification. Third, the Trustee must be independent of AWB and its Affiliates. A Trustee will be considered independent if it: (1) is not an Affiliate of AWB or a trustee, employee, officer, director, member or agent of any Affiliate of AWB, and (2) does not have a relationship with or an interest in AWB or any of its Affiliates that might affect the exercise of the

[9] *See Harris Trust & Savings Bank* v. *Salomon Smith Barney, Inc.,* 530 U.S. 238 (2000). The Department notes its longstanding position that the proposal or grant of a prohibited transaction exemption is not dispositive of whether a prohibited transaction has occurred or will occur.

[10] The term ''Affiliate'' is defined in section I(c) of the proposal as a person that is: (1) controlling, controlled by, or under common control with AWB; (2) an officer, director, partner, or employee of AWB; or (3) a corporation or partnership of which AWB is an officer, director, partner, or employee. For purposes of this definition, ''control'' means the power, direct or indirect, to exercise a controlling influence over the management or policies of a person other than an individual.

[11] The Applicants requested relief from Internal Revenue Code (Code) section 4975, which imposes an excise tax on certain prohibited transactions involving plans described in Code section 4975(e)(1). Although the Department has authority under Reorganization Plan No. 4 of 1978 to provide exemptions from Code section 4975, the Department is not proposing this relief based on its understanding that the Plan is not a plan described in Code section 4975(e)(1).

[12] This applies to service providers to pension plans and service providers providing brokerage services or consulting to a group health plan.

person's best judgment in connection with transactions described in Section II of this exemption. Thus, no Trustee can serve on AWB's governing board while that Trustee is a fiduciary to the Plan. The Trustee also may not receive, directly or indirectly, any compensation or other consideration for their personal account from AWB or any Affiliate in connection with any transaction involving the Plan. Finally, the Trustee may not be an employee, officer, director, member or agent of a Participating Employer that is a service provider to any Plan.

Section III(a)(4) would require the Participating Employers in each industry classification to have the sole authority to: (A) remove the Trustee with respect to the Plan associated with that industry classification, with or without cause, by majority vote; and (B) dissolve or amend the Plan associated with that industry classification by majority vote. These conditions are intended to ensure that the Participating Employers have appropriate control over the Plan.

Section III(a)(5) would require each Trustee to receive fiduciary training so that they are able to understand and appropriately exercise their authority in accordance with ERISA's standards as required by the exemption. The fiduciary training would be required to be conducted by a professional who has appropriate technical training and proficiency with ERISA and who has been prudently selected by the existing Trustees. At a minimum, the training should cover ERISA compliance, fiduciary duties, the exemption conditions and the consequences for failing to comply with the conditions, including any loss of exemptive relief provided by the exemption. The training should explain, in detail, the Trustee's responsibilities under each condition of this exemption. The Trustee must understand their obligation to act independently of AWB, and the specific standards they must meet. The Trustee must also be informed that its failure to comply with any of the exemption conditions could result in prohibited transactions in violation of ERISA.

For existing Trustees, the exemption would require fiduciary training within three months after the exemption's Grant Date, and annually thereafter. After the Grant Date, the training would be required to be provided broadly to all persons who are nominated as Trustees, before their agreement to serve as a Trustee begins, as well as on an annual basis for any person who is elected as a Trustee.

Section III(a)(6) would prohibit the Plans and Participating Employers from indemnifying AWB, Forterra and ProPoint, for any reason. Section III(a)(7) would prohibit the legal counsel for any Plan from also representing AWB or any Affiliate. This is to further ensure the independence of the Trustees as they oversee the operation of the Plans.

Fiduciary Selection of Service Providers

Section III(b) of the proposed exemption would focus on the selection of Plan service providers, including AWB, Forterra, ProPoint, or any other Affiliate. Section III(b)(1) would require each Trustee to have and exercise sole fiduciary authority to select service providers for its Plan. Prudent selection of service providers is a core fiduciary requirement in ERISA. The Department's website provides resources on prudent selection and monitoring of services providers.[13] As noted above, the exemption would require the interests of each Plan to be represented by a Trustee with respect to the transactions covered by the exemption and the conditions.

Before entering into or renewing service contracts with an AWB-Affiliated Service Provider on behalf of a Plan, Section III(b)(2) would require each Trustee to determine that the services are necessary to the operation of the Plan and to document the specific reasons for that determination. The Trustee would consider factors such as whether an AWB-Affiliated Service Provider and its personnel have the qualifications and capability to perform the services, whether the fees reflect arm's-length terms, and whether the arrangements are reasonable, compared with similarly qualified service providers. The documentation of the Trustee's determinations must provide sufficient context and detail and be written in a manner to ensure that any party authorized to review the records under Section III(e) can understand the reasoning for the determination for the selection.

Section III(b)(3) would require the Plans' contracts (including renewals) with AWB-Affiliated Service Providers to be limited to no more than three-years duration and allow the Trustee to terminate the contract any time without penalty to the Plan by providing thirty (30) days' written notice. This does not mean that the Plans must regularly switch service providers. The exemption would permit the Trustee to renew service provider contracts for a new three-year term if the Trustee determines that the renewal is prudent. Any renewal would be required to comply with the conditions for selecting service providers set forth in Section III(b), including the Trustee's regular review of all of the Plan's service providers and their fees.

Section III(b)(4) would impose additional conditions when the AWB-Affiliated Service Provider is also the insurance broker of record for a Participating Employer. The Trustee must comply with Section III(b)(2) and determine and document that the services are necessary for the operation of the Plan and that the selection of the AWB-Affiliated service provider is prudent and loyal. Additionally, the Trustee would be required to obtain the Participating Employer's written certification that it has received a disclosure from the Trustee that includes descriptions of the following: (i) the nature of the affiliation between the AWB-Affiliated Service Provider and AWB; (ii) the services that the AWB-Affiliated Service Provider will provide; and (iii) the amount of fees that the AWB-Affiliated Service Provider will receive.[14] If the fee is disclosed as a percentage of another amount, it must be accompanied by an example of the calculation expressed in dollars. The Department envisions that this disclosure will assist Participating Employers in understanding the potential for conflicts of interest if they elect to hire that AWB-Affiliated Service Provider as their insurance broker of record. Finally, the Trustee must review all compensation paid from the Plan to brokers of record and ensure that commissions paid to the AWB-Affiliated Service Provider are no greater than the lowest commission received by an insurance broker of record that is not an Affiliate of AWB.

Section III(b)(5) of the exemption would require the Trustee to monitor all AWB-Affiliated Service Providers prudently and loyally in accordance with ERISA section 404. In addition to prudently selecting service providers under Section III(b)(1), the Trustee has an obligation to continuously ensure that AWB-Affiliated Service Providers are acting in accordance with the conditions of the exemption at all times.

[13] *See* ''Tips for Selecting and Monitoring Service Providers for Your Employee Benefit Plan'' *available at https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/tips-for-selecting-and-monitoring-service-providers.pdf.*

[14] The Department notes that, pursuant to Section IV(b)(1)(B), discussed below, the AWB-Affiliated Service Provider would not be permitted to receive any fees from third parties. Thus, the fees that the AWB-Affiliated Service Provider will receive from the Plan will be the only compensation that such provider receives.

Fees

Section III(c) would govern the Trustee's payment of fees and other compensation to AWB-Affiliated Service Providers. Trustees must approve all fees and other compensation, in writing, and only after determining that the fees and compensation are: (1) direct payments from the Plan; (2) for services that are both necessary and actually rendered; and (3) do not exceed reasonable compensation within the meaning of ERISA section 408(b)(2). The Plan is not permitted to pay any of AWB's expenses associated with the Plan or any non-Plan expenses.[15]

Disclosure

Section III(d) of the proposed exemption is intended to ensure that Participating Employers choosing health insurance for their employees have the information they need to make an informed decision regarding the Plans' use of AWB-Affiliated Service Providers as Plan service providers.

Section III(d)(1) would require the Trustee to distribute certain disclosures to a Participating Employer at initial enrollment and at each annual renewal thereafter. These disclosures focus on the relationships between the Trustees, AWB, and the service providers. Section III(d)(1)(A) requires a description of the relationship between AWB and any other AWB-Affiliated Service Provider that the Trustee has selected. Section III(d)(1)(B) requires a statement that the Trustee is a fiduciary with respect to the Plan and that before entering into or renewing any services contracts with an AWB-Affiliated Service Provider on behalf of the Plan, the Trustee exercised their fiduciary authority in accordance with ERISA section 404 to prudently and loyally select service providers. Lastly, Section III(d)(1)(C) requires a statement that the Participating Employers, directly or indirectly through the Trustees, have control over the Plan, including the authority and control to select alternative service providers to AWB or AWB-Affiliated Service Providers.

Section III(d)(2) is based on the statutory disclosure requirements in ERISA section 408(b)(2)(B)(v). ERISA section 408(b)(2)(B) requires service providers that enter into a contract or arrangement with a group health plan for brokerage services or consulting to provide important disclosures regarding its services and compensation. The Department has determined that AWB-Affiliated Service Providers should provide similar disclosures regarding their services and compensation. This section requires that the Trustee receive the disclosure from the AWB-Affiliated Service Providers and review, approve, and distribute those disclosures to Participating Employers at initial enrollment and at each annual renewal date thereafter.

Section III(d)(2)(A) requires the AWB-Affiliated Service Provider to provide the Trustee a description of the services to be provided to the Plan. Section III(d)(2)(B) requires a description of all direct compensation, both in the aggregate and by service, the AWB-Affiliated Service Provider (including any subcontractor) reasonably expects to receive from the Plan. This is broader than the statutory language in ERISA section 408(b)(2)(B)(iii)(III), which requires a description of all direct compensation ''*either* in the aggregate or by service'' (emphasis added). Because Section III(c)(1) requires all compensation received by an AWB-Affiliated Service Provider to be direct payments from the Plan, the exemption does not include language similar to that in ERISA section 408(b)(2)(B)(iii)(IV) providing for disclosure of indirect compensation. Under Section III(d)(2)(C), any AWB-Affiliated Service Provider must provide a description of any compensation that will be paid among the AWB-Affiliated Service Provider or a subcontractor, if such compensation is set on a transaction basis (such as commissions, finder's fees, or other similar incentive compensation based on business placed or retained). The AWB-Affiliated Service Provider must identify the services for which such compensation will be paid and the payers and recipients of such compensation (including the status of a payer or recipient as an Affiliate or a subcontractor) regardless of whether such compensation also is disclosed under Section III(d)(2)(A) and/or (B).

Section III(d)(2)(D) requires a description of any compensation that the AWB-Affiliated Service Provider, an Affiliate, or a subcontractor reasonably expects to receive in connection with termination of the contract or arrangement and how any prepaid amounts will be calculated and refunded upon such termination. Section III(d)(2)(F) requires a description of the manner in which the compensation described in clause (B) through (D), as applicable, will be received.

Recordkeeping

Section III(e) of the proposed exemption would require each Trustee to maintain records necessary to demonstrate that they have satisfied the conditions of the exemption. These records must be kept in a manner that is reasonably accessible for examination for six years following the date of any transaction that relies on the exemption.

The records must be reasonably available at their customary location for examination during normal business hours by any authorized employee or representative of the Department; any Participating Employer or fiduciary of a Plan, or any authorized employee or representative of these entities; any individual participant or beneficiary of a Plan or any authorized representative of the participant or beneficiary.

Participants and beneficiaries of a plan, plan fiduciaries, and contributing employers/employee organizations would be able to request only information applicable to their own transactions, and would not be permitted to examine records that are confidential, privileged trade secrets or privileged commercial or financial information. If a Trustee refuses to disclose information to a party other than the Department on the basis that the information is exempt from disclosure, the Trustee must provide the requestor a written notice, within 30 days, advising the requestor of the reasons for the refusal and that the Department may request such information. The requestor would then be able to contact the Department if it believes it would be useful for the Department to request the information.

Section III(e)(3) requires the Trustee to generate the information that is necessary and sufficient for the Trustee to demonstrate that the conditions of the exemption have been met over the prior six-year period within 30 days of a request by the Department. This requires such records to be properly maintained on an ongoing basis and reinforces the Department's position that it is necessary for a Trustee to be regularly aware and mindful of the conditions of the exemption.

Material Facts and Representations

Section III(f) would condition the exemption's relief on the material facts and representations provided by the Applicants being true and accurate at all times. In the event that a material fact or representation is untrue or inaccurate, the exemptive relief provided under this exemption would cease immediately.

[15] The Department notes that settlor expense incurred by AWB on behalf of Participating Employers are not permissibly charged to a Plan, regardless of the existence of a prohibited transaction exemption.

Phase-In Conditions

The following additional conditions would apply as of the first day of the first plan year after the Grant Date. Many of these conditions are focused on documentation, which require some time for the Trustees to prepare, review, and update. Therefore, the Department is providing additional time before these conditions become applicable.

Section IV(a) would impose additional conditions on Plan documents. Section IV(a)(1) requires all Plan documents and disclosures to accurately describe the role and fiduciary status of the Trustee and not include any disclaimers of fiduciary status for any party. Plan documents and disclosures may not indicate, in any way, including on a website, that AWB or its Affiliates are the sponsor of the Plan. Similarly, Section IV(a)(2) requires that the insurance contract(s) used to fund benefits must be held in the name of the Plan or the Plans collectively. Thus, while the exemption would not require AWB or any Affiliate to be a fiduciary to the Plan, AWB and its Affiliates are not permitted to publicly state that they are not fiduciaries. ERISA's definition of fiduciary is a functional one. If AWB takes part in the Trustees' fiduciary duties and decision-making, AWB will also be a fiduciary under ERISA. Furthermore, the exemption would not provide relief for any prohibited transactions caused by AWB or an Affiliate that is acting as fiduciary.

Section IV(a)(3) would require contracts entered into between the Trustee and an AWB-Affiliated Service Provider to specify that any information the AWB-Affiliated Service Provider provides to the Trustee, Participating Employers, and prospective Participating Employers regarding their services to the Plan and related fees is materially accurate at the time it is provided. This is not limited to the disclosure set forth in Section III(d) or IV(c) or (d); rather, it applies to all information AWB and its Affiliates provide to the Trustee or directly to Participating Employers, which they may use in deciding whether to enroll or re-enroll in the Plan.

Section IV(b) would impose additional conditions on fees. Section IV(b)(1) provides that, before entering into any contract for services with an AWB-Affiliated Service Provider, the Trustee must negotiate the rate of fees to be paid for services to the Plan. The exemption would require the contract to specify that the rate may not be increased during the contract period and that the AWB-Affiliated Service Provider may not receive any indirect or other compensation related to services provided under the contract.

Under Section IV(b)(2), fees paid by the Plans to a service provider other than any insurance broker of record that is not an Affiliate of AWB must be established independently of other service provider fees. This would ensure that an increase in one fee could not, directly or indirectly, cause an increased payment to another service provider. If fees are not established independently, there would be a question as to whether the resulting fee was reasonable and charged for necessary services. Notwithstanding this condition, fees may be calculated as percentages of premiums paid to the insurance company that is not an Affiliate of AWB. The Applicants have represented that the Plans are fully-insured and the premiums are set by Premera Blue Cross, an unrelated party, and the premiums are negotiated at arm's length. Because the insurance premium is independently established, the service provider fees can be a percentage of that insurance premium if the Trustees determine it is prudent to do so. Under Section IV(b)(3), fees collected from Participating Employers and Plan participants must be based on actual, rather than estimated, amounts due to service providers.

Section IV(c) would impose additional disclosure obligations to ensure that Participating Employers choosing health insurance for their employees have the information they need to make an informed decision regarding the Plans' use of an AWB-Affiliated Service Provider. Therefore, Section IV(c)(1) would require the upfront disclosure to Participating Employers in Section III(d)(1) to include the following additional information: (A) a description of any fees that the AWB-Affiliated Service Provider, or any of their Affiliates or subcontractors, reasonably expects to receive in connection with termination of the Plan and how those fees would be calculated; and (B) a description of the methodology for calculating fees paid to AWB-Affiliated Service Provider, including examples with dollar amounts. Percentages and formulas alone will not satisfy this condition. This expands on the condition in Section III(b)(4)(iii) that would require—as of the Grant Date—examples of fee calculation only when the fee is disclosed as a percentage of another amount.

Section IV(c)(2) would add a condition that Plan documents include a requirement that the AWB-Affiliated Service Provider furnish, upon written request, any information the Trustee reasonably requests, within 30 days after the request. If the disclosure cannot be provided within 30 days due to extraordinary circumstances beyond the control of the AWB-Affiliated Service Provider, the information must be provided as soon as reasonably practicable, and the AWB-Affiliated Service Provider must provide the Trustee with a notice explaining why they cannot meet the 30-day deadline.

Under Section IV(d), the Trustees must also provide a monthly billing statement to Participating Employers that includes the following statement:

> The amounts you pay each month for health insurance coverage include fees for administrative services, including fees paid to service providers affiliated with the Association of Washington Business (AWB). A description of the services provided by each AWB affiliate is provided to you at the time of your initial enrollment and at each annual renewal. You can also contact [NAME, phone number, email address] for additional copies.

The monthly billing statement must also include a chart accurately listing all service providers and fee percentages or other amounts they receive. The chart, therefore, must identify AWB-Affiliated Service Providers and non-Affiliated service providers so that Participating Employers can see the total service provider cost associated with the Plan. If any administrative fees are expressed as a percentage of the insurance premium, the disclosure also must include an example showing how fees would be calculated based on a $1,000 insurance premium. The monthly billing statement would also provide a point of contact (including phone number and email address) to request copies of disclosures or for additional information regarding the fees.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within fifteen (15) days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be provided to each Participating Employer in the manner approved by the Department. The mailing will contain a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty-five days (45) of the date of

publication of this proposed exemption in the **Federal Register**. All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and/or Code Section 4975(c)(2) does not relieve a fiduciary or other party in interest from certain other provisions of ERISA, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code Section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA section 408(a) and/or Code Section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption would be subject to the express condition that the material facts and representations contained in the application are true and complete at all times and that the application accurately describes all material terms of the transactions which are the subject of the exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, October 27, 2011).

Section I. Definitions

(a) ''AWB'' means the Association of Washington Business.

(b) ''AWB-Affiliated Service Provider'' means AWB, Forterra, Inc., ProPoint, LLC, or any other entity providing services to the Plan that is an Affiliate.

(c) An ''Affiliate'' is a person that is:

(1) Controlling, controlled by, or under common control with AWB;

(2) An officer, director, partner, or employee of AWB; or

(3) A corporation or partnership of which AWB is an officer, director, partner, or employee.

For purposes of this definition, ''control'' means the power, direct or indirect, to exercise a controlling influence over the management or policies of a person other than an individual;

(d) The ''Grant Date'' is the date the final exemption is published in the **Federal Register**.

(e) ''Participating Employer'' means the member employers of AWB who provide medical, dental, vision, and life insurance benefits to their employees through the Plan.

(f) ''Plan'' means any plan that is funded by the AWB HealthChoice Employee Benefits Trust, including through an Industry Trust.

(g) A ''Trustee'' is a person elected in accordance with Section III(a)(3).

Section II. Covered Transactions

If granted, the exemption would provide relief to the Trustees for the selection of an AWB-Affiliated Service Provider to provide services to the Plans for a fee, if the conditions of Sections III and IV are met, subject to the definitional terms in Section I. The exemption would provide only relief from the restrictions of ERISA section 406(b)(1).

Section III. General Conditions

The following conditions apply for each Plan as of the Grant Date, as defined in Section I(d).

(a) Plan Structure

(1) The Plan is a fully-insured employee welfare benefit plan.

(2) The Plan is established or maintained by an employer within the meaning of ERISA section 3(5).

(3) The Trustee with respect to the Plan:

(A) Is a trustee, employee, officer, director, or owner of a Participating Employer in the industry classification associated with the Plan;

(B) Is nominated by a Participating Employer in the industry classification associated with the Plan and elected by a majority vote of Participating Employers in the industry classification;

(C) Is independent of AWB and its Affiliate, which means the Trustee (1) is not an Affiliate of AWB or a trustee, employee, officer, director, member or agent of any Affiliate of AWB, and (2) does not have a relationship with or an interest in AWB or any of its Affiliates that might affect the exercise of the person's best judgment in connection with transactions described in Section II of this exemption; and

(D) Is not an employee, officer, director, member or agent of a Participating Employer that is also a service provider to any Plan.

(4) The Participating Employers in each industry classification have the sole authority to:

(A) Remove the Trustee with respect to the Plan associated with that industry classification, with or without cause, by majority vote; and

(B) Dissolve or amend the Plan associated with that industry classification by majority vote.

(5) Each person who is nominated to serve as a Trustee to the Plan undergoes fiduciary training before their decision to serve as a Trustee, if elected, and annually thereafter. The fiduciary training is provided by a professional who has appropriate technical training and proficiency with ERISA and who has been prudently selected by the board of Trustees and covers, at a minimum, ERISA compliance, fiduciary duties, the conditions of the exemption, and the consequences of failing to comply with the conditions (including any loss of exemptive relief provided herein). Existing Trustees as of the Grant Date receive this training within 3 months of the Grant Date.

(6) Neither the Plan nor any Participating Employer indemnifies AWB or its Affiliates for any reason.

(7) Legal counsel for the Plan does not also represent AWB or any Affiliate.

(b) Selection of Service Providers

(1) The Trustee has and exercises sole fiduciary authority to select service providers for the Plan. The Trustee exercises their fiduciary authority in accordance with ERISA section 404 to

prudently and loyally select service providers and document the selection process and considerations, including whether an AWB-Affiliated Service Provider and its personnel have the qualifications and capability to perform such services; whether the fees to be charged reflect arm's-length terms; and whether the arrangements are reasonable, compared with similarly qualified service providers. The documentation must provide sufficient context and detail and be written in a manner to ensure that any party authorized to review the records under Section III(e) can understand the reasoning for the selection.

(2) Before entering into or renewing any services contracts with an AWB-Affiliated Service Provider on behalf of the Plan, the Trustee determines that the services are necessary to the operation of the Plan and documents the reasons for the determination.

(3) Contracts (including renewals) between the Plan and an AWB-Affiliated Service Provider:

(A) Are limited to no more than three years' duration; and

(B) Allow the Trustee to terminate the contract any time without penalty to the Plan by providing thirty (30) days' written notice.

(4) The AWB-Affiliated Service Provider may be compensated by the Plan for its services as an insurance broker of record to a Participating Employer only if:

(A) The Trustee selects the AWB-Affiliated Service Provider in accordance with Section III(b)(2);

(B) The Trustee obtains the Participating Employer's written certification that it has received a disclosure from the Trustee that includes descriptions of:

(i) the nature of the affiliation (as described in Section I(c)) between the AWB-Affiliated Service Provider and AWB;

(ii) the services that will be provided by the AWB-Affiliated Service Provider; and

(iii) the amount of fees that the AWB-Affiliated Service Provider will receive, provided that if the fee is disclosed as a percentage of another amount, it is accompanied by an example of the calculation expressed in dollars; and

(C) The Trustee ensures the Plan pays the AWB-Affiliated Service Provider for its services as broker of record no more than the lowest commission paid to an unaffiliated broker of record.

(5) The Trustee monitors the AWB-Affiliated Service Provider's performance of services and compliance with the applicable conditions of this exemption prudently and loyally in accordance with ERISA section 404.

(c) Fees

The Trustee approves, in writing, all fees or other compensation paid to AWB-Affiliated Service Providers for services to the Plan, after determining that the fees and other compensation are:

(1) direct payments from the Plan;

(2) for services that are necessary and actually rendered to the Plan; and

(3) do not exceed reasonable compensation within the meaning of ERISA section 408(b)(2).

(d) Disclosure

(1) The Trustee distributes the following disclosures to Participating Employers at initial enrollment and at each annual renewal thereafter:

(A) A description of the relationship between AWB and any other AWB-Affiliated Service Provider that the Trustee has selected;

(B) A statement that that the Trustee is a fiduciary with respect to the Plan and that before entering into or renewing any services contracts with an AWB-Affiliated Service Provider on behalf of the Plan, the Trustee exercised their fiduciary authority in accordance with ERISA section 404 to prudently and loyally select service providers; and

(C) A statement that the Participating Employers, directly or indirectly through the Trustees, have control over the Plan, including the authority and control to select alternative service providers to AWB or AWB-Affiliated Service Providers.

(2) The Trustee receives the following disclosure from the AWB-Affiliated Service Providers, and reviews, approves and distributes the disclosures to Participating Employer at initial enrollment and at each annual renewal thereafter:

(A) A description of the services that are to be provided by any AWB-Affiliated Service Provider to the Plan;

(B) A description of all compensation, both in the aggregate and by service, the AWB-Affiliated Service Providers and any subcontractor reasonably expect to receive from the Plan;

(C) A description of any compensation that will be paid among the AWB-Affiliated Service Providers or a subcontractor, if such compensation is set on a transaction basis (such as commissions, finder's fees, or other similar incentive compensation based on business placed or retained). The AWB-Affiliated Service Provider must identify the services for which such compensation will be paid and identify the payers and recipients of such compensation (including the status of a payer or recipient as an Affiliate or a subcontractor) regardless of whether such compensation also is disclosed pursuant to paragraph (E) or (F), below;

(D) A description of any compensation that the AWB-Affiliated Service Provider, an affiliate, or a subcontractor reasonably expects to receive in connection with termination of the contract or arrangement, and how any prepaid amounts will be calculated and refunded upon such termination; and

(E) a description of the manner in which the compensation described in clause (B) through (D), as applicable, will be received.

(e) Recordkeeping

(1) The Trustee maintains for a period of six (6) years, in a manner that is reasonably accessible for examination, the records necessary to enable the persons described in paragraph (2) below to determine whether the conditions of this exemption have been met, except that:

(A) If such records are lost or destroyed due to circumstances beyond the control of the Trustee, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(B) No party in interest other than the Trustee will be subject to the civil penalty that may be assessed under ERISA section 502(i) if the records are not maintained or are not available for examination as required below:

(2)(A) Except as provided in paragraph (B) below, and notwithstanding any provisions of ERISA section 504(a)(2) and (b), the records referred to in Section III(d)(1) are reasonably available at their customary location for examination during normal business hours by:

(i) Any authorized employee or representative of the Department;

(ii) Any Participating Employer or fiduciary of a Plan, or any authorized employee or representative of these entities; or

(iii) Any individual participant or beneficiary of a Plan or any authorized representative of the participant or, beneficiary; and

(B) None of the persons described in paragraph (e)(2)(A)(ii) or (iii) of this Section are authorized to examine records that are confidential, privileged trade secrets, or privileged commercial or financial information.

(C) If the Trustee refuses to disclose information on the basis that the information is exempt from disclosure under subsection (B), the Trustee must,

by the close of the thirtieth (30th) day following the request, provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information.

(3) The Trustee must provide sufficient information necessary for it to demonstrate that the exemption conditions have been met over the prior six-year period. The Trustee must maintain and retain such records in a manner that ensures it would be able to provide the information to the Department within 30 calendar days of a request.

(f) Material Facts and Representations

All the material facts and representations provided by the Applicants are true and accurate at all times.

Section IV. Phase-In Conditions

The following additional conditions apply as of the first day of the first plan year after the Grant Date.

(a) Plan Documents and Contracts

(1) Plan documents and disclosures:

(A) accurately describe the role and fiduciary status of the Trustee;

(B) do not include any disclaimers of fiduciary status for any party, including AWB and any Affiliate; and

(C) do not indicate, in any way, including on a website, that AWB or its Affiliates are the sponsor of the Plan.

(2) The insurance contract is held in the name of the Plan.

(3) AWB-Affiliated Service Providers contractually agree that all information they provide to the Trustee, Participating Employers and prospective Participating Employers regarding their services to the Plan and related fees is materially accurate at the time it is provided.

(b) Fees

(1) Before entering into any contract for services with an AWB-Affiliated Service Provider on behalf of the Plan, the Trustee:

(A) Negotiates the rate of fees to be paid for services to the Plan and ensures that the rate does not increase during the contract period; and

(B) Contractually prohibits the AWB-Affiliated Service Provider from receiving any fees other than those paid directly by the Plan.

(2) Fees for service providers, other than any insurance broker of record that is not Affiliated with AWB, are established independently of other service provider fees, so that an increase in one fee does not, directly or indirectly, cause an increased payment to another service provider. For purposes of this condition, a service provider fee does not include an insurance premium (*i.e.,* fees may be calculated as percentages of premiums paid to the insurance company).

(3) Fees collected from Participating Employers and Plan participants are based on actual, rather than estimated, amounts due to service providers.

(c) Disclosure

(1) The disclosure described in Section III(d)(1) includes the following additional information:

(A) A description of any compensation that the AWB-Affiliated Service Provider, or any subcontractor, reasonably expects to receive in connection with termination of a contract or arrangement with the Plan and how any prepaid amounts will be calculated and refunded upon such termination; and

(B) A description of the methodology by which AWB-Affiliated Service Provider fees are calculated, including examples with dollar amounts.

(2) The Plan documents require the AWB-Affiliated Service Provider to furnish, upon written request, any information the Trustee reasonably requests, within 30 days after the request unless the disclosure cannot be provided due to extraordinary circumstances beyond the control of the AWB-Affiliated Service Provider, in which case the information must be provided as soon as reasonably practicable and the AWB-Affiliated Service Provider must provide the Trustee with a notice explaining why they cannot meet the 30-day deadline.

(d) Monthly Billing Statements

The Trustees provide to Participating Employers a monthly billing statement that includes:

(1) The following statement: ''The amounts you pay each month for health insurance coverage include fees for administrative services, including fees paid to service providers affiliated with the Association of Washington Business (AWB). A description of the services provided by each AWB affiliate is provided to you at the time of your initial enrollment and at each annual renewal. You can also contact [NAME, phone number, email address] for additional copies.''

(2) A chart accurately listing all service providers and the fee percentages or other amounts they receive. If any administrative services fees are expressed as a percentage of the insurance premium, the disclosure must also include an example showing how fees would be calculated based on a $1,000 insurance premium; and

(3) A point of contact, including a phone number and email address, for copies of disclosures or for additional information.

Exemption date: If granted, the exemption will be in effect as of the date of publication of the final exemption in the **Federal Register**.

Signed at Washington, DC.

George Christopher Cosby,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2023–12687 Filed 6–13–23; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health

AGENCY: Office of Workers' Compensation Programs, Department of Labor.

ACTION: Notice of charter renewal.

SUMMARY: The Secretary of Labor (Secretary) has approved the renewal of the charter of the Advisory Board on Toxic Substances and Worker Health (Board). The renewed charter will expire two years from its filing date or until the Board terminates, whichever occurs first.

SUPPLEMENTARY INFORMATION: In accordance with section 3687 of Public Law 106–398, which was added by section 3141(a) of the National Defense Authorization Act (NDAA) of 2015, Executive Order 13699 (June 26, 2015), and the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. 10) and its implementing regulations issued by the General Services Administration (GSA), the Board was established on July 2, 2015. The current charter expires on June 25, 2023. Pursuant to FACA, Section 14(b)(2), the Secretary will renew the charter biennially, which allows the Board to continue its operations. The Board advises the Secretary with respect to: (1) the Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; (4) the work of industrial hygienists and staff physicians and consulting physicians of

the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency; (5) the claims adjudication process generally, including review of procedure manual changes prior to incorporation into the manual and claims for medical benefits; and (6) such other matters as the Secretary considers appropriate. The Board, when necessary, coordinates exchanges of data and findings with the Department of Health and Human Services' Advisory Board on Radiation and Worker Health.

The Secretary appoints 12 to 15 Board members, one of whom the Secretary appoints as Chair. In accordance with Section 3687(a)(2), Board appointments are made in consultation with organizations with expertise on worker health issues to ensure that membership reflects a proper balance of perspectives from the scientific, medical, and claimant communities, and to address the tasks assigned to the Board. Members serve two-year terms. At the discretion of the Secretary, they may be appointed to successive terms or removed at any time.

The Board meets no less than twice per year and reports to the Secretary. As specified in Section 3687(i), the Board will terminate ten (10) years after the date of the enactment of the NDAA, which was December 19, 2014. Thus, the Board will terminate on December 19, 2024.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as the Board charter, news releases, and other relevant information, are available on the Board's web page at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

FOR FURTHER INFORMATION CONTACT: You may contact Ryan Jansen, Designated Federal Officer, at *jansen.ryan@dol.gov,* or Carrie Rhoads, Alternate Designated Federal Officer, at *rhoads.carrie@dol.gov,* U.S. Department of Labor, 200 Constitution Avenue NW, Suite S–3524, Washington, DC 20210, telephone (202) 343–5580. This is not a toll-free number.

Signed at Washington, DC, this 8th day of June, 2023.

Christopher Godfrey,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2023–12686 Filed 6–13–23; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities (NEH) will hold thirty-two meetings, by videoconference, of the Humanities Panel, a federal advisory committee, during July 2023. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. 10), notice is hereby given of the following meetings:

1. Date: July 17, 2023

This video meeting will discuss applications on the topics of Arts and Humanities, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Office of Challenge Programs.

2. Date: July 18, 2023

This video meeting will discuss applications on the topics of Historic Sites and Homes, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Office of Challenge Programs.

3. Date: July 18, 2023

This video meeting will discuss applications on the topic of Climate Change, for the Cultural and Community Resilience grant program, submitted to the Division of Preservation and Access.

4. Date: July 19, 2023

This video meeting will discuss applications on the topics of History and Culture, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Office of Challenge Programs.

5. Date: July 19, 2023

This video meeting will discuss applications on the topics of Conservation and Museum Collections, for the Preservation and Access Education and Training grant program, submitted to the Division of Preservation and Access.

6. Date: July 19, 2023

This video meeting will discuss applications on the topic of Arts, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

7. Date: July 20, 2023

This video meeting will discuss applications on the topics of World History and Studies, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

8. Date: July 20, 2023

This video meeting will discuss applications on the topics of American Literature, Language, and Studies, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

9. Date: July 20, 2023

This video meeting will discuss applications for the Fellowships for Advanced Social Science Research on Japan grant program, submitted to the Division of Research Programs.

10. Date: July 20, 2023

This video meeting will discuss applications on the topics of History and Culture, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Office of Challenge Programs.

11. Date: July 20, 2023

This video meeting will discuss applications on the topic of COVID–19, for the Community and Cultural Resilience grant program, submitted to the Division of Preservation and Access.

12. Date: July 21, 2023

This video meeting will discuss applications on the topics of Educational Institutions and Organizations, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Office of Challenge Programs.

13. Date: July 21, 2023

This video meeting will discuss applications on the topics of Philosophy, Religion, and Ancient to Early Modern World, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

14. Date: July 21, 2023

This video meeting will discuss applications on the topics of History, Politics, and Social Sciences, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

15. Date: July 24, 2023

This video meeting will discuss applications on the topics of Literature and Cultural Studies, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

16. Date: July 24, 2023

This video meeting will discuss applications on the topics of American History and Studies, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

17. Date: July 24, 2023

This video meeting will discuss applications on the topic of Art Museums, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Office of Challenge Programs.

18. Date: July 25, 2023

This video meeting will discuss applications on the topics of Libraries and Archives, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Office of Challenge Programs.

19. Date: July 25, 2023

This video meeting will discuss applications on the topic of U.S. History, for the Fellowships grant program, submitted to the Division of Research Programs.

20. Date: July 26, 2023

This video meeting will discuss applications on the topics of Music, Dance, Theater, and Film Studies, for the Fellowships grant program, submitted to the Division of Research Programs.

21. Date: July 26, 2023

This video meeting will discuss applications on the topics of British and Comparative Literature, for the Fellowships grant program, submitted to the Division of Research Programs.

22. Date: July 26, 2023

This video meeting will discuss applications on the topic of Higher Education, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Office of Challenge Programs.

23. Date: July 27, 2023

This video meeting will discuss applications on the topics of History and Science, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Office of Challenge Programs.

24. Date: July 27, 2023

This video meeting will discuss applications on the topic of Digital Preservation, for the Research and Development grant program, submitted to the Division of Preservation and Access.

25. Date: July 27, 2023

This video meeting will discuss applications on the topics of European Studies, Political Science, and Jurisprudence, for the Fellowships grant program, submitted to the Division of Research Programs.

26. Date: July 28, 2023

This video meeting will discuss applications on the topics of History, Health, Science, and Environment, for the Fellowships grant program, submitted to the Division of Research Programs.

27. Date: July 28, 2023

This video meeting will discuss applications on the topics of Asian Studies and Media Studies, for the Fellowships grant program, submitted to the Division of Research Programs.

28. Date: July 28, 2023

This video meeting will discuss applications on the topics of Historic Sites and Homes, for the Infrastructure and Capacity Building Challenge Grants program, submitted to the Office of Challenge Programs.

29. Date: July 31, 2023

This video meeting will discuss applications on the topics of American Literature, Communication, and Rhetoric, for the Fellowships grants program, submitted to the Division of Research Programs.

30. Date: July 31, 2023

This video meeting will discuss applications on the topic of European Studies, for the Fellowships grant program, submitted to the Division of Research Programs.

31. Date: July 31, 2023

This video meeting—the first of two on this date—will discuss applications for the Humanities Initiatives at Colleges and Universities grant program, submitted to the Division of Education Programs.

32. Date: July 31, 2023

This video meeting—the second of two on this date—will discuss applications for the Humanities Initiatives at Colleges and Universities grant program, submitted to the Division of Education Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chair's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: June 8, 2023.

Jessica Graves,

Legal Administrative Specialist, National Endowment for the Humanities.

[FR Doc. 2023–12682 Filed 6–13–23; 8:45 am]

BILLING CODE 7536–01–P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 14, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 5, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 27 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–168, CP2023–172.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–12704 Filed 6–13–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 14, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 5, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 121 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–170, CP2023–174.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–12702 Filed 6–13–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 14, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 5, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 28 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–169, CP2023–173.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–12701 Filed 6–13–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97688; File No. SR–NYSE–2023–12]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt New Section 303A.14 of the NYSE Listed Company Manual To Establish Listing Standards Related to Recovery of Erroneously Awarded Incentive-Based Executive Compensation

June 9, 2023.

I. Introduction

On February 22, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Section 303A.14 of the NYSE Listed Company Manual (''Manual'') to require issuers to adopt and comply with a policy providing for the recovery of erroneously awarded incentive-based compensation received by current or former executive officers as required by Rule 10D–1 under the Act (''Rule 10D–1''). The proposed rule change was published for comment in the **Federal Register** on March 13, 2023.[3] On April 24, 2023, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] On June 5, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Background and Description of the Proposal, as Modified by Amendment No. 1

On October 26, 2022, the Commission adopted final Rule 10D–1 [6] to implement Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which added Section 10D to the Act. Section 10D of the Act requires the Commission to adopt rules directing the national securities exchanges to prohibit the listing of any security of an issuer that is not in compliance with the requirements of Section 10D of the Act. Rule 10D–1 requires national securities exchanges that list securities to establish listing standards that require each issuer to adopt and comply with a written executive compensation recovery policy and to provide the disclosures required by Rule 10D–1 and in the applicable Commission filings.[7] Under Rule 10D–1, listed companies must recover from current and former executive officers incentive-based compensation received

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97055 (March 7, 2023), 88 FR 15480 (''Notice''). Comments received on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nyse-2023-12/srnyse202312.htm.*

[4] *See* Securities Exchange Act Release No. 97354, 88 FR 26371 (April 28, 2023).

[5] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-nyse-2023-12/srnyse202312-199379-399262.pdf.* In Amendment No. 1, the Exchange (i) proposes to amend Section 303A.00 of the Manual to make it clear, consistent with the language of proposed Section 303A.14 of the Manual (''Section 303A.14''), that all listed issuers listing the following securities are required to comply with the requirements of Section 303A.14: (a) closed-end and open-end funds, (b) passive business organizations, listed derivative or special purpose securities, (c) foreign private issuers, and (d) issuers listing only preferred or debt securities on the NYSE (including securities listed under NYSE Rule 5.2(j)); (ii) amends proposed Section 303A.14(b) to provide that the effective date of Section 303A.14 would be October 2, 2023; and (iii) amends proposed Section 802.01F of the Manual (Noncompliance with Section 303A.14 (Erroneously Awarded Compensation)) (''Section 802.01F'') to provide that in the event of any failure by a listed issuer to comply with any requirement of Section 303A.14, the Exchange may at its sole discretion provide such issuer with an initial six-month cure period and an additional six-month cure period.

[6] 17 CFR 240.10D–1.

[7] *See* Securities Exchange Act Release No. 96159, 87 FR 73076 (November 28, 2022) (''Adopting Release''). Rule 10D–1 requires such exchange listing rules to be effective no later than one year after November 28, 2022. Rule 10D–1 further requires that each listed issuer: (i) adopt the required recovery policy no later than 60 days following the effective date of the listing standard; (ii) comply with the recovery policy for all incentive-based compensation received by executive officers on or after the effective date of the applicable listing standard; and (iii) provide the required disclosures on or after the effective date of the listing standard.

during the three completed fiscal years preceding the date on which the issuer is required to prepare an accounting restatement.

As required by Rule 10D–1, the Exchange proposes to adopt Section 303A.14 entitled ''Erroneously Awarded Compensation.'' Proposed Section 303A.14 (the ''Rule'') mirrors the text of Rule 10D–1. Specifically, proposed Section 303A.14 would require NYSE listed issuers to adopt a recovery policy that complies with the requirements of the Rule (''recovery policy''), comply with their recovery policy, and provide the required disclosures in the applicable Commission filing.[8] Proposed Section 303A.14 would prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion of the rule.[9]

Specifically, proposed Section 303A.14(c)(1) would require each issuer, for initial and continued listing, to adopt and comply with a written recovery policy providing that the issuer will recover reasonably promptly the amount of erroneously awarded incentive-based compensation in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

The issuer's recovery policy must apply to all incentive-based compensation received by a person: (A) after beginning service as an executive officer; (B) who served as an executive officer at any time during the performance period for that incentive-based compensation; (C) while the issuer has a class of securities listed on a national securities exchange or a national securities association; and (D) during the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement as described in paragraph (c)(1) of the Rule.[10] An issuer's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.

For purposes of determining the relevant recovery period, the date that an issuer is required to prepare an accounting restatement as described in paragraph (c)(1) of the Rule is the earlier to occur of: (A) the date the issuer's board of directors, a committee of the board of directors, or the officer or officers of the issuer authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the issuer is required to prepare an accounting restatement as described in paragraph (c)(1) of the Rule; or (B) the date a court, regulator, or other legally authorized body directs the issuer to prepare an accounting restatement as described in paragraph (c)(1) of the Rule.[11]

The amount of incentive-based compensation that must be subject to the issuer's recovery policy (''erroneously awarded compensation'') is the amount of incentive-based compensation received that exceeds the amount of incentive-based compensation that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid. For incentive-based compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement: (A) the amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the incentive-based compensation was received; and (B) the issuer must maintain documentation of the determination of that reasonable estimate and provide such documentation to the Exchange.[12]

The issuer must recover erroneously awarded compensation in compliance with its recovery policy except to the extent that one of the conditions set forth below is met, and the issuer's committee of independent directors responsible for executive compensation decisions, or in the absence of such a committee, a majority of the independent directors serving on the board, has made a determination that recovery would be impracticable.

- The direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the issuer must make a reasonable attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover, and provide that documentation to the Exchange.
- Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the issuer must obtain an opinion of home country counsel, acceptable to the Exchange, that recovery would result in such a violation, and must provide such opinion to the Exchange.
- Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.[13]

The issuer is prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation.[14]

Proposed Section 303A.14(c)(2) would require that each issuer file all disclosures with respect to such recovery policy in accordance with the requirements of the federal securities laws, including the disclosure required by the applicable Commission filings.

Proposed Section 303A.14(d) would provide that the requirements of the Rule do not apply to the listing of: (1) a security futures product cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) or that is exempt from the registration requirements of section 17A(b)(7)(A) (15 U.S.C. 78q–1(b)(7)(A)); (2) a standardized option, as defined in 17 CFR 240.9b–1(a)(4), issued by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1); (3) any security issued by a unit investment trust, as defined in 15 U.S.C. 80a–4(2); and (4) any security issued by a management company, as defined in 15 U.S.C. 80a–4(3), that is registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), if such management company has not awarded incentive-

[8] *See* proposed Section 303A.14(b) and (c).

[9] *See* proposed Section 303A.14(a).

[10] *See* proposed Section 303A.14(c)(1)(i). In addition to these last three completed fiscal years, the recovery policy must apply to any transition period (that results from a change in the issuer's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the issuer's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year.

[11] *See* proposed Section 303A.14(c)(1)(ii).

[12] *See* proposed Section 303A.14(c)(1)(iii).

[13] *See* proposed Section 303A.14(c)(1)(iv).

[14] *See* proposed Section 303A.14(c)(1)(v).

based compensation to any executive officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company.

Proposed Section 303A.14(e) would provide that, unless the context otherwise requires, the following definitions apply for purposes of the Rule:

• *Executive Officer.* An executive officer is the issuer's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Executive officers of the issuer's parent(s) or subsidiaries are deemed executive officers of the issuer if they perform such policy making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers, or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an executive officer for purposes of the Rule would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b).

• *Financial reporting measures.* Financial reporting measures are measures that are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission.

• *Incentive-based compensation.* Incentive-based compensation is any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure.

• *Received.* Incentive-based compensation is deemed received in the issuer's fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the payment or grant of the incentive-based compensation occurs after the end of that period.

Proposed Section 303A.14(b) would provide that the effective date of the Rule (''effective date'') is October 2, 2023 and that each listed issuer must (i) adopt the recovery policy no later than 60 days following the effective date; (ii) comply with its recovery policy for all incentive-based compensation received (as such term is defined in proposed Section 303A.14(e)) by executive officers on or after the effective date; [15] and (iii) provide the required disclosures in the applicable Commission filings required on or after the effective date.[16]

The Exchange also proposes additional clarifying changes to Section 303A.00 of the Manual (Introduction; Preferred and Debt Listings) (''Section 303A.00'') to make clear, consistent with the language of proposed Section 303A.14, that all listed issuers listing the following securities are required to comply with the requirements of Section 303A.14: (i) closed-end and open-end funds; (ii) passive business organization, listed derivative or special purpose securities; (iii) foreign private issuers; and (iv) issuers listing only preferred or debt securities on the NYSE (including securities listed under NYSE Rule 5.2(j)).[17]

The Exchange states that the proposed new requirements described above are consistent with the protection of investors and the public interest because they further the goal of ensuring the accuracy of the financial disclosure of listed issuers and may improve the overall quality and reliability of financial reporting as well as provide clarification by conforming the text of Section 303A.00 to the requirements of proposed Section 303A.14.[18]

As described above, Rule 10D–1 requires national securities exchanges to prohibit the initial or continued listing of any security of an issuer not in compliance with its rules adopted to comply with Rule 10D–1. The Exchange proposes therefore to require that a listed issuer will be subject to delisting in the event of any failure by such listed issuer to comply with any requirement of Section 303A.14, including the requirement to adopt a recovery policy that complies with the applicable listing standard, disclose the policy in accordance with Commission rules or comply with its recovery policy. The Exchange states that the proposed delisting process that sets forth procedures that would apply if an issuer failed to comply with Section 303A.14 is closely modeled on the provisions with respect to late filings set forth in Section 802.01E of the Manual.[19] Specifically, the Exchange proposes to adopt proposed Section 802.01F of the Manual (Noncompliance with Section 303A.14 (Erroneously Awarded Compensation)) to provide that a listed issuer that is out of compliance with the Rule [20] and fails to regain compliance within any cure period provided by the Exchange (as further described below) would have its listed securities immediately suspended and the

[15] As described above, a NYSE listed issuer would have to comply with its recovery policy for all incentive-based compensation received by executive officers on or after the effective date of the applicable listing standard (*i.e.,* Section 303A.14). Incentive-based compensation that is the subject of a compensation contract or arrangement that existed prior to the effective date of Rule 10D–1 would still be subject to recovery under the Exchange's rule if such compensation was received on or after the effective date of Section 303A.14, as required by Rule 10D–1. *See* Adopting Release, *supra* note 7, and also definitions of ''incentive based compensation'' and ''received'' in proposed Section 303A.14(e).

[16] *See* Amendment No. 1, *supra* note 5, at 5–6. In support of proposing an effective date of October 2, 2023, the Exchange states it believes this is consistent with Section 10D ''and the goal of implementing the proposed rule promptly while also being consistent with the expectations of listed issuer that the proposed rules would take effect a year after the adoption of Rule 10D–1 based on the issuers' understanding of a statement made . . . in the Rule 10D–1 Adopting Release.'' *See id.*

[17] *See id.* at 12.

[18] *See id.* at 12–13.

[19] *See id.* at 13. NYSE's original filing included provisions establishing cure periods to be applied in the event of a listed issuer's failure to adopt a recovery policy within the required time period, but did not establish cure periods for other incidents of noncompliance with Section 303A.14. Amendment No. 1 revised these cure period provisions so that they are now applicable to all incidents of noncompliance with Section 303A.14 and not just delayed adoption of recovery policies. *See id.* at 4 n.4. The Exchange states that it believes the compliance procedures, as amended, ''are appropriately rigorous and are consistent with the public interest and the interests of investors.'' *See id.* at 13.

[20] Proposed Section 802.01F(b) provides that a listed issuer will be deemed to be below standards in the event of any failure by such listed issuer to comply with any requirement of the Rule. The listed issuer would be required to notify the Exchange in writing within five days of any type of delinquency. When the Exchange determines that a delinquency has occurred, it will promptly send written notification to a listed issuer of the procedures set forth in the rule and, within five days of the date of receipt of such notification, the listed issuer will be required to (i) contact the Exchange to discuss the status of resolution of the delinquency and (ii) issue a press release disclosing the occurrence of the delinquency, the reason for the delinquency and, if known, the anticipated date the delinquency will be cured. If the listed issuer has not issued the required press release within five days of the date of the delinquency notification, the Exchange will issue a press release stating that the issuer has incurred a delinquency and providing a description thereof. *See* proposed Section 802.01F(b).

Exchange would immediately commence delisting procedures with respect to all such listed securities.[21] Proposed Section 802.01F(c) would provide that the Exchange may afford a listed issuer that fails to comply with any of the requirements of the Rule an initial six-month period to cure the deficiency.[22] If the issuer fails to cure the delinquency within the initial cure period, the Exchange may either afford the issuer up to an additional six months to cure the deficiency or, if the Exchange determines that an additional cure period is not appropriate,[23] commence suspension and delisting procedures in accordance with Section 804.00 of the Manual.[24] Notwithstanding the foregoing, the Exchange may in its sole discretion decide (i) not to afford a listed issuer any initial cure period or additional cure period, or (ii) at any time during such cure period, to truncate the cure period and immediately commence suspension and delisting procedures if the listed issuer is subject to delisting pursuant to any other provision of the Manual, including if the Exchange believes, in the Exchange's sole discretion, that continued listing and trading of a listed issuer's securities on the Exchange is inadvisable or unwarranted.[25] In determining whether an initial or additional cure period is appropriate, or whether either such period should be truncated, the Exchange will consider the likelihood that the delinquency can be cured during such period.[26] The Exchange may also commence suspension and delisting procedures without affording any cure period at all or at any time during the initial or additional cure period if the Exchange believes, in the Exchange's sole discretion, that it is advisable to do so on the basis of an analysis of all relevant factors.[27] In no event would the Exchange continue to trade a listed issuer's securities if that listed issuer has failed to cure its delinquency with the Rule on the date that is twelve months after the date the Exchange notified the issuer of the delinquency.[28]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[29] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act.[30] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[31] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(7) of the Act,[32] which requires, among other things, that the rules of a national securities exchange provide a fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange. The proposed rule change, as modified by Amendment No. 1, is also consistent with Section 10D of the Act[33] and Rule 10D–1 thereunder, as further described below.[34]

The development and enforcement of meaningful listing standards for a national securities exchange is of substantial importance to financial markets and the investing public. Meaningful listing standards are especially important given investor expectations regarding the nature of companies that have achieved an exchange listing for their securities, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.[35] The corporate governance standards embodied in the listing rules of national securities exchanges, in particular, play an important role in assuring that companies listed for trading on the exchanges' markets observe good governance practices, including a fair approach and greater accountability for the recovery of erroneously awarded compensation.[36]

In enacting Section 10D of the Act,[37] Congress resolved to require national securities exchanges to establish listing standards to require listed issuers to develop and comply with a policy to recover incentive-based compensation erroneously awarded on the basis of financial information that requires an accounting restatement.[38] In October

[21] *See* proposed Sections 303A.14(a) and (d). Such listed issuer would not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 of the Manual with respect to such a delisting determination, and any such listed issuer would be subject to delisting procedures as set forth in Section 804.00 of the Manual. Section 804.00 of the Manual (Procedure for Delisting) provides that an issuer subject to a delisting determination has a right to a review of the determination by a committee of the Board of Directors of the Exchange, provided a written request for such a review is filed with the Secretary of the Exchange within ten business days after receiving written notice of the delisting. *See* Section 804.00 of the Manual.

[22] During such six-month period, the Exchange would monitor the listed issuer and the status of resolution of the delinquency until the delinquency is cured. *See* proposed Section 802.01F(c).

[23] In determining whether an additional cure period is appropriate, the Exchange will consider the likelihood that the delinquency can be cured during the additional cure period. *See* proposed Section 802.01F(d).

[24] An issuer would not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 of the Manual. *See* proposed Section 802.01F(c).

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See* proposed Section 802.01F(d).

[29] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

[32] 15 U.S.C. 78(b)(7).

[33] 15 U.S.C. 78j–4.

[34] 17 CFR 240.10D–1.

[35] *See, e.g.,* Securities Exchange Release Nos. 65708 (November 8, 2011), 76 FR 70799 70802 (November 15, 2011) (SR–NASDAQ–2011–073); 63607 (December 23, 2010), 75 FR 82420, 82422 (December 30, 2010) (SR–NASDAQ–2010–137); 57785 (May 6, 2008), 73 FR 27597, 27599 (May 13, 2008) (SR–NYSE–2008–17); and 93256 (October 4, 2021), 86 FR 56338 (October 8, 2021) (SR–NASDAQ–2021–007).

[36] *See, e.g.,* Securities Exchange Release No. 68639 (January 11, 2013), 78 FR 4570, 4579 (January 22, 2013) (SR–NYSE–2012–49) (stating, in connection with the modification of exchange rules for compensation committees of listed issuers to comply with Rule 10C–1 of the Act, that corporate governance listing standards ''play an important role in assuring that companies listed for trading on the exchanges' markets observe good governance practices, including a reasoned, fair, and impartial approach for determining the compensation of corporate executives'' and stating that the proposal would foster ''greater transparency, accountability and objectivity'' in oversight of compensation practices.).

[37] Public Law 111–203, sec. 954, 124 Stat. 1376, 1904 (2010) (codified at 15 U.S.C. 78j–4).

[38] As a part of the Dodd-Frank Act legislative process, in a 2010 report, the Senate Committee on Banking, Housing and Urban Affairs stated that it is ''unfair to shareholders for corporations to allow executive officers to retain compensation that they were awarded erroneously.'' *See* Report of the Senate Committee on Banking, Housing, and Urban Affairs, S. 3217, Report No. 111–176 at 135–36 (Apr. 30, 2010) (''Senate Report'') at 135. *See also* Adopting Release, *supra* note 7, 87 FR at 73077 (citing to the Senate Report) (''The language and legislative history of the Dodd-Frank Act make clear that Section 10D is premised on the notion that an executive officer should not retain incentive-based compensation that, had the issuer's accounting been correct in the first instance, would not have been received by the executive officer, regardless of any fault of the executive officer for the accounting errors. The Senate Report also indicates that shareholders should not 'have to embark on costly

2022, as required by this legislation, the Commission adopted Rule 10D–1 under the Act, which directs the national securities exchanges to establish listing standards that require issuers to: (i) develop and comply with written policies for recovery of incentive-based compensation based on financial information required to be reported under the securities laws, applicable to the issuers' executive officers, during the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement; and (ii) disclose those compensation recovery policies in accordance with Commission rules. In response, the Exchange has filed the proposed rule change, which includes rules intended to comply with the requirements of Rule 10D–1.

The Exchange's proposed Section 303A.14 incorporates the requirements of Rule 10D–1. The Commission believes that the Exchange's proposal will foster greater fairness, accountability, and transparency to shareholders of listed issuers by advancing the recovery of incentive-based compensation that was erroneously awarded on the basis of financial information that requires an accounting restatement, consistent with Section 10D of the Act [39] and Rule 10D–1 thereunder,[40] and will therefore further the protection of investors consistent with Section 6(b)(5) of the Act.[41] In addition, as the Commission stated in the Adopting Release, the recovery requirements may provide executive officers with an increased incentive to take steps to reduce the likelihood of inadvertent misreporting and will reduce the financial benefits to executive officers who choose to pursue impermissible accounting methods, which can further discourage such behavior.[42] The Commission believes that these benefits of the Exchange's new rules on the recovery of erroneously awarded compensation will protect investors and the public interest as required under Section 6(b)(5) of the Act.

Rule 10D–1 and proposed Section 303A.14 require that a listed issuer recover the amount of erroneously awarded incentive-based compensation ''reasonably promptly.'' One commenter requested NYSE include guidance in its proposed listing standards regarding what the exchange will consider in evaluating whether an issuer is pursuing recovery ''reasonably promptly'' under its policy and provided a non-exclusive list of factors the Exchange could consider and set forth in its rules.[43] As discussed above, NYSE's proposed rule mirrors the language in Rule 10D–1 and such guidance is not included in the rule text of Rule 10D–1. The Adopting Release stated that whether an issuer is acting reasonably promptly ''will depend on the particular facts and circumstances applicable to that issuer'' and ''the final rules do not restrict exchanges from adopting more prescriptive approaches to the timing and method of recovery under their rules in compliance with Section 19(b) of the Exchange Act . . .'' [44] Rule 10D–1 also does not compel the exchanges to adopt a more prescriptive approach to the timing and method of recovery. In its proposal, NYSE stated that ''the issuer's obligation to recover erroneously awarded incentive-based compensation reasonably promptly will be assessed on a holistic basis with respect to each such accounting restatement prepared by the issuer'' and that ''[i]n evaluating whether an issuer is recovering erroneously awarded incentive-based compensation reasonably promptly, the Exchange will consider whether the issuer is pursuing an appropriate balance of cost and speed in determining the appropriate means to seek recovery, and whether the issuer is securing recovery through means that are appropriate based on the particular facts and circumstances of each executive officer that owes a recoverable amount.'' [45] The Commission believes this guidance provided by the Exchange is consistent with the Commission's statements regarding when an issuer is acting ''reasonably promptly'' as expressed in the Adopting Release, with Rule 10D–1 and with the Act.[46]

Rule 10D–1 requires issuers subject to the listing standards to adopt a recovery policy no later than 60 days following the date on which the applicable listing standards become effective and to comply with their recovery policy, and provide the required disclosures, on or after the effective date. The Commission received comment letters requesting the Commission not approve the proposal before November 28, 2023, citing burdens to issuers, including with respect to assessing the impact of the new listing standards on their existing executive compensation programs, developing and implementing compliant policies, and obtaining board (and in some cases shareholder) approval.[47] Commenters stated that listed issuers anticipated an effective date of November 28, 2023 based on the language in Rule 10D–1 requiring that the new listing standards become effective by no later than one year following the publication of the final rules in the **Federal Register**.[48] One commenter stated that the Adopting Release stated that ''issuers will have more than a year from the date the final rules are published in the **Federal Register** to prepare and adopt compliant recovery policies.'' [49] The Exchange, in Amendment No. 1, is proposing that the effective date of Section 303A.14 be October 2, 2023.[50] The Exchange believes that setting this date as the effective date will ensure that issuers have more than a year from the date Rule 10D–1 was published in the **Federal Register** to adopt recovery policies.[51] This is consistent with language in Rule 10D–1 and the Adopting Release, while also ensuring

legal expenses to recoup their losses' and that 'executives must return monies that should belong to the shareholders.' '').

[39] 15 U.S.C. 78j–4.

[40] 17 CFR 240.10D–1.

[41] 15 U.S.C. 78f(b)(5).

[42] *See* Adopting Release, *supra* note 7, 87 FR at 73077. *See also* Amendment No. 1, *supra* note 5, at 12–13, agreeing with the Commission's statement on the benefits of the recovery policy.

[43] *See* Letter to Vanessa Countryman, Secretary, Commission, from Wilson Sonsini Goodrich & Rosati, dated April 4, 2024 [sic] (''Wilson Sonsini Letter''), at 4.

[44] *See* Adopting Release, *supra* note 7, 87 FR at 73104. For example, the Commission stated that after the exchanges have observed issuer performance they can use any resulting data to assess the need for further guidelines to ensure prompt and effective recovery. *See id.*

[45] *See* Amendment No. 1, *supra* note 5, at 5.

[46] *See* Adopting Release, *supra* note 7, 87 FR 73104.

[47] *See, e.g.,* Wilson Sonsini Letter at 5; Letter to Vanessa Countryman, Secretary, Commission, from Davis Polk Wardwell LLP et al., submitted on behalf of 39 law firms, dated April 3, 2023 (''Davis Polk Letter''); Letter to Vanessa Countryman, Secretary, Commission, from C. Edward Allen, Vice President, Policy & Advocacy, and Christina Maguire, President & CEO, Society for Corporate Governance, dated April 3, 2023 (''Society Letter''); Letter to Vanessa Countryman, Secretary, Commission, from American Securities Association, Business Roundtable, Center On Executive Compensation, National Association of Manufacturers, and U.S. Chamber of Commerce, dated April 3, 2023 (''ASA Letter'').

[48] *See, e.g.,* Society Letter at 1; ASA Letter at 2.

[49] *See* Davis Polk Letter at 1 n.1 (citing to Adopting Release, *supra* note 7, 87 FR at 73111).

[50] *See* Amendment No. 1, *supra* note 5, amending proposed Section 303A.14(b).

[51] Listed issuers will need to have their recovery policy in place no later than 60 days following the effective date of October 2, 2023, which would be more than a year after publication of Rule 10D–1 in the **Federal Register**. Listed issuers will also have to comply with their recovery policy for all incentive-based compensation received by executive officers on or after the effective date of October 2, 2023, and provide the required disclosures in the applicable Commission filings on or after the effective date of October 2, 2023. *See* Adopting Release, *supra* note 7, and also definitions of ''incentive based compensation'' and ''received'' in proposed Section 303A.14(e). *See also supra* notes 15–16 and accompanying text.

prompt implementation of this proposed rule.

With respect to a listed issuer that fails to comply with proposed Section 303A.14, the Exchange has proposed delisting procedures that are closely modeled on its current procedures applicable to listed issuers subject to a filing delinquency set forth in Section 802.01E of the Manual.[52] The Commission believes that these procedures, as modified by Amendment No. 1, for listed issuers out of compliance with proposed Section 303A.14, which are consistent with the procedures for filing delinquencies, adequately meet the mandate of Rule 10D–1 and are consistent with investor protection and the public interest, since they give a listed issuer a reasonable time period to cure non-compliance with these important requirements before they will be delisted while helping to ensure that listed issuers that are non-compliant will not remain listed for an inappropriate amount of time.[53] Additionally, the proposed delisting process, including the cure period and the right to a review of a delisting determination by a committee of the Board of Directors of the Exchange, is consistent with Section 6(b)(7) of the Act in that it provides a fair procedure for the review of delisting determinations based on violations of the Exchange's rules for recovering erroneous compensation.

[52] *See supra* notes 19–28 and accompanying text.

[53] The Exchange originally proposed that if an issuer was non-compliant with any of the provisions of the Rule (except for a delayed adoption of a recovery policy), the Exchange would immediately suspend and commence delisting procedures with respect to such issuer's listed securities. *See* Notice, *supra* note 3, at 15482. One commenter stated that the Exchange's proposal should be amended to allow issuers a period of time to submit a plan of compliance and to cure any failure to comply with the listing standards before being delisted. *See* Wilson Sonsini Letter, at 2–3. Another commenter also criticized the Exchange's proposed delisting procedure and stated its concern that ''in knowing that immediate suspension will be the outcome for noncompliance under the NYSE [p]roposal, NYSE staff would be more likely to determine that the required recovery of erroneously awarded compensation was performed 'reasonably promptly' even when most investors would conclude otherwise.'' *See* Letter to Vanessa Countryman, Secretary, Commission, from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, dated April 3, 2023, at 4. As discussed above, Amendment No. 1 amended the Exchange's proposed delisting provisions to provide to that in the event of any failure by a listed issuer to comply with any requirement of Section 303A.14, the Exchange may provide such issuer with an initial six-month cure period and an additional six-month cure period. *See* Amendment No. 1, *supra* note 5. The Commission believes that Amendment No. 1 appropriately addresses these commenters' concerns.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange 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–NYSE–2023–12 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–NYSE–2023–12. 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–NYSE–2023–12, and should be submitted on or before July 5, 2023.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchange amended the proposal to (i) add a clarifying amendment to Section 303A.00 to make it clear that, consistent with the language of proposed Section 303A.14, all listed issuers listing the following securities are required to comply with the requirements of Section 303A.14: (a) closed-end and open-end funds, (b) passive business organization, listed derivative or special purpose securities, (c) foreign private issuers, and (d) issuers listing only preferred or debt securities on the NYSE; (ii) propose that the effective date of Section 303A.14 be October 2, 2023; and (iii) allow the Exchange, in its sole discretion, to provide a listed issuer that fails to comply with any requirement of Section 303A.14 an initial six-month cure period and an additional six-month cure period.[54]

The changes in Amendment No. 1 provide greater clarity to the proposal. The changes to Section 303A.00 will ensure that the requirements of that section of the Manual conform to the requirements of proposed Section 303A.14. The change to the effective date of the listing standards is consistent with Rule 10D–1 and language in the Adopting Release and is responsive to comments stating that listed issuers anticipated an effective date of November 28, 2023. The change to the delisting procedures is responsive to comments recommending NYSE allow a listed issuer to cure any failure to comply with Section 303A.14 before being delisted, rather than only providing a cure period for non-compliance with adoption of a recovery policy, as originally proposed. The cure periods for non-compliance being proposed by NYSE are similar to those that exist under NYSE's rules for the late filing of annual and quarterly reports that the Commission has previously approved as consistent with the Act.[55] The amended proposal also provides for a cure period for any violations of Section 303A.14 similar to the approach taken by Nasdaq in its proposal to adopt rules to comply with

[54] *See* Amendment No. 1, *supra* note 5.

[55] *See* Section 804.01E of the Manual.

Rule 10D–1.[56] Nasdaq's proposal has also been approved by the Commission as consistent the Act.[57] Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[58] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[59] that the proposed rule change (SR–NYSE–2023–12), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12758 Filed 6–13–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97674; File No. SR–BOX–2023–13]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Trading on the BOX Options Market LLC Facility To Amend Certain Rebates for Qualified Contingent Cross Transactions

June 8, 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, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule to amend the Fee Schedule [sic] for trading on BOX to amend certain rebates for Qualified Contingent Cross (''QCC'') transactions on the BOX Options Market LLC (''BOX'') options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on June 1, 2023. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

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 the Fee Schedule for trading on BOX to amend certain rebates for Qualified Contingent Cross (''QCC'') transactions. A QCC Order is defined as an originating order (Agency Order) to buy or sell at least 1,000 standard option contracts, or 10,000 mini-option contracts, that is identified as being part of a qualified contingent trade, coupled with a contra side order to buy or sell an equal number of contracts.[5]

Currently, BOX assesses $0.20 per contract to Broker Dealers and Market Makers for both the Agency Order and contra order of a QCC transaction. Public Customers and Professional Customers are not assessed a QCC Transaction Fee. Further, rebates are paid on all qualifying orders pursuant to Section IV.D.1 of the BOX Fee Schedule. Specifically, a QCC Rebate is paid to the Participant that entered the order into the BOX system when at least one party to the QCC transaction is a Broker Dealer or Market Maker. The Participant receives a per contract rebate on QCC transactions according to the tier achieved. Volume thresholds are calculated on a monthly basis by totaling the Participant's QCC Agency Order volume on BOX. The Exchange notes that the QCC Rebate is intended to incentivize the sending of more QCC Orders to BOX.

The Exchange now proposes to amend the QCC Rebate structure in Section IV.D.1 of the BOX Fee Schedule. Specifically, the Exchange proposes to amend the volume thresholds in Tiers 1, 2, and 3 and proposes to eliminate Tier 4 entirely. For Tier 1, the Exchange proposes to amend the volume threshold to 0 to 999,999 contracts. For Tier 2, the Exchange proposes to amend the volume threshold to 1,000,000 to 1,999,999 contracts. For Tier 3, the Exchange proposes to amend the volume threshold to 2,000,000+ contracts. Additionally, the Exchange proposes to amend the rebates in Tiers 2 and 3. Specifically, in Tier 2, the Exchange proposes to increase Rebate 2 to $0.25 from $0.24. In Tier 3, the Exchange proposes to increase Rebate 1 to $0.17 from $0.16 and increase Rebate 2 to $0.27 from $0.25.

The QCC Rebate tier structure will be as follows:

Tier	QCC Agency order volume on BOX (per month)	Rebate 1 (per contract)	Rebate 2 (per contract)
1	0 to 999,999 contracts	($0.14)	($0.22)
2	1,000,000 to 1,999,999 contracts	(0.16)	(0.25)
3	2,000,000+ contracts	(0.17)	(0.27)

[56] *See* Securities Exchange Act Release No. 97060 (March 7, 2023), 88 FR 15500 (March 13, 2023) (SR–Nasdaq–2023–005).

[57] *See* Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change to Establish Listing Standards Related to Recovery of Erroneously Awarded Executive Compensation (June 9, 2023) (SR–Nasdaq–2023–005).

[58] 15 U.S.C. 78s(b)(2).

[59] 15 U.S.C. 78s(b)(2).

[60] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* BOX Rule 7110(c)(6).

The Exchange also proposes to amend the QCC Growth Rebate to account for the changes discussed above. Specifically, the Exchange proposes that if a Participant's QCC Agency Order volume on BOX achieves Tier 2 (formerly Tier 3) of the QCC Rebate in the month AND the Participant's total QCC volume combined with total QOO volume exceeds 6 million (formerly 11 million) contracts per month, then the Participant will qualify for the rebates in Tier 3 (formerly Tier 4) of the QCC Rebate. The Exchange believes that the proposed changes discussed above will encourage Participants to send increased QCC and QOO order flow to BOX in order to achieve a high rebate, which will result in increased liquidity on BOX to the benefit of all market participants.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 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 BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed changes to the QCC Rebate structure are reasonable because the proposed changes provide opportunities for Participants to receive higher rebates for their QCC Order volume on BOX. Further, the Exchange believes the proposed changes to the QCC rebate structure are equitable and not unfairly discriminatory as the proposed rebates will apply uniformly to the Participants that reach the applicable tiers.

The Exchange continues to believe that the proposed rebate structure and rebate amounts are reasonable as it provides an incremental incentive for Participants to strive for the higher tier levels, which provide increasingly higher rebates for incrementally more QCC volume achieved, which the Exchange believes is a reasonably designed incentive for Participants to grow their QCC order flow to receive the enhanced rebates. The Exchange also believes that continuing to have two alternative rebates (depending on the capacity of the parties to the transaction) is reasonable and appropriate as this is how the Exchange assesses the rebates for QCC transactions today.[7]

The Exchange believes the proposed changes to the QCC Growth Rebate is reasonable because this rebate provides incentives for BOX Participants to engage in substantial amounts of trading activity which would serve to bring additional open outcry liquidity to the Trading Floor and additional QCC order flow to BOX. This incentive may also encourage Participants to begin sending such order flow to BOX for the opportunity to earn this rebate because the threshold to qualify is being lowered.

The Exchange believes that the proposed QCC Growth Rebate Qualifications are reasonable because they offer Participants an opportunity to achieve a higher QCC rebate. Additionally, the Exchange believes the proposed changes to the QCC Growth Rebate are equitable and not unfairly discriminatory because any Participant may qualify for this rebate.[8] All BOX Participants may enter order flow to obtain a QCC Growth Rebate.

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.

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact its business. 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 and rebates to remain competitive with other exchanges. Because competitors are free to modify their own fees and rebates 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.

The proposed changes 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 Exchange believes that the proposed changes will encourage market participants to send their QCC orders to BOX for execution in order to obtain greater rebates and lower their costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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–BOX–2023–13 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–BOX–2023–13. This file

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] The Exchange notes that Rebate 1 assesses lower rebates than rebates in Rebate 2 because when only one side of the QCC transaction is a Broker Dealer or Market Maker then only one side of the QCC transaction is assessed a fee, therefore the total fees assessed are lower and the corresponding rebate is also lower.

[8] The Exchange notes that all BOX Participants may transact an options business electronically or on the BOX Trading Floor with a registered Trading Permit. BOX Participants may transact business on the Trading Floor through a Floor Broker.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

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–BOX–2023–13 and should be submitted on or before July 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12664 Filed 6–13–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97667; File No. SR–BX–2023–015]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Fees at Equity 7, Section 118

June 8, 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 BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Equity 7, section 118(e), as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange operates on the ''taker-maker'' model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, section 118(e), which consists of several different credits and fees for Retail Orders[3] and Retail Price Improvement Orders[4] under Rule 4780 (Retail Price Improvement Program).

Currently, the Exchange charges a fee of $0.0018 per share executed for RPI Orders entered by a member that (i) quotes Retail Price Improvement Orders in at least 1,200 symbols on average per day and (ii) provides liquidity through Retail Price Improvement Orders equal to or exceeding an average daily volume of 2,500,000 shares. The Exchange currently charges a fee of $0.0025 per share executed for all other RPI Orders that provide liquidity. The Exchange proposes to adopt a new fee of $0.0020 per share executed for RPI Orders entered by a member that (i) quotes Retail Price Improvement Orders in at least 1,200 symbols on average per day; (ii) provides liquidity through Retail Price Improvement Orders equal to or exceeding an average daily volume of 1,000,000 shares; and (iii) increases its average daily volume of liquidity provided in Retail Price Improvement Orders at least 10% relative to the month of March 2023. The Exchange hopes that the proposed fee will encourage members to increase liquidity providing activity in RPI Orders on the Exchange relative to March 2023. If the proposal is effective in achieving this purpose, then the quality of the Exchange's market will improve, particularly with respect to RPI and Retail Orders to the benefit of all participants, especially those who submit RPI and Retail Orders.

At this time, the Exchange proposes to sunset the proposed fee of $0.0020 per share executed. The fee will be available through September 30, 2023.[5] Despite only offering this incentive for four months (*i.e.,* June 2023 through September 2023), the Exchange believes that it may continue to encourage members to earn lower fees by increasing liquidity providing activity in RPI Orders on the Exchange. The Exchange will use this time period to evaluate the appropriate parameters going forward to encourage increasing liquidity providing activity in RPI Orders on the Exchange.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Retail Orders shall mean an order type with a Non-Display Order Attribute submitted to the Exchange by a Retail Member Organization (as defined in Rule 4780). A Retail Order must be an agency Order, or riskless principal Order that satisfies the criteria of FINRA Rule 5320.03. The Retail Order must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology. *See* Rule 4702(b)(6).

[4] Retail Price Improving (''RPI'') Orders shall mean an Order Type with a Non-Display Order Attribute that is held on the Exchange Book in order to provide liquidity at a price at least $0.001 better than the NBBO through a special execution process described in Rule 4780. A Retail Price Improving Order may be entered in price increments of $0.001. RPI Orders collectively may be referred to as ''RPI Interest.'' *See* Rule 4702(b)(5).

[5] The proposed $0.0020 per share executed fee will be available through September 30, 2023 but would not be available thereafter. For example, as of October 1, 2023, the Exchange would no longer offer the incentive.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[7] 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'. . . .'' [8]

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.'' [9]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes it is reasonable and equitable to adopt a new $0.0020 per share executed fee for RPI Orders entered by a member that (i) quotes Retail Price Improvement Orders in at least 1,200 symbols on average per day; (ii) provides liquidity through Retail Price Improvement Orders equal to or exceeding an average daily volume of 1,000,000 shares; and (iii) increases its average daily volume of liquidity provided in Retail Price Improvement Orders at least 10% relative to the month of March 2023. As discussed above, the Exchange's goal is to increase liquidity adding activity in RPI Orders on its platform, particularly relative to March 2023. It is reasonable and equitable to address this need by providing a lower fee to members that meet the proposed thresholds as an incentive for them to increase their liquidity activity in RPI Orders on the Exchange relative to March 2023. If the proposal is effective in achieving this purpose, then the quality of the Exchange's market will improve, particularly with respect to RPI and Retail Orders to the benefit of all participants, especially those who submit RPI and Retail Orders. The Exchange's proposal to sunset the $0.0020 fee is also reasonable because the Exchange believes that despite only offering this fee for four months, the incentive may continue to encourage members to earn lower fees by increasing liquidity providing activity in RPI Orders on the Exchange.

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange intends for its proposal to improve market quality for all members that submit RPI and Retail Orders on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Although net adders of liquidity for RPI Orders will benefit most from the proposal, this result is fair insofar as increased liquidity adding activity in RPI Orders will help to improve market quality and the attractiveness of the Nasdaq BX market to all existing and prospective retail participants. The Exchange's proposal to sunset the incentive is equitable and not unfairly discriminatory because the fee will be available to all members during the four months it is offered.

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.

As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. Members may modify their businesses so that they can meet the required thresholds and pay lower charges. The Exchange's proposal to sunset the fee does not impose an undue burden on competition because any member can qualify for the fee during the four months it is offered. 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

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *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)).

[9] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

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.

In sum, the Exchange intends for the proposed change to its fees for RPI Orders, in the aggregate, to increase member incentives to engage in the addition of liquidity on the Exchange. 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 for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–BX–2023–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–BX–2023–015. 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–BX–2023–15 and should be submitted on or before July 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12660 Filed 6–13–23; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97675; File No. SR–CboeBZX–2023–036]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Revise Certain of the Exchange's Initial Listing Standards

June 8, 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 26, 2023, Cboe BZX Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to revise certain of the Exchange's initial listing standards. 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/equities/regulation/rule_filings/bzx/),* at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make several amendments to increase its requirements for initial listing of certain Tier I and II securities and help assure adequate liquidity for such listed securities. Specifically, the Exchange proposes to (i) impose a new requirement that at least 50% of a company's Round Lot Holders [3] must each hold ''Unrestricted Securities'', as defined below, with a Market Value [4] of at least $2,500; (ii) impose a new minimum average daily trading volume for securities trading over-the-counter (''OTC'') of at least 2,000 shares over the 30 day period prior to listing (with trading occurring on more than half of those 30 days) including trading volume of the underlying security on the primary market with respect to an ADR; and (iii) increase the Exchange's requirements for initial listing to help assure adequate liquidity. The Exchange also proposes to adopt an alternative to the minimum $4 price requirement for companies that seek to list Tier II securities on the Exchange which meet the express exclusion from the definition of a ''penny stock'' contained in Exchange Act Rule 3a51–1(g).[5] Such an amendment would allow a Company to list a Tier II security on the Exchange if it satisfies all existing and proposed listing standards except for the $4 price requirement.[6] The proposed amendments are very similar to existing initial listing requirements on the Nasdaq Stock Market, LLC (''Nasdaq'').[7]

The Exchange proposes several amendments in this rule change to increase its requirements for initial listing securities and help assure adequate liquidity for listed securities. In addition to the changes described above, the Exchange proposes to revise its initial listing criteria to exclude ''Restricted Securities'', as defined below, from the Exchange's calculations of a company's Publicly Held Shares,[8] Market Value [9] of Publicly Held Shares, and Round Lot Holders [10] (''Initial Liquidity Calculations''). To do so, the Exchange proposes to add new definitions to define ''Restricted Securities'', ''Unrestricted Publicly Held Shares'' and ''Unrestricted Securities''.[11] The Exchange is not proposing to change the requirements for continued listing purposes at this time, but believes that these heightened initial listing requirements will result in enhanced liquidity for the companies that satisfy them on an ongoing basis.[12] Further, the Exchange is not proposing to adopt the proposed initial listing requirements as it relates to Closed-End Funds, but rather to keep its initial listing requirements more closely aligned to another exchange.[13] Each proposed change is described in more detail below.

I. Restricted Securities

The Exchange is proposing to modify its initial listing standards to exclude securities subject to resale restrictions from its Initial Liquidity Calculations. Currently, securities subject to resale restrictions are included in the Exchange's Initial Liquidity Calculations, however, such securities are not freely transferrable or available for outside investors to purchase and therefore do not truly contribute to a security's liquidity upon listing. Because the current Initial Liquidity Calculations include Restricted Securities, a security with a substantial number of Restricted Securities could satisfy the Exchange's initial listing requirements related to liquidity and list on the Exchange, even though there could be few freely tradable shares, resulting in a security listing on the Exchange that is illiquid. The Exchange is concerned because illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices.

To address this concern, the Exchange is proposing to adopt a new definition of ''Restricted Securities'' under Exchange Rule 14.1(a)(24), which includes any securities subject to resale restrictions for any reason, including Restricted Securities (1) acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; [14] (2) acquired through an employee stock benefit plan or as compensation for professional services; [15] (3) acquired in reliance on Regulation S, which cannot be resold within the United States; [16] (4) subject to a lockup agreement or a similar contractual restriction; [17] or (5) considered ''restricted securities'' under Rule 144 of the Securities Act of 1933.[18] The Exchange is also proposing to adopt a new definition of ''Unrestricted Securities'' under proposed Rule 14.1(a)(36), which means securities that are not Restricted Securities. In connection with these amendments, the Exchange is proposing to renumber the remaining provisions of Rule 14.1(a) to maintain an organized rule structure.

The Exchange believes that these proposed amendments to the listing rules will enhance its listing criteria and better protect investors by helping to ensure that securities listed on the Exchange are liquid and have sufficient investor interest to support an exchange listing. Further, the proposed

[3] *See* Exchange Rule 14.1(a)(25).

[4] *See* Exchange Rule 14.1(a)(19).

[5] 17 CFR 240.3a51–1(g).

[6] *See* Rule 14.9(b)(1)(A).

[7] *See* generally Nasdaq Listing Rules Series 5000, 5200, 5300 and 5500 as it pertains to the initial listing requirements designed to help assure adequate liquidity for listed securities. *See* Nasdaq Listing Rule 5505(a)(1)(B) and IM–5505–2 as it pertains to the alternative minimum $4 price requirement.

[8] *See* Exchange Rule 14.1(a)(22).

[9] *See* Exchange Rule 14.1(a)(19).

[10] *See* Exchange Rule 14.1(a)(25).

[11] As discussed further below, these proposed amendments to help assure adequate liquidity for listed securities are very similar to amendments to Nasdaq's proposed listing standards that have received Commission approval. *See* Securities Exchange Act Release Nos 85503 (April 3, 2019) 84 FR 14172 (April 9, 2019) (SR–NASDAQ–2019–009) (Notice of Filing of Proposed Rule Change To Revise the Exchange's Initial Listing Standards Related to Liquidity) and 86314 (July 5, 2019) 84 FR 33102 (July 11, 2019) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Revise the Exchange's Initial Listing Standards Related to Liquidity).

[12] Exchange staff may apply additional and more stringent criteria to a listed company that satisfies all of the continued listing requirements but where there are indications that there is insufficient liquidity in the security to support fair and orderly trading. In such circumstances, the Exchange would typically first allow the company to provide and implement a plan to increase its liquidity in the near term. *See* Exchange Rule 14.2.

[13] *See* section 101(g) of the NYSE American LLC (''NYSE American'' Company Guide.

[14] *See e.g.,* 17 CFR 230.144(a)(3)(i) and (ii).

[15] *See e.g.,* 17 CFR 230.701(g), which states that securities issued pursuant to certain compensatory benefit plans and contracts relating to compensation are considered restricted securities.

[16] *See* 17 CFR 230.144(a)(3)(v), which states that securities of domestic issuers acquired in a transaction in reliance on Regulation S are considered restricted securities.

[17] Securities issued in such transactions would typically include a ''restrictive'' legend stating that the securities cannot be freely resold unless they are registered with the SEC or in a transaction exempt from the registration requirements, such as the exemption available under Rule 144.

[18] See generally Securities and Exchange Commission Investor Publications, Rule 144: Selling Restricted and Control Securities (January 16, 2013), available at: *https://www.sec.gov/reportspubs/investorpublications/investorpubsrule144htm.html.* The Exchange would consider a security as subject to a resale restriction until any restrictive legends are removed, even if a safe harbor is available that permits the sale of the security at an earlier date.

amendments to Rule 14.1(a) are substantively identical to Nasdaq Rules 5005(a)(38) (definition of Restricted Security) and 5005(a)(47) (definition of Unrestricted Securities).

A. Publicly Held Shares

The Exchange is proposing to modify its initial listing requirements related to Publicly Held Shares so that they are based only on shares of Unrestricted Securities. A company is required to have a minimum number of Publicly Held Shares in order to list its primary equity securities (including American Depositary Receipts or ''ADRs'') [19] on all tiers of the Exchange. A company is also required to have a minimum number of Publicly Held Shares in order to list its preferred stock or secondary classes of common stock as Tier I or Tier II securities on the Exchange. Currently, Exchange Rule 14.1(a)(22) defines ''Publicly Held Shares'' as ''shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating Publicly Held Shares shall be made in accordance with Rule 13d–3 under the Act.'' As discussed above, the current definition of Publicly Held Shares does not exclude securities subject to resale restrictions, which may result in a security with limited liquidity satisfying the Exchange's initial listing requirements related to Publicly Held Shares and qualifying to list on the Exchange.

The Exchange proposes adding a new definition of ''Unrestricted Publicly Held Shares'' under Exchange Rule 14.1(a)(35), which would be defined as Publicly Held Shares excluding the newly defined ''Restricted Securities.'' The Exchange proposes to revise references to ''Publicly Held Shares'' to ''Unrestricted Publicly Held Shares'' in the following rules:

Rule No.	Tier	Security type	Current required number of publicly held shares
14.8(b)(1)(B)	Tier I	Primary Equity Securities	At least 1,100,000 Shares.
14.8(d)(1)(A)	Tier I	Preferred Stock and Secondary Classes of Common Stock.	At least 200,000 Shares.
14.9(b)(1)(B)	Tier II	Primary Equity Securities	At least 1,000,000 Shares.
14.9(c)(1)(C)	Tier II	Preferred Stock and Secondary Classes of Common Stock.	At least 200,000 Shares.

As a result, only securities that are freely transferrable will be included in the calculation of Publicly Held Shares to determine whether a company satisfies the Exchange's initial listing criteria under these rules. The Exchange believes that excluding Restricted Securities will better reflect the liquidity of, and investor interest in, a security and therefore will better protect investors.

In addition to the above, the Exchange proposes to revise Exchange Rule 14.3(a)(7) to reflect the change to ''Unrestricted Publicly Held Shares.'' [20] The Exchange also proposes revising 14.3(c)(2) to state that in considering whether an ADR satisfies the initial listing requirements, the Exchange will consider the Unrestricted Publicly Held Shares of the underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, the Exchange will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market, as discussed below. The Exchange notes that the proposed amendments to the Publicly Held Share requirements are very similar to existing listing standards on Nasdaq.[21]

B. Market Value of Publicly Held Shares

The Exchange is proposing to modify its initial listing requirements related to Market Value of Publicly Held Shares so that it is based only on Unrestricted Shares. A company is required to have a minimum Market Value of Publicly Held Shares in order to list its primary equity securities (including ADRs) on both tiers of the Exchange. A company is also required to have a minimum Market Value of Publicly Held Shares in order to list its preferred stock or secondary classes of common stock as Tier I or Tier II securities on the Exchange. The calculation of ''Market Value of Publicly Held Shares'' does not exclude stock subject to resale restrictions. As discussed above, Restricted Securities may not contribute to liquidity and therefore the current calculation of Market Value of Publicly Held Shares may result in a security with limited true liquidity satisfying the listing requirements related to the Market Value of Publicly Held and qualifying to list.

The Exchange proposes revising its initial listing requirements so that they are based on the Market Value of Publicly Held Shares, and therefore exclude Restricted Securities, in the following rules:

Rule No.	Market tier	Security type	Current required market value
14.8(b)(2)(B)(iii)	Tier I	Primary Equity Securities	At least $18 million (Equity Standard).
14.8(b)(2)(C)(ii)	Tier I	Primary Equity Securities	At least $20 million (Market Value Standard).
14.8(b)(2)(A)(iii)	Tier I	Primary Equity Securities	At least $8 million (Income Standard).
14.8(b)(2)(D)(ii)	Tier I	Primary Equity Securities	At least $20 million (Total Assets/Total Revenue Standard).
14.8(d)(1)(B)	Tier I	Preferred Stock and Secondary Classes of Common Stock.	At least $4 million.
14.9(b)(2)(A)(ii)	Tier II	Primary Equity Securities	At least $15 million (Equity Standard).

[19] Exchange Rule 14.1(a)(21) defines ''Primary Equity Security'' as ''a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (''ADRs'') or Shares (''ADSs'').

[20] Rule 14.3(a)(7) currently states that ''The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.''

[21] The proposed changes to Rules 14.3(a)(7) and 14.3(c)(2) are substantively identical to Nasdaq Rules. *See e.g.,* Nasdaq Listing Rules 5205(g) and 5215(b).

Rule No.	Market tier	Security type	Current required market value
14.9(b)(2)(B)(iii)	Tier II	Primary Equity Securities	At least $15 million (Market Value Standard).
14.9(b)(2)(C)(iii)	Tier II	Primary Equity Securities	At least $5 million (Net Income Standard).
14.9(c)(1)(D)	Tier II	Preferred Stock and Secondary Classes of Common Stock.	At least $3.5 million.

As discussed above, the Exchange believes that excluding Restricted Securities from the calculation of Market Value of Publicly Held Shares will better reflect the liquidity of, and investor interest in, a security and therefore will better protect investors. Specifically, Market Value of Publicly Held Shares is an indication of the size and investor interest in a company. When Restricted Securities are included in those calculation, a company could technically meet the Exchange's requirement without actually having sufficient investor interest, resulting in a security that is illiquid. Less liquid securities may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices and a company's Market Value of Publicly Held Shares.

The Exchange notes that the proposed amendments as it relates to the Market Value of Publicly Held Shares referenced in the table above are very similar to existing listing standards on Nasdaq.[22]

The Exchange also proposes to revise Rule 14.3(a)(7) to reflect that the computation for Market Value of Unrestricted Publicly Held Shares shall be as of the date of the application of the company for all market tiers.[23] This proposed change is substantively identical to Nasdaq Rule 5205(g). Lastly, the Exchange proposes revising Rule 14.3(c)(2) to state that in considering whether an ADR satisfies the initial listing requirements, the Exchange will consider the Market Value of Unrestricted Publicly Held Shares of the underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, the Exchange will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market, as discussed below. This change is substantively identical to Nasdaq Rule 5215(b).

C. Round Lot Holders

The Exchange is proposing to revise the listing criteria related to the minimum number of Round Lot Holders for companies seeking to initially list primary equity securities (including ADRs), warrants, preferred stock, and secondary classes of common stock on the Exchange so that they are based on holders of Unrestricted Securities. Currently, the Exchange defines a ''Round Lot Holder'' [24] as ''a holder of a Normal Unit of Trading'' [25] and notes that ''beneficial holders will be considered in addition to holders of record.'' The Exchange defines a ''Round Lot or normal unit of trading'' as ''100 shares of a security unless, with respect to a particular security, the Exchange determines that a normal unit of trading shall constitute other than 100 shares.'' A company is required to have a minimum number of Round Lot Holders in order to list securities on the Exchange. While this is another measure of liquidity designed to help assure that there will be sufficient investor interest and trading to support price discovery once a security is listed, as noted above, under existing rules, all the shares held by a holder could be Restricted Securities that do not contribute to liquidity.

To address this concern, the Exchange is proposing to revise the definition of ''Round Lot Holder'' to mean a holder of a normal unit of trading of Unrestricted Securities.[26] This change will impact the following rules:

Rule No.	Market tier	Security type	Current required number of round lot holders
14.8(b)(1)(C)	Tier I	Primary Equity Securities	At least 400 Round Lot Holders.
14.8(c)(4)	Tier I	Warrants	At least 400 Round Lot Holders.
14.8(d)(1)(D)	Tier I	Preferred Stock and Secondary Classes of Common Stock.	At least 100 Round Lot Holders.
14.9(b)(1)(C)	Tier II	Primary Equity Securities	At least 300 Round Lot Holders.
14.9(c)(1)(B)	Tier II	Preferred Stock and Secondary Classes of Common Stock.	At least 100 Round Lot Holders.
14.9(d)(1)(D)	Tier II	Warrants	At least 400 Round Lot Holders.

As a result of these changes, a holder of only Restricted Securities would not be considered in the Round Lot Holder count. The Exchange believes that these amendments will help ensure adequate distribution and investor interest in a listed security, which will result in a more liquid trading market and which will better protect investors. Illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices. The Exchange notes that these changes are very similar to listing standards on Nasdaq.[27]

In addition to the above, the Exchange also proposes revising Rule 14.3(c)(2) to state that in considering whether an

[22] *See e.g.,* the listing standards on the Nasdaq Capital Market (Nasdaq Listing Rules 5505(b)(1)(B) (Equity Standard), 5505(b)(2)(C) (Market Value Standard), 5505(b)(3)(C) (Net Income Standard), and 5510(a)(4) (standard applicable to Preferred Stock or Secondary Classes of Common Stock)).

[23] Rule 14.3(a)(7) currently states that ''The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.''

[24] *See* Exchange Rule 14.1(a)(25).

[25] *See* Exchange Rule 14.1(a)(24).

[26] The Exchange notes that the proposed definition is very similar to the definition of ''Round Lot Holder'' provided in Nasdaq Rule 5005(a)(41).

[27] *See e.g.,* Nasdaq Listing Rule 5505(a)(3), 5510(a)(2) and 5515(a)(4).

ADR satisfies this proposed change that determination of Round Lot Holders be based on holders of Unrestricted Securities, the Exchange will consider whether Round Lot Holders of the underlying security hold Unrestricted Shares of that underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, the Exchange will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market, as discussed below. The Exchange will also apply the new minimum value requirement for Round Lot Holders to the underlying security, as proposed below, in addition to the minimum number of Round Lot Holders required by the applicable tier that the company is seeking to list on. The Exchange notes that this proposed change is substantively identical to existing Nasdaq Rule 5215(b).

D. American Depository Receipts

The Exchange proposes to revise Rule 14.3(c)(2) to specify how these new requirements apply to ADRs. Specifically, as under the current rule for calculating Publicly Held Shares, Market Value of Publicly Held Shares, and Round Lot Holders, the Exchange will continue to consider the underlying security in calculating the Unrestricted Publicly Held Shares and Market Value of Unrestricted Publicly Held Shares and in calculating the new definition of a Round Lot Holder. In determining whether shares of the underlying security are ''restricted'' for these purposes, only restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market would result in those securities being considered restricted for purposes of the proposed rules. Thus, if the restrictions provided as examples in the new definition of ''Restricted Securities'' would restrict the underlying security from being freely sold or tradable on its home country market, the Exchange would also consider such restrictions when calculating ''Unrestricted Publicly Held Shares.'' The Exchange believes that this is appropriate because the purpose of the Initial Liquidity Calculations, and the proposed changes described herein, is to establish investor interest in the foreign issuer and ensure adequate liquidity and distribution of the foreign issuer's underlying security on its home country market, which is held by the depositary bank and represented by the ADR. For this reason, existing Rule 14.3(c)(2) currently looks to the underlying security when calculating Publicly Held Shares, Market Value of Publicly Held Shares, Round Lot and Public Holders [28] and it is similarly appropriate to consider whether or not the underlying security is freely tradable in its home country market when determining Unrestricted Publicly Held Shares, Market Value of Unrestricted Publicly Held Shares, and Round Lot Holders. Excluding securities that are only restricted from resale or trading in the United States would not be an appropriate measure of investor interest in or liquidity of the underlying security because the underlying security will not be listed or trading in the U.S.[29] Moreover, applying the new definition of Restricted Securities to securities trading on a foreign market, if the securities trading on the home country market are not already restricted by the examples set forth in the new definition of Restricted Securities, would unduly impose the requirements of a U.S. national securities exchange on those securities, which will not be listed in the U.S. The Exchange notes that this proposed change is substantively identical to existing Nasdaq Rule 5215(b).

In addition to the above, the Exchange proposes to revise the reference to Form S–12 in Rule 14.3(c)(2) [30] to Form F–6 in order to refer to the current form required by the Commission to register ADRs under the Securities Act of 1933.[31]

II. Minimum Value Requirements for Holders

The Exchange is also proposing to revise the listing rules related to Round Lot Holders listed in Part I.C. above to impose a new requirement related to the minimum investment amount held by shareholders. Under the current definition of a Round Lot, a shareholder may be considered a Round Lot Holder by holding exactly 100 shares, which would be worth only $400 in the case of a stock that is trading at the minimum bid price of $4 per share. The Exchange believes that this minimal investment is not an appropriate representation of investor interest to support a listing on a national securities exchange. To address this concern, the Exchange proposes to require that for initial listing at least 50% of a company's required Round Lot Holders must each hold Unrestricted Securities with a Market Value of at least $2,500. The Exchange does not propose to impose this requirement on initial listings of warrants, however, because warrants do not have a minimum price requirement and may have little value at the time of issuance.[32]

The Exchange believes that adopting this amendment will help ensure that a majority of the required minimum number of unrestricted shareholders hold a meaningful value of Unrestricted Securities and that a company has sufficient investor interest to support an exchange listing. The Exchange also notes that the proposed rule is very similar to Nasdaq Rule 5505(a)(3) and 5510(a)(2).

III. Average Daily Trading Volume

The Exchange is proposing to adopt an additional initial listing criteria for primary equity securities (including ADRs), preferred stock, and secondary classes of common stock, previously trading OTC in the United States. The new rules will require such securities to have a minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including trading volume of the underlying security on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days (*i.e.,* at least 16 days). The Exchange believes that this will help ensure a liquid trading market, promote price discovery and establish an appropriate market price for listed securities.

The Exchange is proposing to implement this new requirement by making additional amendments to:

- Exchange Rule 14.8(b)(1) to add new Rule 14.8(b)(1)(D) as it pertains to Tier I primary equity securities;
- Exchange Rule 14.8(d)(1) to add new Rule 14.8(d)(1)(F) as it pertains to Tier I preferred stock and secondary classes of common stock;
- Exchange Rule 14.9(b)(1) to add new Rule 14.9(b)(1)(E) (and re-letter existing Rule 14.9(b)(1)(E) to (F)) as it pertains to Tier II primary equity securities;
- Exchange Rule 14.9(c)(1) to add new Rule 14.9(c)(1)(F) [33] as it pertains to Tier II preferred stock and secondary classes of common stock;
- In connection with the foregoing amendments, the Exchange is also

[28] *See* Exchange Rule 14.1(a)(23).

[29] For example, the underlying security may not be eligible to trade in the U.S., but that would not cause all shares of that security to be considered restricted if they are freely tradable on the foreign issuer's home country market.

[30] Proposed Exchange Rule 14.3(c)(2) is very similar to Nasdaq Rule 5215(b).

[31] Securities Exchange Act Release No. 34–19612 (March 18, 1983), 48 FR 12346 (March 24, 1983).

[32] 15 U.S.C. 77r(b).

[33] Rule 14.1(a)(21) defines the term ''Primary Equity Security as a ''Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (''ADRs'') or Shares (''ADSs'').''

proposing to revise the cross-references in Rule 14.8(d)(1) and Rule 14.9(c)(1) to add new Rules 14.8(d)(1)(F) and 14.9(c)(1)(F), respectively.

The Exchange notes that the average daily trading volume requirement is very similar requirements on Nasdaq.[34]

As noted above, the average daily trading volume requirement will also apply to ADRs. Currently, the Exchange considers the underlying security of an ADR when determining annual income from continuing operations, Publicly Held Shares, Market Value of Publicly Held Shares, stockholders' equity, Round Lot or Public Holders, operating history, Market Value of listed securities, and total revenue. The Exchange is proposing amend 14.3(c)(2) to state that the average daily trading volume of the underlying security of an ADR will be considered in the Exchange's computations for this new requirement. The Exchange would consider trading in the security underlying an ADR on the foreign issuer's primary market together with the average daily trading volume of the ADR in the U.S. OTC market in determining whether a foreign issuer seeking to list ADRs satisfies the requirement. The Exchange believes that this will help demonstrate adequate investor interest in the foreign issuer and the underlying security, which will help promote price discovery and establish an appropriate market price for the ADR.[35] This proposed amendment is substantively identical to existing Nasdaq Rule 5215(b).

The Exchange is proposing to adopt an exemption from the proposed average daily trading volume requirement for securities (including ADRs) listed in connection with a firm commitment underwritten public offering of at least $4 million. The Exchange believes that the sale of securities in an underwritten public offering provides an additional basis for believing that a liquid trading market will likely develop for such securities after listing, since the offering process is designed to promote appropriate price discovery. Moreover, the underwriters in a firm commitment underwritten public offering will also generally make a market in the securities for a period of time after the offering, assisting in the creation of a liquid trading market. For these reasons, in part, the Exchange's rules already provide similar exemptions in other situations involving a firm commitment underwritten offering.[36] The Exchange believes that the process of a firm commitment underwritten offering similarly supports an exception from the proposed average daily trading volume requirement. Finally, the Exchange believes that the proposed minimum $4 million firm commitment underwritten public offering is large enough to represent a fundamental change in how the company will trade following the offering, such that the prior trading volume will not be representative of the volume following the offering. In that regard, the Exchange notes that the minimum $4 million offering would be sufficient to satisfy the Exchange's one million share public float requirement at the minimum $4 price for listing for Tier II securities. This exemption will be included in new Rules 14.8(b)(1)(D), 14.8(d)(1)(F), 14.9(b)(1)(E), and 14.9(c)(1)(F).[37]

IV. Minimum Price Requirement

Rule 3a51–1 [38] provides that ''penny stock'' means any equity security other than securities that meet certain exclusions. Rule 3a51–1(g) provides an exclusion for a security if its issuer has either ''[n]et tangible assets (*i.e.,* total assets less intangible assets and liabilities) in excess of $2,000,000, if the issuer has been in continuous operation for at least three years, or $5,000,000, if the issuer has been in continuous operation for less than three years'' or ''[a]verage revenue of at least $6,000,000 for the last three years.'' When the Commission made changes to Rule 3a51–1 concerning exchange-listed securities, it specifically noted that it did not intend to foreclose reliance on the other exclusions available in Rule 3a51–1, including the exclusion available in Rule 3a51–1(g).[39] Proposed Rule 14.9(b)(1)(A)(ii) would only permit a company seeking to list a Tier II security to list with a $2 or $3 price if it satisfies the net tangible assets or revenue test of Rule 3a51–1(g) and, as such, securities listing under the proposed rule would not be penny stocks at the time of their listing. A company that qualifies for initial listing only under the proposed requirement could become a ''penny stock'' if it fails the net tangible assets and revenue tests after listing and does not satisfy any of the other exclusions from being a penny stock. In order to assist brokers' and dealers' compliance with the requirements of the Penny Stock Rules, the Exchange will monitor companies listed under the proposed alternative and publish a list of any company that initially listed under that requirement, which does not then meet the requirements of Rule 3a51–1(g), described above, or any of the other exclusions from being a penny stock contained in Rule 3a51–1.[40] Such list will be updated on a daily basis.

The proposed alternative price test will be based on the BZX Official Closing Price [41] in the security.[42] The Exchange notes that the process for determining the BZX Official Closing Price is similar to such process on Nasdaq for determining the Nasdaq Official Closing Price.[43] The Exchange also proposes that the required closing price must be achieved for at least five consecutive business days before approval of the listing application. The Exchange may extend the minimum five-day compliance period required to satisfy these tests based on any fact or circumstance, including the margin of compliance, the trading volume, the trend of the security's price, or information or concerns raised by other regulators concerning the trading of the security. If a security obtains a $4 closing price for five consecutive business days and, at the same time

[34] *See e.g.,* to Nasdaq Rule 5505(a)(5), and 5510(a)(6).

[35] ADR shares trade separately from the underlying securities, and often have slightly different values. However, ADR share values usually track closely with the value of the underlying security

[36] For example, Exchange Rule 14.2(c)(3)(D) provides an exemption from the requirements applicable to a company that was formed by a reverse merger if the company completes a firm commitment underwritten public offering where the gross proceeds to the company will be at least $40 million.

[37] The proposed exemptions are very similar to those on Nasdaq. *See e.g.,* Nasdaq Rule 5505(a)(5) and 5510(a)(6).

[38] 17 CFR 240.3a51–1.

[39] *See* Securities Exchange Act Release No. 49037 (January 8, 2004), 69 FR at 2535 (January 16, 2004) (text at footnote 41) (''In addition, we note that any security that satisfies one of the other exclusions in Rule 3a51–1 will not be a penny stock even if it fails to satisfy any of the proposed conditions for reported securities or for other exchange registered securities discussed above.'').

[40] The Exchange believes that the other exclusion most likely to be implicated would be Rule 3a51–1(d), 17 CFR 240.3a51–1(d), which provides an exclusion from the definition of a penny stock for a security with a minimum bid price of $5. Note, however, that if a Company obtains a $4 minimum bid price at a time when it meets all other initial listing requirements, the Exchange would no longer consider the company as having listed under the proposed alternative standard.

[41] *See* BZX Rule 11.23(a)(3). The Exchange notes that the process for determining the BZX Official Closing Price is similar to the process on Nasdaq for determining the Nasdaq Official Closing Price.

[42] As provided in Exchange Rule 11.23(c)(2)(B), ''[f]or a BZX-listed corporate security, the Closing Auction price will be the BZX Official Closing Price. In the event that there is no Closing Auction for a BZX-listed corporate security, the BZX Official Closing Price will be the price of the Final Last Sale Eligible Trade. *See* Exchange Rule 11.23(a)(9) for the definition of ''Final Last Sale Eligible Trade''.

[43] *See* Nasdaq Rule 4754. The Exchange notes that pursuant to Nasdaq Rule 4754(b)(5), Nasdaq may apply auxiliary procedures for the Closing Cross to ensure a fair and orderly market, where no such provision is available on BZX.

satisfies all other initial listing criteria, it will no longer be considered as having listed under the alternative requirement. In such case the security will satisfy the requirements for the exclusion contained in Rule 3a51–1(a)(2) and no longer be monitored for compliance with the other exclusions from the definition of a penny stock.

The Exchange notes that the proposal to adopt an alternative to the minimum $4 price requirement for companies seeking to list Tier II securities on the Exchange is very similar to rules proposed by Nasdaq considered and approved by the Commission.[44]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[45] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [46] 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.

As described below, the Exchange believes that the proposed rule changes in this filing are consistent with the investor protection requirement of Section 6(b)(5) of the Act because they each will enable the Exchange to help ensure that issuers seeking to list securities on the Exchange have sufficient public float, investor base, and trading interest likely to generate depth and liquidity. Illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices.

I. Restricted Securities

The proposed amendments will adopt new definitions of ''Restricted Securities'' and ''Unrestricted Securities'' in order to exclude securities that are subject to resale restrictions from the Exchange's Initial Liquidity Calculations. The Exchange believes that these amendments will bolster the Exchange's quantitative shareholder requirements, and as a result, better reflect and safeguard the liquidity of a security. The Exchange believes that adopting the new definitions of Restricted Securities and Unrestricted Securities will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because securities subject to resale restrictions are not freely transferrable and therefore excluding Restricted Securities from the Exchange's Initial Liquidity Calculations will help ensure that the Exchange lists only companies with liquid securities and sufficient investor interest to support an exchange listing meeting the Exchange's listing criteria, which will better protect investors. Further, the proposed definitions are substantively identical to Nasdaq Rules 5005(a)(38) (definition of Restricted Security) and 5005(a)(47) (definition of Unrestricted Securities).

A. Publicly Held Shares

The proposed amendments will adopt a new definition of ''Unrestricted Publicly Held Shares'' and change the existing definition of ''Public Shareholders'' to ''Unrestricted Public Shareholders'' so that they each exclude Restricted Securities. The Exchange also proposes to revise its initial listing standards to conform the minimum number of Publicly Held Shares and Unrestricted Public Shareholders to the new or revised definitions. The Exchange believes that these changes will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it will help ensure that a security to be listed has adequate liquidity and is thus suitable for listing and trading on an exchange, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

The Exchange notes that the proposed amendments to the Publicly Held Share requirements are very similar to existing listing standards on Nasdaq.[47]

B. Market Value of Publicly Held Shares

The proposed amendments will revise the definition of ''Market Value'' to exclude Restricted Securities from the calculation of Market Value of Unrestricted Publicly Held Shares as well as revise the Exchange's initial listing standards to conform the minimum Market Value to the new definition. The Exchange believes that these changes will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it will help ensure that a security to be listed has adequate liquidity and investor interest and is thus suitable for listing and trading on an exchange, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

The Exchange notes that the proposed amendments as it relates to the Market Value of Publicly Held Shares are substantively identical to existing listing standards on Nasdaq.[48]

C. Round Lot Holders

The proposed amendments will exclude Restricted Securities from the calculation of the number of Round Lot Holders required to meet the Exchange's initial listing criteria by adopting a new definition of ''Round Lot Holder'' which will exclude Restricted Securities. The Exchange believes that this amendment will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by helping ensure adequate distribution, shareholder interest and a liquid trading market of a security. The Exchange notes that these changes are very similar

[44] *See* Securities Exchange Act Nos. 66159 (January 13, 2012) 77 FR 3021 (January 20, 2012) (SR–NASDAQ–2012–002) (Notice of Filing of Proposed Rule Change To Adopt an Alternative to the $4 Initial Listing Bid Price Requirement for the Nasdaq Capital Market of Either $2 or $3, if Certain Other Listing Requirements Are Met); 66830 (April 18, 2012) 77 FR 24549 (April 24, 2012) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 1, To Adopt an Alternative to the $4 Per Share Initial Listing Bid Price Requirement for the Nasdaq Capital Market of Either $2 Closing Price Per Share or $3 Closing Price Per Share, if Certain Other Listing Requirements are Met).

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

[47] *See e.g.,* the listing standards on the Nasdaq Capital Market (Nasdaq Listing Rules 5505(a)(2) and 5510(a)(3)).

[48] *See e.g.,* the listing standards on the Nasdaq Capital Market (Nasdaq Listing Rules 5505(b)(1)(B) (Equity Standard), 5505(b)(2)(C) (Market Value Standard), 5505(b)(3)(C) (Net Income Standard), and 5510(a)(4) (standard applicable to Preferred Stock or Secondary Classes of Common Stock)).

to listing standards on Nasdaq,[49] and the proposed definition of Round Lot Holder is substantively identical to Nasdaq Rule 5005(a)(41).

D. American Depository Receipts

The proposed amendments will modify the Exchange's rules to state that when considering the security underlying an ADR, the Exchange will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market. However, any restrictions, including those provided as examples in the new definition of ''Restricted Securities,'' which would restrict the underlying security from being freely sold or tradable on its home country market would be considered by the Exchange when calculating ''Unrestricted Publicly Held Shares.'' The Exchange believes that this is appropriate because the purpose of the Initial Liquidity Calculations, and the proposed changes described herein, is to establish investor interest in the foreign issuer and ensure adequate liquidity and distribution of the foreign issuer's underlying security on its home country market, which is held by the depositary bank and represented by the ADR. For this reason, existing Rule 14.3(c)(2) currently looks to the underlying security when calculating Publicly Held Shares, Market Value of Publicly Held Shares, Round Lot and public holders and it is similarly appropriate to consider whether or not the underlying security is freely tradable in its home country market when determining Unrestricted Publicly Held Shares, Market Value of Unrestricted Publicly Held Shares, and Round Lot Holders. Excluding securities that are only restricted from resale or trading in the United States would be not be an appropriate measure of investor interest in or liquidity of the underlying security because the underlying security will not be listed or trading in the U.S. Moreover, applying the new definition of Restricted Securities to securities trading on a foreign market, if the securities trading on the home country market are not already restricted by the examples set forth in the new definition of Restricted Securities, would unduly impose the requirements of a U.S. national securities exchange on those securities, which will not be listed in the U.S. For the foregoing reasons, the Exchange believes that this provision will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Further, the Exchange believes that this provision is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. While the Exchange's Initial Liquidity Calculations for ADRs would be calculated differently than other securities, these differences are not unfair because they recognize the unique structure of ADRs, as already reflected in the existing treatment of ADRs under the Exchange's rules, where the Exchange looks to the underlying security in order to ensure sufficient investor interest and adequate liquidity and distribution of the foreign issuer's underlying security, which is represented by the ADR.

The Exchange notes that this proposed change is substantively identical to existing Nasdaq Rule 5215(b).

II. Minimum Value Requirements for Holders

The Exchange proposes adopting a new requirement that at least 50% of a company's Round Lot Holders hold Unrestricted Securities with a Market Value of at least $2,500. The Exchange notes that the proposed $2,500 threshold is from 6.5 times to 12.5 times larger than the existing minimum investment, and the Exchange believes that this increased amount is a more appropriate representation of genuine investor interest in the company and will make it more difficult to circumvent the requirement through share transfers for no value. As such, the Exchange believes that these amendments will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by requiring more than half of the required number of shareholders hold a more significant investment in the company, and that the company will therefore have an adequate distribution, shareholder interest and a liquid trading market of a security.

The Exchange also notes that the proposed rule is very similar to Nasdaq Rules.[50]

III. Average Daily Trading Volume

The proposed amendments will generally impose a minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including trading volume of the underlying security on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days (*i.e.,* at least 16 days). This will apply to primary equity securities, preferred stock, secondary classes of common stock and ADRs previously trading OTC in the United States that apply to list securities on the Exchange. The Exchange believes this proposed change will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by helping to assure adequate liquidity and price discovery of a security. The Exchange believes that companies trading at least 2,000 shares a day over a period of 30 trading days prior to listing, with trading occurring on more than half of those 30 days, can demonstrate sufficient investor interest to support sustained trading activity when listed on a national stock exchange.

The proposed rule change will provide a limited exemption to this requirement for securities (including ADRs) listed in connection with a firm commitment underwritten public offering of at least $4 million. The Exchange believes that it is consistent with the protection of investors and the public interest, and not unfairly discriminatory, to exempt from the proposed average daily trading volume requirement securities satisfying this exemption because underwriters facilitate appropriate price discovery and will generally make a market in the securities for a period of time after the offering, assisting in the creation of a liquid trading market. Further, the Exchange believes that this exemption is consistent with the protection of investors and the public interest, and not unfairly discriminatory, because the proposed minimum $4 million firm commitment underwritten public offering is large enough to represent a fundamental change in how the company will trade following the offering, such that the prior trading volume will not be representative of the volume following the offering.

Under the proposed rule, the Exchange would consider trading in the security underlying an ADR on the foreign issuer's primary market together with the average daily trading volume of the ADR in the U.S. OTC market in determining whether a foreign issuer seeking to list ADRs satisfies the requirement. The Exchange believes that this distinction is not unfairly discriminatory because the trading

[49] *See e.g.,* Nasdaq Listing Rule 5505(a)(3) and 5510(a)(2).

[50] *See e.g.,* Nasdaq Listing Rules 5505(a)(3) and 5510(a)(2).

volume in the underlying security on the foreign issuer's primary market represents interest in the foreign issuer's security and that interest is reasonably likely to be indicative of investor interest in the ADR.

The proposed rule is very similar to Nasdaq Rules.[51]

IV. Minimum Price Requirement

The proposed rule change will adopt a $2 and $3 initial listing price alternative for Tier II securities listed on the Exchange that is identical to a listing requirement on Nasdaq, which the Commission has already determined is consistent with these requirements.[52]

In this proposed rule amendment, the Exchange proposes to determine compliance with the new alternative based on a security's BZX Official Closing Price, instead of its bid price. The Exchange believes that this change will protect investors and the public interest by ensuring that a trade, reflecting the value of the security to both the buyer and seller, has taken place at the required price. The Exchange also proposes to require that a company meet the applicable closing price for at least five consecutive business days, which will protect investors and the public interest by helping to ensure that the company has achieved more than just fleeting compliance. In addition, the Exchange is providing additional information clarifying how it will determine compliance with the price requirements and how it will review a security that initially listed under the proposed alternative to determine if that security subsequently achieves a $4 price and meets the other initial listing requirements. The Exchange believes that this additional transparency will also help protect investors and the public interest.

The Exchange believes that the proposed price requirement is sufficient to protect investors and would exercise its discretionary authority to deny initial listing if the Exchange was concerned about the ability of a Company to maintain compliance with the continued listing price or believed there were public interest concerns leading to the company's low stock price.

The Exchange believes that the proposed price requirement is sufficient to protect investors and would exercise its discretionary authority to deny initial listing if the Exchange was concerned about the ability of the company to maintain compliance with the continued listing price or believed there were public interest concerns leading to the company's low stock price. Moreover, given that these companies have an exchange-listing available to them, prohibiting listing on the Exchange does not serve to protect investors and the Exchange believes that investors would be at least as well protected by having these companies instead listed on the Exchange, where they would be subject to oversight by the Exchange's regulatory staff. As such, the Exchange believes that the proposed rule change, as amended, is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, as noted above, the proposed rule change would adopt the identical initial listing price requirement on Nasdaq of $2 or $3 depending on the security's other characteristics. As such, the Exchange believes that its listing requirements would remain substantially similar to those of Nasdaq. In addition, as noted, the proposed rule change, as amended, would require that any security qualifying under this new price alternative also meet the requirements of Rule 3a51–1(g)[53] and that these securities therefore would not be considered ''penny stocks'' under the Act at the time of their listing. To the extent that a security no longer qualified for the exclusion under Rule 3a51–1(g), or any of the other exclusions in Rule 3a51–1, the Exchange would notify the public by including the security in a list published on the Exchange's website.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed rule change will not impose any unnecessary burden on intramarket competition as all domestic and foreign companies seeking to list primary equity securities, preferred stock, secondary classes of common stock or subscription receipts would be affected in the same manner by these changes. As discussed above, companies listing ADRs would be treated differently in some respects than companies listing other primary equity securities, but those differences reflect the unique characteristics of ADRs and does not impose an unnecessary burden on competition.

The proposed rule changes will expand the competition for the listing of equity securities as they will enable the Exchange to compete for the listing of companies that are currently not qualified for listing on the Exchange but are qualified to list on other national securities exchanges. To the extent that companies prefer listing on a market with these proposed listing standards, other exchanges can choose to adopt similar enhancements to their requirements. As such, these changes are neither intended to, nor expected to, impose any burden on competition between exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–036 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.

[51] *See e.g.,* 5505(a)(5) and 5510(a)(6).

[52] *Supra* note 44.

[53] 17 CFR 240.3a51–1(g).

All submissions should refer to file number SR–CboeBZX–2023–036. 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–CboeBZX–2023–036 and should be submitted on or before July 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12665 Filed 6–13–23; 8:45 am]

BILLING CODE 8011–01–P

[54] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97671; File No. SR–NSCC–2022–015]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Make Certain Enhancements to the Gap Risk Measure and the VaR Charge

June 8, 2023.

On December 2, 2022, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2022–015 (the ''Proposed Rule Change'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on December 21, 2022,[3] and the Commission has received one comment regarding the changes proposed in the Proposed Rule Change.[4]

On January 24, 2023, pursuant to section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] On March 20, 2023, the Commission instituted proceedings, pursuant to section 19(b)(2)(B) of the Act,[7] to determine whether to approve or disapprove the Proposed Rule Change.[8]

Section 19(b)(2) of the Act [9] provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[10] The 180th day after publication of the Notice in the **Federal Register** is June 19, 2023.

The Commission is extending the period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to section 19(b)(2)(B)(ii)(II) of the Act,[11] the Commission designates August 18, 2023, as the date by which the

Commission should either approve or disapprove the Proposed Rule Change SR–NSCC–2022–015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12661 Filed 6–13–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96511 (Dec. 15, 2022), 87 FR 78157 (Dec. 21, 2022) (File No. SR–NSCC–2022–015) (''Notice of Filing'').

[4] Comments are available at *https://www.sec.gov/comments/sr-nscc-2022-015/srnscc2022015.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 96740 (Jan. 24, 2023), 88 FR 5953 (Jan. 30, 2023) (SR–NSCC–2022–015).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Securities Exchange Act Release No. 97171 (March 20, 2023), 88 FR 17898 (March 24, 2023 (File No. SR–NSCC–2022–015).

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2)(B)(ii)(II).

[11] *Id.*

[12] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97673; File No. SR–BOX–2023–15]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Separate Fees and Rebates on Non-Auction Transactions for Options Overlying the Standard and Poor's Depositary Receipts Trust

June 8, 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, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule to establish separate fees and rebates on Non-Auction transactions for options overlying the Standard and Poor's Depositary Receipts Trust (''SPY'') on the BOX Options Market LLC (''BOX'') options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on June 1, 2023. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *https://rules.boxexchange.com/rulefilings.*

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 Section IV, Non-Auction Transactions, of the BOX Fee Schedule. Specifically, the Exchange proposes to establish separate fees and rebates on Non-Auction transactions for options overlying the Standard and Poor's Depositary Receipts Trust (''SPY'').[5]

Non-Auction Transactions

Currently, in Section IV.A of the BOX Fee Schedule, fees and credits for Non-Auction transactions are assessed depending on three factors: (i) the account type of the Participant submitting the order; (ii) whether the Participant is a liquidity provider or liquidity taker; and (iii) the account type of the contra party.

The Exchange now proposes to assess separate fees for SPY Non-Auction transactions. Specifically, when a Public Customer SPY order interacts with a Public Customer or non-Public Customer SPY order, the Exchange will not assess a fee or credit.

Further, when a Professional Customer or Broker Dealer SPY order interacts with a Public Customer SPY order, the Exchange proposes to assess a $0.60 fee when making liquidity or $0.50 when taking liquidity. When a Professional Customer or Broker Dealer SPY order interacts with a Professional Customer, Broker Dealer, or Market Maker SPY order, the Exchange proposes to assess $0.15 for making liquidity or $0.50 for taking liquidity. The Exchange notes that these fees are currently assessed to SPY transactions today as SPY is a Penny Interval Class.[6]

When a Market Maker SPY order interacts with a Public Customer SPY order, the Exchange proposes to assess no fee when making liquidity or $0.50 when taking liquidity. When a Market Maker SPY order interacts with a Professional Customer, Broker Dealer, or Market Maker SPY order, the Exchange proposes to assess no fee when making liquidity or $0.50 when taking liquidity.

The proposed fee structure for SPY Non-Auction Transactions will be as follows:

Account type	Contra party	SPY	
		Maker	Taker
Public Customer	Public Customer	$0.00	$0.00
	Professional Customer/Broker Dealer	0.00	0.00
	Market Maker	0.00	0.00
Professional Customer or Broker Dealer	Public Customer	0.60	0.50
	Professional Customer/Broker Dealer	0.15	0.50
	Market Maker	0.15	0.50
Market Maker	Public Customer	0.00	0.50
	Professional Customer/Broker Dealer	0.00	0.50
	Market Maker	0.00	0.50

For example, under the proposal, if a Public Customer submitted a SPY order to the BOX Book (making liquidity), the Public Customer would not be offered a rebate or charged a fee if the order interacted with a Market Maker's SPY order and the Market Maker (taking liquidity) would be charged $0.50.

Tiered Volume Rebate for Non-Auction Transactions

The Exchange also proposes to amend Section IV.A.1 of the Fee Schedule, Tiered Volume Rebate for Non-Auction Transactions. Specifically, the Exchange proposes to adopt separate rebates for SPY transactions for Public Customers in Non-Auction Transactions. For Tier 1, where percentage thresholds of Public Customer volume is 0.000%–0.129%, the Exchange proposes no rebates. For Tier 2, where percentage thresholds of Public Customer volume is 0.130%–0.339%, the Exchange proposes to assess a $0.05 rebate when making liquidity or no rebate when taking liquidity. For Tier 3, where percentage thresholds of Public Customer volume is 0.340%–0.549%, the Exchange proposes

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Options overlying Standard and Poor's Depositary Receipts/SPDRs (''SPY'') are based on the SPDR exchange-traded fund (''ETF''), which is designed to track the performance of the S&P 500 Index.

[6] *See* BOX Informational Circular 2022–11 available at *https://boxoptions.com/assets/IC-2022-11-Penny-Program-Class-Removals-1.pdf.*

a $0.10 rebate when making liquidity or no rebate when taking liquidity. For Tier 4, where percentage thresholds of Public Customer volume is 0.550% and above, the Exchange proposes a $0.27 rebate when making liquidity or no rebate for taking liquidity. The proposed rebate structure will be as follows:

Tier	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Per contract rebate	
		SPY	
		Maker	Taker
1	0.000%–0.129%	$0.00	$0.00
2	0.130%–0.339%	(0.05)	0.00
3	0.340%–0.549%	(0.10)	0.00
4	0.550% and Above	(0.27)	0.00

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange's proposal to adopt separate fees for SPY Non-Auction Transactions is reasonable, equitable, and not unfairly discriminatory because pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in the most actively traded options classes. The Exchange believes that eliminating maker fees for Market Makers when trading against Public Customers will incentivize Market Makers to provide tighter spreads in SPY which may lead to increased order flow to BOX and result in increased liquidity on the Exchange, benefitting all market participants. The Exchange also proposes to eliminate Public Customer rebates for transactions when the Market Maker is a maker and the Public Customer is a taker because BOX will no longer receive fees when the Market Maker is a maker and the Public Customer is a taker. The Exchange notes that other exchanges assess separate fees and credits for SPY transactions,[8] and that it currently assesses separate fees and rebates for SPY transactions for PIP and COPIP Transactions on BOX.[9] The Exchange also notes that SPY has the most actively traded options [10] and therefore the Exchange believes that separate fees are appropriate to more effectively attract order flow to BOX.

Non-Auction Transactions

The Exchange believes the proposed Non-Auction Transaction fees for Public Customer SPY transactions are reasonable. Under the proposal, Public Customers will never pay a fee for their SPY Non-Auction Transactions and may be eligible for a rebate depending on their monthly volume for all transactions executed on BOX under Section IV.A.1. The Exchange believes that charging no fee to Public Customers for SPY Non-Auction Transactions is equitable and not unfairly discriminatory. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for Public Customer benefit. Accordingly, the Exchange believes that charging no fee for Public Customers for their SPY transactions is appropriate and not unfairly discriminatory. The Exchange notes that where the Public Customer is a taker against Professional Customer/Broker Dealer or Market Maker, the Public Customer will no longer receive a rebate. The Exchange believes that any disincentive created by removing this rebate will be more than offset by Market Makers providing tighter spreads in response to the elimination of maker fees for Market Makers trading against Public Customers. Tighter spreads may attract a higher level of Public Customer order flow to the BOX Book and create liquidity, which will ultimately benefit all Participants trading on BOX.

The Exchange believes that charging Professional Customers and Broker Dealers higher fees than Public Customers for SPY Non-Auction Transactions is equitable and not unfairly discriminatory. Professional Customers, while Public Customers by virtue of not being Broker Dealers, generally engage in trading activity more similar to Broker Dealer proprietary trading accounts (submitting more than 390 standard orders per day on average). The Exchange believes that the higher level of trading activity from these Participants will draw a greater amount of BOX system resources than that of non-professional, Public Customers. Because this higher level of trading activity will result in greater ongoing operational costs, the Exchange aims to recover its costs by assessing Professional Customers and Broker Dealers higher fees for transactions. The Exchange notes that the proposed SPY transaction fees for Professional Customers and Broker Dealers is identical to what their SPY transactions are assessed today.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to assess no maker fee for BOX Market Makers trading against Public Customers and to eliminate rebates when the Public Customer is a taker against a Professional Customer, Broker Dealer, or Market Maker for SPY Non-Auction Transactions because, when being charged no fee for their transactions, Market Makers may tighten their spreads in SPY and therefore will increase market quality in SPY options. Specifically, Market Makers can provide higher volumes of liquidity and lowering certain fees will help attract a higher level of Market Maker order flow to the BOX Book and create liquidity, which the Exchange believes will make Public Customer taker rebates unnecessary to attract order flow. As such, the Exchange believes it is appropriate that Market Makers be charged lower transaction fees than Professional Customers and Broker Dealers for SPY Non-Auction Transactions and that Public Customers not receive rebates when the Public Customer is a taker against a

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *See* Nasdaq Phlx LLC (''Phlx'') Fee Schedule, Section 3 (Rebates and Fees for Adding and Removing Liquidity in SPY). The Exchange notes that while PHLX differentiates SPY from other symbols for fee purposes, the structure and amount of the fees are different than the proposal discussed herein.

[9] *See* BOX Fee Schedule, Section IV.B (PIP and COPIP Transactions).

[10] *See https://www.optionseducation.org/toolsoptionquotes/today-s-most-active-options* (providing a daily list of the most active options by type).

Professional Customer, Broker Dealer, or Market Maker.

Tiered Volume Rebate for Non-Auction Transactions

The Exchange believes that the proposed Public Customer SPY rebates in the Tiered Volume Rebate for Non-Auction Transactions structure are reasonable, equitable, and not unfairly discriminatory. The proposed volume thresholds and applicable rebates for SPY are meant to incentivize Public Customers to post orders on the Exchange to obtain the benefit of the rebate, which will in turn benefit all market participants by increasing liquidity on the Exchange. The Exchange notes that the proposed SPY maker rebates are identical to the rebates that are currently assessed to SPY transactions today. The Exchange believes that offering no rebate for SPY taker transactions is reasonable and appropriate because assessing no maker fee for Market Makers may result in tighter spreads in SPY, thus eliminating the need for additional volume-based incentives for Public Customers to take liquidity on BOX.

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.

The Exchange believes the proposed changes to the fees in the Non-Auction Transactions fee structure will not impose a burden on intramarket competition as BOX believes that the changes will result in the Participants being charged appropriately for their SPY transactions and are designed to incentivize order flow to BOX by incentivizing Market Makers to provide tighter spreads. Submitting an order is entirely voluntary and Participants can determine which type of order they wish to submit, if any, to BOX. Further, the Exchange believes the proposed changes in the Non-Auction Transaction fee structure will not impose a burden on intermarket competition as another exchange currently assesses separate fees for SPY transactions.[11]

The Exchange believes the proposed changes to the rebate structure for Public Customer Non-Auction Transactions will not impose a burden on competition among various Exchange Participants. The Exchange believes that the proposed changes will result in Public Customers being rebated appropriately for their SPY transactions. Further, the Exchange believes that this proposal will enhance competition between exchanges because it is designed to allow the Exchange to better compete with other exchanges for this order flow.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[12] and Rule 19b–4(f)(2) thereunder,[13] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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–BOX–2023–15 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–BOX–2023–15. 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–BOX–2023–15 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. 2023–12663 Filed 6–13–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 88 FR 38117, June 12, 2023.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, June 15, 2023 at 2:00 p.m.

[11] *See supra* note 8.

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

CHANGES IN THE MEETING: The Closed Meeting scheduled for Thursday, June 15, 2023 at 2:00 p.m. has been changed to Thursday, June 15, 2023 at 10:00 a.m.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: June 12, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–12822 Filed 6–12–23; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97672; File No. SR–CBOE–2023–018]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Make Permanent the Operation of Its Flexible Exchange Options Pilot Program Regarding Permissible Settlement Values for FLEX Index Options

June 8, 2023.

On April 10, 2023, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent the operation of its Flexible Exchange Options (''FLEX Options'') pilot program (''Pilot Program'') regarding permissible exercise settlement values for FLEX Index Options. The proposed rule change was published for comment in the **Federal Register** on April 28, 2023.[3]

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is June 12, 2023.

The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates July 20, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CBOE–2023–018).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12662 Filed 6–13–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97368 (April 24, 2023), 88 FR 26353.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SURFACE TRANSPORTATION BOARD

[Docket No. MCF 21107]

Van Pool Transportation LLC—Acquisition of Control—Royal Coach Lines, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving and authorizing finance transaction.

SUMMARY: On May 15, 2023, Van Pool Transportation LLC (Van Pool or Applicant), a noncarrier, filed an application for Van Pool to acquire control of an interstate passenger motor carrier, Royal Coach Lines, Inc. (Royal Coach), by acquiring all of the outstanding equity shares from Steven DiPaolo, the sole shareholder of Royal Coach. The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by July 31, 2023. If any comments are filed, Van Pool may file a reply by August 14, 2023. If no opposing comments are filed by July 31, 2023, this notice shall be effective on August 1, 2023.

ADDRESSES: Comments may be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, send one copy of comments to Van Pool's representative: Andrew K. Light, Scopelitis, Garvin, Light, Hanson & Feary, P.C., 10 W Market Street, Suite 1400, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 740–5567. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: According to the application, Van Pool is a limited liability company organized under Delaware law and headquartered in Wilbraham, Mass. (Appl. 2.) Applicant states that it is not a federally regulated carrier but that it indirectly owns and controls all of the equity and voting interest in seven interstate passenger motor carriers that are among its operating subsidiaries (the Affiliate Regulated Carriers). (*Id.* at 2.) The Affiliate Regulated Carriers are as follows[1]:

- NRT Bus, Inc., which primarily provides non-regulated student school bus transportation services in Massachusetts (Essex, Middlesex, Norfolk, Suffolk, and Worcester counties), and occasional charter services;
- Trombly Motor Coach Service, Inc., which primarily provides non-regulated school bus transportation services in Massachusetts (Essex and Middlesex counties), and occasional charter services;
- Salter Transportation, Inc., which primarily provides non-regulated school bus transportation services in Massachusetts (Essex County) and southern New Hampshire, and occasional charter services;
- Easton Coach Company, LLC, which provides (i) intrastate paratransit, shuttle, and line-run services under contracts with regional transportation authorities and other organizations, primarily in New Jersey and eastern Pennsylvania, and (ii) private charter motor coach and shuttle services (interstate and intrastate), primarily in eastern Pennsylvania;
- F.M. Kuzmeskus, Inc., which provides (i) non-regulated school bus transportation services in western Massachusetts and southern Vermont, (ii) intrastate and interstate motor coach and limousine charter services, and (iii) limited intrastate and interstate charter services;
- Alltown Bus Service, Inc., which primarily provides non-regulated school bus transportation services in the

[1] Additional information about these motor carriers, including U.S. Department of Transportation (USDOT) numbers, motor carrier numbers, and USDOT safety fitness ratings, can be found in the application. (*See* Appl. 3–6; *id.* at Ex. A.)

metropolitan area of Chicago, Ill., and its northern suburbs, and occasional charter services; and

• DS Bus Lines, Inc., which primarily provides (i) non-regulated school bus transportation services in Kansas (Beloit, Kansas City, Lincoln, Olathe, and Shawnee), Missouri (Belton and Smithville), Colorado (the metropolitan area of Denver), and Oklahoma (the metropolitan area of Tulsa), (ii) intrastate employee shuttle services in Colorado and Texas, and (iii) occasional charter services.[2]

According to the application, Van Pool also has operating subsidiaries that provide transportation services that do not involve regulated interstate transportation or require interstate passenger authority, primarily in the northeastern and central portions of the United States. (Appl. 2–3.) Van Pool states that it is indirectly owned and controlled by investment funds affiliated with Audax Management Company, LLC, a Delaware limited liability company. (*Id.* at 8.)[3]

The application explains that Royal Coach, the carrier being acquired, is a New York corporation headquartered in Yonkers, N.Y., and provides the following services: (i) primarily non-regulated school bus transportation services under contracts with schools in the metropolitan area of Westchester County, N.Y., and southern Connecticut (Westchester Area), and (ii) contract and charter transportation services in the Westchester Area for activities such as summer camps, events, group trips, and other activities, utilizing the same buses and vans at times when those vehicles are not in use for school activities. (*Id.* at 6–7.) According to the application, less than 1% of Royal Coach's charter revenue was derived from regulated interstate moves. (*Id.* at 7.) The application states that Royal Coach holds intrastate contract carrier and charter carrier operating authorities issued by the New York State Department of Transportation, as well as interstate carrier operating authority under FMCSA Docket No. MC–139888 and a safety rating of ''Satisfactory.'' (*Id.* at 6.) Van Pool states that it will acquire control of Royal Coach by acquiring all of the outstanding equity shares from Steve DiPaolo, the sole shareholder of Royal Coach. (*Id.* at 1, 6.)

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least (1) the effect of the proposed transaction on the adequacy of transportation to the public, (2) the total fixed charges that result from the proposed transaction, and (3) the interest of affected carrier employees. Van Pool has submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), *see* 49 CFR 1182.2(a)(7), and a jurisdictional statement under 49 U.S.C. 14303(g) that the aggregate gross operating revenues of the involved carriers exceeded $2 million during the 12-month period immediately preceding the filing of the application, *see* 49 CFR 1182.2(a)(5). (*See* Appl. 9–13.)

Van Pool asserts that the proposed transaction will not have a material, detrimental impact on the adequacy of transportation services available for the public. (*Id.* at 10.) According to Van Pool, Royal Coach will continue to provide the same services it currently provides under the same name; however, going forward, Royal Coach will operate within the holdings of Applicant, an organization thoroughly experienced in passenger transportation operations. (*Id.*) Van Pool states that it is experienced in the same market segments served by Royal Coach (school bus transportation and private charter transportation) and that the passenger carrier management capacity of Applicant is expected to result in improved operating efficiencies, increased equipment utilization rates, and cost savings derived from economies of scale, which in turn will help to ensure the provision of adequate service to the public. (*Id.*) Van Pool also asserts that the addition of Royal Coach will enhance the viability of Applicant's organization and its subsidiaries. (*Id.*)

Van Pool states the impact of the transaction on the regulated motor carrier industry will be minimal at most and that neither competition nor the public interest will be adversely affected. (*Id.* at 13.) According to Van Pool, the school bus transportation market is competitive in the Westchester Area, with several local, regional, and national school bus service providers in operation. (*Id.* at 12.) Van Pool also asserts that a number of passenger charter transportation providers serve the Westchester Area. (*Id.* at 12–13.) In addition, Van Pool asserts that all charter service providers, including Royal Coach, compete with other modes of passenger transportation, including rail, low-cost airlines, carpools, and passenger transportation network companies. (*Id.* at 13.) Van Pool states that there is virtually no overlap in the service areas and/or customer bases among the Affiliate Regulated Carriers and Royal Coach. (*Id.*)

Van Pool asserts that the proposed transaction will increase fixed charges in the form of interest expenses because funds will be borrowed to assist in financing the transaction; however, Van Pool maintains that the increase will not impact the provision of transportation services to the public. (*Id.* at 10–11.) Van Pool also asserts that it does not expect the transaction to have substantial impacts on employees or labor conditions, and it does not anticipate a measurable reduction in force or changes in compensation levels or benefits at Royal Coach. (*Id.* at 11.) Van Pool submits, however, that staffing redundancies could result in limited downsizing of back-office and/or managerial-level personnel. (*Id.*)

Based on Van Pool's representations, the Board finds that the acquisition as proposed in the application is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6. If no opposing comments are filed by expiration of the comment period, this notice will take effect automatically and will be the final Board action in this proceeding.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available at *www.stb.gov.*

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.

3. This notice will be effective August 1, 2023, unless opposing comments are filed by July 31, 2023. If any comments are filed, Applicant may file a reply by August 14, 2023.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW, Washington, DC 20530; and (3) the U.S. Department of

[2] In *Van Pool Transportation LLC—Acquisition of Control—Local Motion, Inc.,* MCF 21104 (STB served Feb. 10, 2023), Applicant received approval to acquire control of Local Motion, Inc., which became effective on March 28, 2023, but Applicant states that it has not yet completed the transaction. (Appl. 3 n.4.)

[3] Further information about Applicant's corporate structure and ownership can be found in the application. (*See* Appl. 8–9; *id.* at Ex. B.)

Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590.

Decided: June 8, 2023.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2023–12706 Filed 6–13–23; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the I–26 Asheville Connector in North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other federal agencies.

SUMMARY: This notice announces actions taken by FHWA and the other Federal agencies that are final. The actions relate to the proposed improvements to upgrade the I–26 corridor in Asheville from south of the I–26/I–40/I–240 interchange through the I–240 interchange with US 19–23–74A/Patton Avenue west of the French Broad River so that I–240 can be redesignated as I–26 in Buncombe County, North Carolina. The project is commonly referred to as the I–26 Asheville Connector and is identified as State Transportation Improvement Program Project (STIP) No. I–2513. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filled on or before November 13, 2023. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Clarence W. Coleman, P. E., Preconstruction and Environment Director, FHWA, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina, 27601–1418; telephone: (919) 747–7014; email: *clarence.coleman@dot.gov.* FHWA North Carolina Division's regular office hours are 8 a.m. to 5 p.m. (Eastern Time). For North Carolina Department of Transportation (NCDOT): Mr. Derrick Weaver, P. E., Deputy Director of Technical Services, NCDOT, 1536 Mail Service Center, Raleigh, North Carolina 27699–1536; telephone (919) 707–2516, email: *dweaver@dot.state.nc.us.* NCDOT's regular office hours are 8 a.m. to 5 p.m. (Eastern Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of North Carolina: proposed improvements to upgrade the I–26 corridor in Asheville from south of the I–26/I–40/I–240 interchange through the I–240 interchange with US 19–23–74A/Patton Avenue west of the French Broad River so that I–240 can be redesignated as I–26. The proposed action includes improvements to the I–40 interchanges with Smoky Park Highway, I–26/I–240 and Brevard Road, upgrading I–240 (as well as interchanges at Brevard Road, Amboy Road, and Haywood Road) from the I–26/I–240 interchange with I–40 to the I–240 interchange with Patton Avenue west of the French Broad River, constructing I–26 on new location from the Patton Avenue interchange north across the French Broad River, tying into US 19/23/70 south of Broadway Street, and widening Riverside Drive from Hill Street to Broadway Street. The 7.0-mile project is commonly referred to as the I–26 Asheville Connector and is identified in the Statewide Transportation Improvement Plan (STIP) as STIP No. I–2513. The actions by the Federal Agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on January 9, 2020, in the FHWA ROD approved on May 26, 2023, and in other documents in the project record. The FEIS, ROD, and other project records are available by contacting the FHWA or the NCDOT at the addresses provided above. The FEIS and ROD can be viewed and downloaded from the project website at *https://www.ncdot.gov/projects/asheville-i-26-connector/Pages/default.aspx,* or obtained from any contact listed above.

This notice applies to all Federal Agency decisions that are final as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401 *et seq.*].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303; 23 U.S.C. 138]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Anadromous Fish Conservation Act [16 U.S.C. 757(a) *et seq.*], Fish and Wildlife Coordination Act [16 U.S.C. 661 *et seq.*], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevenson Fishery Conservation and Management Act of 1976 [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966 [54 U.S.C. 306108]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa) at seq.]; Archeological and Historic Preservation Act [54 U.S.C. 312501–312508]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000(d) *et seq.*]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251 *et seq.*]; Coastal Barrier Resources Act [16 U.S.C. 3501–3510]; Coastal Zone Management Act [16 U.S.C. 1451 *et seq.*]; Land and Water Conservation Fund (LWCF) [54 U.S.C. 200301 *et seq.*]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f) *et seq.*]; Rivers and Harbors Act of 1899 [33 U.S.C. 401 *et seq.*]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation [23 U.S.C. 119(g) and 133(b)(14)]; Flood Disaster Protection Act [42 U.S.C. 4001 *et seq.*].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601 *et seq.*]; Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 11001 *et seq.*]; Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901 *et seq.*].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination

with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Clarence W. Coleman,

Preconstruction and Environment Director, Raleigh, North Carolina.

[FR Doc. 2023–12674 Filed 6–13–23; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2023–01; Evaluation of Policies and Procedures Related to the Use and Maintenance of Hot Bearing Wayside Detectors (Supplement)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory; notice No. 2.

SUMMARY: On March 3, 2023, in response to a series of rail accidents suspected of being caused by burnt journal bearings, FRA published Safety Advisory 2023–01 addressing the use and maintenance of hot bearing detectors (HBDs). Since publication of that Safety Advisory, FRA has continued to evaluate railroads' use of HBDs and on May 10, 2023, in New Castle, Pennsylvania, another accident occurred that is suspected of being the result of a burnt journal bearing. Preliminary information related to this most recent accident shows that the train involved passed a HBD which alarmed prior to the accident. Accordingly, FRA is issuing this Notice to supplement Safety Advisory 2023–01 with one additional recommendation. Specifically, this Notice adds a fifth recommendation to Safety Advisory 2023–01 recommending that railroads take action to evaluate the resiliency and accuracy of the overall process used to monitor and measure bearing health.

FOR FURTHER INFORMATION CONTACT: Karl Alexy, Associate Administrator for Railroad Safety and Chief Safety Officer, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202)–493–6282.

Disclaimer: This Safety Advisory is considered guidance pursuant to DOT Order 2100.6A (June 7, 2021). Except when referencing laws, regulations, policies, or orders, the information in this Safety Advisory does not have the force and effect of law and is not meant to bind the public in any way. This document does not revise or replace any previously issued guidance.

SUPPLEMENTARY INFORMATION:

Background

In response to recent rail accidents, on February 21, 2023, while calling on the freight rail industry and Congress to take action to improve rail safety, U.S. Department of Transportation Secretary Pete Buttigieg reiterated the Department's commitment to enhancing rail safety through specific targeted actions.[1] In addition to various regulatory and other activities FRA already had underway at the time of Secretary Buttigieg's announcement, one of the actions announced included a focused inspection program of routes over which high-hazard flammable trains (HHFTs)[2] and other trains transporting large volumes of hazardous materials travel (Route Assessment). Subsequently, in response to continued derailments and the death of a Norfolk Southern Railway (NS) worker, FRA launched a supplemental safety assessment of NS, issued three safety advisories and two safety bulletins[3] calling attention to the risks FRA identified in the recent accidents.

HHFT Route Assessment

As noted above, in March 2023, FRA initiated a nationwide comprehensive assessment of HHFT routes and other rail routes over which large quantities of other hazardous materials are transported. The Route Assessment includes all FRA technical safety disciplines (*i.e.,* hazardous materials, track, signal and train control, mechanical, operating practices, and grade crossing). The Route Assessment is designed to evaluate the overall condition of the rail infrastructure (including, but not limited to, the track, rolling stock, signal systems, and other equipment that affects or monitors the safety of rail operations) and railroads' compliance with both FRA safety regulations and the regulations of the Pipeline and Hazardous Materials Safety Administration.

Initial observations from the Route Assessment point to significant inconsistencies in the railroads' application of best practices associated with the installation and maintenance of HBDs, as well as in the assessment and use of HBD data to address failing or failed bearings. FRA is continuing to evaluate the tools, algorithms, and other methodologies railroads use to evaluate bearing health, and the training practices for all railroad employees involved in monitoring bearing health information and/or taking action in response to that information.

Supplemental Safety Assessment of Norfolk Southern

On March 15, 2023, FRA initiated a supplemental safety assessment of NS (NS Assessment), with a specific focus on safety culture and training, as well as a deep dive into compliance with selected regulations and the status of recommendations from FRA's 2022 System Audit of NS performed January through May of 2022.[4] The investigation phase of FRA's NS Assessment was completed mid-May 2023, and analysis of survey results is currently in process. While FRA continues to analyze results to confirm FRA's findings and any recommendations, several areas of concern have arisen, including the resiliency of NS's processes and procedures for monitoring and actioning bearing health information from the railroad's system of HBDs.

New Castle, Pennsylvania Accident—May 10, 2023

On May 10, 2023, at 11:24 p.m., a NS general merchandise train (*i.e.,* not an HHFT) derailed nine cars in New Castle, Pennsylvania. Five cars derailed on a bridge over the Mahoning River. Both the National Transportation Safety Board and FRA are investigating the accident and both investigations are ongoing. Although no final conclusions as to the cause of the accident have been identified yet, preliminary information indicates that a burnt journal bearing played a role in the derailment and that the train involved passed at least one HBD that alarmed before the derailment. FRA is probing the communication and

[1] *See https://www.transportation.gov/briefing-room/us-department-transportation-fact-sheet-steps-forward-freight-rail-industry-safety.*

[2] An HHFT is ''a single train transporting 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block or a single train carrying 35 or more loaded tank cars of a Class 3 flammable liquid throughout the train consist.'' 49 CFR 171.8.

[3] *https://railroads.dot.gov/elibrary/safety-advisory-2023-01-evaluation-policies-and-procedures-related-use-and-maintenance-hot; https://railroads.dot.gov/elibrary/safety-advisory-2023-02-train-makeup-and-operational-safety-concerns; https://railroads.dot.gov/elibrary/safety-advisory-2023-03-accident-mitigation-and-train-length; https://railroads.dot.gov/elibrary/safety-bulletin-2023-01-switching-operation-accident; https://railroads.dot.gov/sites/fra.dot.gov/files/2023-03/Safety%20Bulletin%202023-02%20%28031623%29.pdf.*

[4] FRA Audit Number: 2022–NS Special Audit –01–1; *https://railroads.dot.gov/elibrary/fra-audit-report-norfolk-southern-railway-company.*

timing of the alarm to both the locomotive and the dispatch center, as well as the history and performance of the bearing in question. Of particular interest is the impact of failures or delays in the communication of bearing health information to those involved in the data analysis and decision-making process as to what action to take in response to the information and to enable the crew to take appropriate action.

Safety Advisory 2023–01 Published March 3, 2023

In Safety Advisory 2023–01, FRA recognized the value of wayside detection systems if they are appropriately installed, maintained, and utilized. As noted in that Safety Advisory, if implemented properly, wayside detectors enable railroads to assess the health of rail equipment and infrastructure to enable the early identification of mechanical or other defects. Nonetheless, as explained in Safety Advisory 2023–01, even with industry's widespread use of wayside detection systems (such as HBDs), since 2021, at least five derailments have occurred that are suspected of being caused by mechanical defects (burnt journal bearings in particular).[5]

Each railroad involved in these five recent derailments had systems of HBDs intended to identify defective bearings or bearings experiencing anomalies that could lead to failures. However, in each case, despite the fact that those HBDs flagged at least one suspected bearing on each train, the derailments occurred. Accordingly, Safety Advisory 2023–01, as originally published, focused its recommendations on inspection and maintenance procedures related to the HBDs, the thresholds at which detectors are set to flag anomalies, and the training and qualification of personnel responsible for installing, inspecting, and maintaining HBDs. As originally published, the Safety Advisory also recommended that railroads ''review current procedures governing actions responding to HBD alerts to ensure required actions are commensurate with the risk of the operation involved,'' but the Advisory did not make any recommendations related to ensuring the effectiveness, reliability, and robustness of such procedures. In other words, as originally published, Safety Advisory 2023–01 did not address the effectiveness of railroads' established processes and procedures in ensuring adequate and accurate bearing health data is gathered from detectors, analyzed, and communicated to all railroad personnel responsible for making decisions or taking action in response to that data. FRA notes that the process of gathering, monitoring, reporting, analyzing, and actioning information from detectors includes tasks that, if incorrectly done, can introduce risk. For instance, an error in HBD installation or maintenance that is not identified by commissioning testing, may impact the reporting of HBD measurements. Similarly, processes with insufficient redundancies or cross-checks to ensure each necessary step or task is performed timely and accurately may lead to failures in the processes that allow a valid detector alert or alarm to go undetected. Accordingly, in addition to the four recommendations contained in Safety Advisory 2023–01 as originally published, with this supplementary notice, FRA is making a fifth recommendation to railroads. Specifically, FRA recommends that railroads evaluate each step and task performed by railroad personnel to identify any potential points where non-revealing failures may occur (*i.e.,* any steps or tasks that, if not performed or performed incorrectly or timely, could mislead decision makers when actioning a HBD report or lack of a HBD report). FRA also recommends that railroads implement appropriate safeguards to minimize the impact of any non-revealing failures when monitoring, analyzing, and responding to detector information.

Recommended Railroad Action

In light of the above discussion, FRA is revising the recommendations included in Safety Advisory 2023–01 to add recommendation number 5 below. For ease of reference, FRA's existing recommendations 1 through 4 are reproduced below, along with additional recommendation 5. Accordingly, FRA recommends that railroads take the following actions:

1. Review existing HBD system inspection and maintenance policies and procedures for compliance with existing industry standards and manufacturer recommendations for HBDs.

2. Review existing procedures to train and qualify personnel responsible for installing, inspecting, and maintaining HBDs to ensure they have the appropriate knowledge and skills. Railroads should also develop and implement appropriate training on the inspection and maintenance requirements for HBDs and provide that training at appropriate intervals to ensure the required knowledge and skill of inspection and maintenance personnel. Further, railroads should evaluate their training content and training frequency to ensure any employee who may be called upon to evaluate a suspect bearing has the necessary training, experience, and qualifications. FRA also encourages railroads to ensure these individuals are available at all hours of operations across a railroad's network.

3. Review current HBD detector thresholds in light of recent derailments, and all other relevant available data (including data from any close calls or near misses), to determine the adequacy of the railroad's current thresholds. Thresholds should be established for single measurement as well as multiple measurements of individual bearings to enable temperature trend analysis.

4. Review current procedures governing actions responding to HBD alerts to ensure required actions are commensurate with the risk of the operation involved. With regard to trains transporting any quantity of hazardous materials, FRA recommends railroads adopt the procedures outlined in AAR's OT–55 for key trains as an initial measure.

5. Rigorously evaluate the resiliency and accuracy of the overall process used to monitor and act upon information from wayside detectors, with specific focus on steps and tasks that, if not performed or performed incorrectly, could mislead decision makers. The process of monitoring, reporting, inspecting, analyzing, and acting on information from detectors includes tasks that, if incorrectly executed, could introduce risk. Railroads should also evaluate each step and task performed by railroad personnel to pinpoint any HBD reporting failures and implement appropriate safeguards to minimize the impact of those failures when monitoring, analyzing, and responding to detector information.

Conclusion

In general, as noted in Safety Advisory 2023–01 as originally published, the issues identified in this Safety Advisory and this supplementary notice are indicators of a railroad's safety culture. Implementing procedures that ensure safety, and training personnel so those procedures become

[5] The five derailments include three derailments that occurred on NS (Warner Roberts, Georgia (July 12, 2022); Sandusky, Ohio (October 8, 2022); and East Palestine, Ohio (February 3, 2023)) and two derailments that occurred on the Kansas City Southern Railway (KCS) in 2021. The three NS derailments are discussed in detail in Safety Advisory 2023–01 and the 2021 KCS derailments occurred on August 2, 2021, and December 3, 2021, and in both cases, a HBD flagged a suspect bearing, but the crews were either unable to act in time to prevent a derailment or were directed to continue the train move resulting in a derailment.

second nature, is vital. Equally important is the commitment, throughout the organization, to safety and empowerment of personnel to live up to that commitment. Specifically, personnel should be encouraged and empowered to develop, implement, and comply with procedures that may temporarily impact operations, but maximize safety, just as those executing the procedures should be empowered to strictly adhere to those procedures, even if it delays a train. The railroads should evaluate their safety culture not only as it relates to the issues indicated in this Safety Advisory, but to all aspects of their operations.

FRA encourages railroads to continue to take actions consistent with Safety Advisory 2023–01 as originally published and the additional recommendation in this supplementary notice, as well as any other complementary actions, to ensure the safety of rail transportation. FRA may modify this Safety Advisory and supplementary notice, issue additional safety advisories, or take other actions necessary to ensure the highest level of safety on the Nation's railroads, including pursuing other corrective measures under its authority.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2023–12724 Filed 6–13–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2017–0108 (Notice No. 2021–07)]

Hazardous Materials: Notification of Termination of Certain Explosive Classification Approvals Due to Non-Compliance With the UN Model Regulation Test Series 6(d) Requirement

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notification of termination of explosive approvals.

SUMMARY: PHMSA has terminated the Explosive (EX) classification approvals listed below. PHMSA published a **Federal Register** Notice on May 4, 2021, notifying the approval holders listed below that PHMSA intended to terminate their approvals for failure to provide proof that the approved explosives successfully completed the UN Test Series 6(d) of Part I of the UN Manual of Tests and Criteria. The notice advised approval holders that they must either show why their approvals should not be terminated or apply for a modification of their approval prior to June 3, 2021.

FOR FURTHER INFORMATION CONTACT: Mrs. Harpreet Singh, Chief, Energetic Materials Branch, Sciences and Engineering Division, 202–366–4535, PHMSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Hazardous Materials Safety (OHMS) provides notice of the termination of the approvals listed below. The below-listed approval holders failed to provide evidence that their explosives successfully passed UN Test Series 6(d) of Part I of the UN Manual of Tests and Criteria (UN 6(d) testing) as required by 49 CFR 172.102, Special Provision 347.

Publication in the **Federal Register** is an authorized method for PHMSA to serve the approval holders in accordance with 49 CFR 105.35(a)(3). The approval holders listed below failed to submit evidence that the UN 6(d) testing had been successfully completed and failed to apply for a modification of their approval. Therefore, PHMSA terminated their approvals, effective June 3, 2021.

II. Background

Final rule HM–215O [1] amended Special Provision 347 to require successful completion of UN 6(d) testing. This change affected explosives classified as Division 1.4S hazardous materials and impacted UN Numbers UN0349, UN0367, UN0384, and UN0481. This requirement became effective for transportation by aircraft under the International Civil Aviation Organization (ICAO) on January 1, 2019; for transportation by vessel under the International Maritime Organization (IMO) on January 1, 2020; and for domestic highway and rail transportation on May 10, 2021. PHMSA attempted to contact the affected approval holders in October 2020 via a Safety Advisory Notice issued from the PHMSA EX Portal to alert holders of the May 10, 2021, compliance deadline. On May 4, 2021, PHMSA issued a **Federal Register** Notice [2] [Docket No. PHMSA–2017–0108, Notice No. 2021–03] which notified the approval holders of PHMSA's intent to terminate all approvals that failed to provide PHMSA with documentation showing that the UN 6(d) test had been successfully completed by June 3, 2021. As noted above, publication in the **Federal Register** is an authorized method for PHMSA to serve the approval holders in accordance with 49 CFR 105.35(a)(3). The approval holders listed below failed to submit evidence that the UN 6(d) testing had been successfully completed and failed to apply for a modification of their approval. Therefore, PHMSA terminated their approvals, effective June 3, 2021. As of July 2021, PHMSA had not received any records that the required UN 6(d) testing had been successfully completed for the below-listed EX number(s).

III. Action

PHMSA terminated the below EX classification approvals in accordance with § 107.713(b)(1).

IV. Terminated Approvals

EX approval holders are listed in alphabetical order.

EX No.	UN No.	EX approval holder
EX1999100239	UN0367	Accurate Arms Company, Inc.
EX1988040100	UN0367	Accurate Energetic Systems, LLC.
EX1988040101	UN0367	Accurate Energetic Systems, LLC.
EX1989110272	UN0367	Accurate Energetic Systems, LLC.
EX1989110427	UN0481	Accurate Energetic Systems, LLC.
EX1989110428	UN0481	Accurate Energetic Systems, LLC.
EX1989110429	UN0481	Accurate Energetic Systems, LLC.
EX1989110431	UN0481	Accurate Energetic Systems, LLC.
EX1989110432	UN0481	Accurate Energetic Systems, LLC.

[1] 85 FR 27810 (May 11, 2020).

[2] 86 FR 23782 (May 4, 2021).

EX No.	UN No.	EX approval holder
EX1989110433	UN0481	Accurate Energetic Systems, LLC.
EX1989110434	UN0481	Accurate Energetic Systems, LLC.
EX1989110435	UN0481	Accurate Energetic Systems, LLC.
EX1989110437	UN0481	Accurate Energetic Systems, LLC.
EX1990020001	UN0367	Action Manufacturing Company.
EX1995070012	UN0367	Action Manufacturing Company.
EX1995070013	UN0367	Action Manufacturing Company.
EX1998110101	UN0367	Action Manufacturing Company.
EX201302610	UN0367	Action Manufacturing Company.
EX1990050150	UN0367	Aerojet Propulsion Division (APD).
EX2014060245	UN0349	Aerojet Rocketdyne, Inc.
EX2005030114	UN0349	Aircraft Interior Products Goodrich Corporation.
EX1990010215	UN0367	Alliant Techsystems (ATK), formerly Thiokol Corporation, Elkton Division.
EX1988090082	UN0367	Alliant Techsystems, Inc. (ATK).
EX1989050056	UN0367	Alliant Techsystems Operations LLC.
EX2007110352	UN0367	Alliant Techsystems Operations LLC.
EX1989100162	UN0367	Alliant Techsystems Operations LLC.
EX2009010092	UN0349	Alliant Techsystems Operations LLC.
EX2013040297	UN0481	Alliant Techsystems Operations LLC.
EX1991050098	UN0367	Alliant Techsystems, Inc.
EX1991050099	UN0367	Alliant Techsystems, Inc.
EX1988040026	UN0367	Alliant Techsystems, Inc. (formerly Honeywell, Inc.).
EX1990100007	UN0367	Alliant Techsystems, Inc. (formerly Honeywell, Inc.).
EX1990100008	UN0367	Alliant Techsystems, Inc. (formerly Honeywell, Inc.).
EX2004010221	UN0349	American Airlines, Inc.
EX2018042084	UN0349	Armtec Defense Products Co.
EX2008040391	UN0349	Austin Powder Company.
EX1994120113	UN0384	Baker Hughes INTEQ (Owen Compliance Services, Inc.).
EX1990080103	UN0367	BEI Defense Systems Company, Inc.
EX1990080105	UN0367	BEI Defense Systems Company, Inc.
EX2001050157	UN0367	BF Goodrich Aerospace.
EX2019022522	UN0349	Brazilian Government.
EX2018012130	UN0349	Brazilian Government.
EX1997070025	UN0481	Cambridge Isotope Laboratories, Inc. (CIL).
EX1997070026	UN0481	Cambridge Isotope Laboratories, Inc. (CIL).
EX1997070027	UN0481	Cambridge Isotope Laboratories, Inc. (CIL).
EX1997080006	UN0481	Cambridge Isotope Laboratories, Inc. (CIL).
EX1997080007	UN0481	Cambridge Isotope Laboratories, Inc. (CIL).
EX1997080008	UN0481	Cambridge Isotope Laboratories, Inc. (CIL).
EX2018062063	UN0349	Captive Technologies.
EX2009070004	UN0367	Cartridge Actuated Devices, Inc.
EX2017080149	UN0481	Combined Tactical Systems, Inc.
EX1997070024	UN0481	Crescent Chemical Company.
EX1997070068	UN0481	Crescent Chemical Company.
EX1997070069	UN0481	Crescent Chemical Company.
EX1997070070	UN0481	Crescent Chemical Company.
EX1997070071	UN0481	Crescent Chemical Company.
EX1997070072	UN0481	Crescent Chemical Company.
EX1997070073	UN0481	Crescent Chemical Company.
EX1997070074	UN0481	Crescent Chemical Company.
EX1997070075	UN0481	Crescent Chemical Company.
EX1997070076	UN0481	Crescent Chemical Company.
EX1997070077	UN0481	Crescent Chemical Company.
EX1997070078	UN0481	Crescent Chemical Company.
EX1997070079	UN0481	Crescent Chemical Company.
EX1996020030	UN0481	Dangerous Goods Management.
EX1998020066	UN0481	Dangerous Goods Management.
EX1998110137	UN0349	De La Mare Engineering, Inc.
EX1999060129	UN0349	Delta Defense, Inc.
EX2002060189	UN0367	Department of Energy.
EX1992030149	UN0367	Department of Energy.
EX1985030145	UN0367	Department of Energy.
EX1988020258	UN0367	Department of Energy.
EX1998050150	UN0349	Dynamit Nobel GmbH.
EX1998050151	UN0349	Dynamit Nobel GmbH.
EX1997120152	UN0481	Dynamit Nobel Wien GmbH.
EX1998050065	UN0349	Dyno Nobel North America, (Formerly, The Ensign-Bickford Company).
EX1998070014	UN0349	Dyno Nobel North America, (Formerly, The Ensign-Bickford Company).
EX1998070015	UN0349	Dyno Nobel North America, (Formerly, The Ensign-Bickford Company).
EX1998070016	UN0349	Dyno Nobel North America, (Formerly, The Ensign-Bickford Company).
EX1999010231	UN0349	Dyno Nobel North America, (Formerly, The Ensign-Bickford Company).
EX1999010232	UN0349	Dyno Nobel North America, (Formerly, The Ensign-Bickford Company).
EX2007060067	UN0349	Dyno Nobel, Inc.
EX1999010179	UN0349	Dyno Nobel, Inc. (formerly IRECO, Incorporated).

EX No.	UN No.	EX approval holder
EX1994040159	UN0349	Edison Giocattoli, S.p.a.
EX2011080094	UN0481	Energy Technical Systems, Inc.
EX2014071026	UN0349	Esterline Defense Technologies.
EX2014030181	UN0349	Esterline Defense Technologies.
EX2015030271	UN0349	Esterline Defense Technologies.
EX2013090807	UN0349	Esterline Defense Technologies (Armtec Defense Products Co.).
EX1987040167A	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1987070022A	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1988090072A	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1989030240A	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1989120002A	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1991080167	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1991120107	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1991120108	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1991120109	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1991120110	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992010103	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992010118	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992010119	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992010120	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992020188	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030091	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030092	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030093	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030094	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030095	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030096	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030097	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030098	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030099	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030100	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030101	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030102	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030103	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030104	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030105	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030106	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030107	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030108	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030109	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030110	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030111	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030112	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030113	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030114	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030115	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030116	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030117	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030118	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030119	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030120	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030121	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030122	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030123	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030124	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030125	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030126	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030127	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030128	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030129	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030162	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030163	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030165	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030166	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030167	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030168	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030426	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030427	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030428	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992030429	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992040203	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992120143	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1992120144	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1993030182	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).

EX No.	UN No.	EX approval holder
EX1993030183	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1993030184	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1993050013	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1993050014	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1993050184	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1993050185	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1993050186	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1993050187	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1993050188	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1993050189	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1993050190	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1993050191	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1993050192	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1993100003	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1993100004	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1994060241	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1994060242	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1994070291	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1994070292	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX1994100006	UN0367	ET, Inc. (formerly Explosive Technology, Inc.).
EX2014080308	UN0481	ETA S.A.
EX1989040015	UN0367	General Dynamics Ordnance Systems, Inc.
EX2004120201	UN0367	Goodrich Corporation Aircraft Interior Products Propulsion System.
EX2004120266	UN0367	Goodrich Corporation Aircraft Interior Products Propulsion System.
EX2005030106	UN0367	Goodrich Corporation Aircraft Interior Products Propulsion System.
EX2018062079	UN0349	Government of Argentina.
EX2014010162	UN0349	Government of Brazil.
EX2014030546	UN0349	Government of Canada, Department of National Defence (DND).
EX2015020468	UN0349	Government of Canada, Department of National Defence (DND).
EX2016010220	UN0367	Government of Chile.
EX2011060808	UN0367	Government of Egypt.
EX2012090400	UN0367	Government of Finland.
EX2012111048	UN0367	Government of Finland.
EX2013050931	UN0367	Government of Finland.
EX2013050933	UN0367	Government of Finland.
EX2013050934	UN0367	Government of Finland.
EX2013050935	UN0367	Government of Finland.
EX2013050937	UN0367	Government of Finland.
EX2013050938	UN0367	Government of Finland.
EX2013050944	UN0367	Government of Finland.
EX2016110903	UN0367	Government of Finland.
EX2016120102	UN0367	Government of Finland.
EX2012080134	UN0367	Government of Finland, Finnish Air Force Materiel Command.
EX2012080135	UN0367	Government of Finland, Finnish Air Force Materiel Command.
EX2012080136	UN0367	Government of Finland, Finnish Air Force Materiel Command.
EX2012080137	UN0367	Government of Finland, Finnish Air Force Materiel Command.
EX2012080138	UN0367	Government of Finland, Finnish Air Force Materiel Command.
EX2013040878	UN0367	Government of Finland, Finnish Air Force Materiel Command.
EX2012080132	UN0367	Government of Finland, Finnish Materiel Command.
EX2012080130	UN0367	Government of Finland, Finnish Materiel Command.
EX2012080133	UN0367	Government of Finland, Finnish Materiel Command.
EX2012080131	UN0367	Government of Finland, Finnish Materiel Command.
EX2019082696	UN0367	Government of Indonesia.
EX2015100860	UN0367	Government of Israel, Ministry of Defense.
EX2016110139	UN0367	Government of Oman.
EX2016110837	UN0367	Government of Romania.
EX2009110194	UN0349	Government of Spain.
EX1996110231	UN0481	Government of Switzerland.
EX2013090134	UN0367	Government of Switzerland.
EX2013100569	UN0367	Government of Switzerland.
EX2013120494	UN0367	Government of Switzerland.
EX2013121238	UN0367	Government of Switzerland.
EX2014020631	UN0367	Government of Switzerland.
EX2014050390	UN0367	Government of Switzerland.
EX2014080653	UN0367	Government of Turkey.
EX2014080655	UN0367	Government of Turkey.
EX2019042048	UN0349	Harris Corporation.
EX1996090033	UN0349	HFI Pyrotechnics Inc.
EX1991020110	UN0367	Hi-Shear Technology Corporation.
EX1995100062	UN0367	Hughes Missile Systems Co.
EX2000100140	UN0367	IMI Services USA, Inc.
EX2003090038	UN0367	IMI Services USA, Inc.
EX2003090039	UN0367	IMI Services USA, Inc.
EX2003090040	UN0367	IMI Services USA, Inc.

EX No.	UN No.	EX approval holder
EX2006020597	UN0367	IMI Services USA, Inc.
EX2006030376	UN0367	IMI Services USA, Inc.
EX2006030377	UN0367	IMI Services USA, Inc.
EX2006090071	UN0481	IMI Services USA, Inc.
EX2006090072	UN0481	IMI Services USA, Inc.
EX2006090073	UN0481	IMI Services USA, Inc.
EX2006090074	UN0481	IMI Services USA, Inc.
EX2007040208	UN0367	IMI Services USA, Inc.
EX2007040209	UN0367	IMI Services USA, Inc.
EX2007040210	UN0367	IMI Services USA, Inc.
EX2007040211	UN0367	IMI Services USA, Inc.
EX2007040212	UN0367	IMI Services USA, Inc.
EX2007040214	UN0367	IMI Services USA, Inc.
EX2006120390	UN0367	International Launch Services.
EX1998010222	UN0349	Ion Track Instruments.
EX1989010061	UN0367	IRECO, Incorporated.
EX1989010063	UN0367	IRECO, Incorporated.
EX1990080009	UN0367	IRECO, Incorporated.
EX2019112092	UN0367	Kaman Aerospace Corporation, Precision Products Division.
EX1996010026	UN0367	KDI Precision Products, Inc.
EX1993070128	UN0384	Kilgore Flares Company, LLC (formerly Kilgore Corporation).
EX1989040062	UN0367	Kilgore Flares Company, LLC (formerly Kilgore Corporation).
EX1989040064	UN0367	Kilgore Flares Company, LLC (formerly Kilgore Corporation).
EX1989040065	UN0367	Kilgore Flares Company, LLC (formerly Kilgore Corporation).
EX1989040066	UN0367	Kilgore Flares Company, LLC (formerly Kilgore Corporation).
EX2018042083	UN0367	Kingdom of Norway.
EX2012100180	UN0349	Kuwaiti Government.
EX2012100261	UN0367	Kuwaiti Government.
EX2012100771	UN0367	Kuwaiti Government.
EX2012101234	UN0367	Kuwaiti Government.
EX2012101307	UN0367	Kuwaiti Government
EX2012110071	UN0367	Kuwaiti Government.
EX2012121019	UN0367	Kuwaiti Government.
EX2012121020	UN0367	Kuwaiti Government.
EX2014060500	UN0367	Kuwaiti Government.
EX2017070003	UN0367	Kuwaiti Government.
EX2010121648	UN0367	L–3 Fuzing & Ordnance Systems.
EX2006060214	UN0349	Lockheed Martin Aeronautics Company.
EX1998060022	UN0349	Lockheed Martin Astronautics.
EX1988010203	UN0367	Lockheed Martin Corporation, Vought Systems.
EX2007010486	UN0349	Lockheed Martin Missiles & Fire Control.
EX2006120308	UN0349	Lockheed Martin Missiles and Fire Control.
EX2014100238	UN0367	Malaysian Government.
EX2014100239	UN0349	Malaysian Government.
EX1988060076	UN0349	Margo Supplies, Limited.
EX2007010049	UN0349	Martinez Specialties, Inc.
EX2005110342	UN0384	Mat Transport AG.
EX2004090159	UN0349	Mecano-Tech, Inc.
EX1993030204	UN0384	Ministry of Defence.
EX2011050296	UN0481	Missiles & Space Batteries Ltd.
EX2006100248	UN0384	Nammo Raufoss.
EX2011060272	UN0367	Nammo Talley, Inc.
EX1997030156	UN0349	National Aeronautics & Space Administration (NASA).
EX2019042398	UN0367	Netherlands Government, Ministry of Defence.
EX2019062134	UN0367	Netherlands Government, Ministry of Defence.
EX2019052212	UN0367	Netherlands Government, Ministry of Defence.
EX2019062140	UN0367	Netherlands Government, Ministry of Defence.
EX2019062153	UN0367	Netherlands Government, Ministry of Defence.
EX2017040300	UN0384	Netherlands Ministry of Defense.
EX2017102345	UN0349	Nobelteq Arms & Ammunition (PTY LTD).
EX2005060403	UN0349	NOF America Corporation.
EX2006090055	UN0349	ODA Enterprises, LLC.
EX1983050016	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1983100004	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1986100062	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1986110105	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987020082	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987030349	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987030349A	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987040013	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987040066	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987040066A	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987040166	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987040170	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).

EX No.	UN No.	EX approval holder
EX1987060001	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987060114	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987060115A	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987060273	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987070045	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987070168	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987080060	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987080161	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987110194	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987110272	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1988010167	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1988030080	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1988030081	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1988030091	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1988050276	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1988060019	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1988070012	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1988070279	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1988080020	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1988080021	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1988090072	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1988100206	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1988110127	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1989010224	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1989010250	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1989010263	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1989020005	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1989030237	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1989060207	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1989080099	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1989090020	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1989090050	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1989110183	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1989120005	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1990010080	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1990040015	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1990090184	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1990120099	UN0367	OEA Aerospace, Inc. (formerly ET, Inc.).
EX1987110191	UN0367	OEA, Inc.
EX1987120186	UN0367	OEA, Inc.
EX1988090132	UN0367	OEA, Inc.
EX1988100184	UN0367	OEA, Inc.
EX1988110130	UN0367	OEA, Inc.
EX1988110168	UN0367	OEA, Inc.
EX2011060087	UN0349	Omnitek Partners, LLC.
EX2012070226	UN0349	Omnitek Partners, LLC.
EX1997040127	UN0349	Orbital Sciences Corporation.
EX1997040128	UN0349	Orbital Sciences Corporation.
EX1997040129	UN0349	Orbital Sciences Corporation.
EX1998010044	UN0349	Orbital Sciences Corporation.
EX1998010045	UN0349	Orbital Sciences Corporation.
EX1981030045	UN0367	Pacific Scientific.
EX2001030056	UN0367	Pacific Scientific.
EX2014020516	UN0349	Pioneer Wireline Services.
EX2014080306	UN0349	Polyfectos S.R.I.—Productos Experciales de Pirotechnia.
EX1995020024	UN0481	Radian International LLC.
EX1995020025	UN0481	Radian International LLC.
EX1995020026	UN0481	Radian International LLC.
EX1999040101	UN0481	Radian International LLC.
EX1999040102	UN0481	Radian International LLC.
EX1999040103	UN0481	Radian International LLC.
EX1995020023	UN0349	Radian International LLC.
EX1990040352	UN0367	Raytheon Company DBA Raytheon Systems Company.
EX2007060063	UN0349	RCS Rocket Motor Components, Inc.
EX2007060065	UN0349	RCS Rocket Motor Components, Inc.
EX2007090393	UN0349	RCS Rocket Motor Components, Inc.
EX2007090404	UN0349	RCS Rocket Motor Components, Inc.
EX1998060011	UN0349	Reed-Joseph International Company.
EX2013010733	UN0349	Reynolds Systems, Inc.
EX1994070004	UN0349	Rockwell International Corporation.
EX2000100101	UN0349	Schlumberger.
EX2001020259	UN0367	Schlumberger.
EX2004050280	UN0384	Schlumberger.
EX2006020514	UN0384	Schlumberger.

EX No.	UN No.	EX approval holder
EX1987060027	UN0349	Schlumberger Perforating and Testing Center.
EX1987060283	UN0349	Schlumberger Perforating and Testing Center.
EX1988060182	UN0349	Schlumberger Perforating and Testing Center.
EX1994010082	UN0367	Schlumberger Perforating and Testing Center.
EX1994020120	UN0367	Schlumberger Perforating and Testing Center.
EX1994050292	UN0367	Schlumberger Perforating and Testing Center.
EX1994060018	UN0367	Schlumberger Perforating and Testing Center.
EX1995120021	UN0384	Schlumberger Perforating and Testing Center.
EX1996080002	UN0384	Schlumberger Perforating and Testing Center.
EX1997100012	UN0367	Schlumberger Perforating and Testing Center.
EX1997100012A	UN0367	Schlumberger Perforating and Testing Center.
EX1997110099	UN0367	Schlumberger Perforating and Testing Center.
EX1997120090	UN0384	Schlumberger Perforating and Testing Center.
EX1997120139	UN0367	Schlumberger Perforating and Testing Center.
EX1998110106	UN0384	Schlumberger Perforating and Testing Center.
EX1999030011	UN0367	Schlumberger Perforating and Testing Center.
EX1999050168	UN0367	Schlumberger Perforating and Testing Center.
EX1987060282	UN0349	Schlumberger Reservoir Completions.
EX2004080087	UN0349	Schlumberger Reservoir Completions.
EX2005100173	UN0349	Schlumberger Reservoir Completions.
EX2006020384	UN0367	Schlumberger Reservoir Completions.
EX2006060181	UN0367	Schlumberger Reservoir Completions.
EX2009110196	UN0384	Schlumberger Technology Corporation.
EX2010030568	UN0384	Schlumberger Technology Corporation.
EX1995040042	UN0367	Schlumberger Well Services.
EX2000080043	UN0349	Segutronic High Security Engineering.
EX2008100269	UN0384	Special Devices, Inc.
EX2014070364	UN0367	Spectra Technologies, LLC.
EX2014070661	UN0367	Spectra Technologies, LLC.
EX1987070142	UN0367	Stresau Laboratory, Inc.
EX1987070145	UN0367	Stresau Laboratory, Inc.
EX1995040044	UN0481	Supelco, Inc.
EX1983040001	UN0349	Sutton AG Enterprises, Inc.
EX2006070137	UN0367	SwETech AB.
EX2012081250	UN0367	Taiwan Ministry of National Defense.
EX2006100253	UN0384	Talley Defense Systems.
EX2017040139	UN0349	TCO AS.
EX1990020056	UN0367	Tech Ord.
EX1990060041	UN0367	Tech Ord.
EX1990060042	UN0367	Tech Ord.
EX1990060044	UN0367	Tech Ord.
EX1992010063	UN0367	Tech Ord.
EX1992050131	UN0367	Tech Ord.
EX1992050132	UN0367	Tech Ord.
EX1997020095	UN0367	Tech Ord.
EX1997070061	UN0384	Tech Ord.
EX1998110136	UN0349	Tech Ord.
EX1999030378	UN0349	Tech Ord.
EX1999070225	UN0384	Tech Ord.
EX1997010051	UN0367	Tech Ord.
EX2003070046	UN0349	Technical Consultants, Inc.
EX2003070046A	UN0349	Technical Consultants, Inc.
EX2003070047	UN0349	Technical Consultants, Inc.
EX1990060043	UN0367	Technical Ordnance, Inc.
EX2001020093	UN0349	The Boeing Company.
EX2001030032	UN0349	The Boeing Company.
EX2012111046	UN0367	The Government of Finland.
EX2013050082	UN0367	The Government of the United Arab Emirates.
EX2011020522	UN0384	The Netherlands Government, Ministry of Defense.
EX1997090011	UN0481	Thiokol Corporation.
EX2005070009	UN0349	Titan Energetics, A Division of Titan Specialties, Ltd.
EX2015010210	UN0481	Tk Holdings Inc.
EX2015030140	UN0481	Tk Holdings Inc.
EX2014020326	UN0367	U.S. Department of Energy.
EX1986030075	UN0367	U.S. Department of Energy.
EX1980120071	UN0367	U.S. Department of Energy.
EX1988100144	UN0367	UniDynamics Phoenix, Inc.
EX2008060282	UN0349	United Launch Alliance.
EX2010070467	UN0349	United Launch Alliance.
EX2011020067	UN0349	United Launch Alliance.
EX2007120480	UN0349	Universal Propulsion Company.
EX2008010038	UN0367	Universal Propulsion Company.
EX2003060201	UN0367	Universal Propulsion Company Seating & Propulsion Systems.
EX2003080142	UN0367	Universal Propulsion Company Seating & Propulsion Systems.

EX No.	UN No.	EX approval holder
EX2003090231	UN0367	Universal Propulsion Company Seating & Propulsion Systems Goodrich Corporation.
EX2003090233	UN0367	Universal Propulsion Company Seating & Propulsion Systems Goodrich Corporation.
EX1986110195	UN0367	Universal Propulsion Company, Inc.
EX1986110196	UN0367	Universal Propulsion Company, Inc.
EX1987030012	UN0367	Universal Propulsion Company, Inc.
EX1987120084	UN0367	Universal Propulsion Company, Inc.
EX1987120090	UN0367	Universal Propulsion Company, Inc.
EX2005050019	UN0367	Universal Propulsion Company, Inc.
EX2005080064	UN0367	Universal Propulsion Company, Inc.
EX2005090495	UN0367	Universal Propulsion Company, Inc.
EX2005110388	UN0367	Universal Propulsion Company, Inc.
EX2008040079	UN0367	Universal Propulsion Company, Inc.
EX2010071106	UN0367	Universal Propulsion Company, Inc.
EX2010091304	UN0367	Universal Propulsion Company, Inc.
EX2010091328	UN0367	Universal Propulsion Company, Inc.
EX2010111451	UN0367	Universal Propulsion Company, Inc.
EX1990020341	UN0367	Universal Propulsion Company, Inc.
EX1987110204	UN0367	Universal Propulsion Company, Inc. (formerly, OEA Aerospace, Inc.).
EX1987110205	UN0367	Universal Propulsion Company, Inc. (formerly, OEA Aerospace, Inc.).
EX1987110206	UN0367	Universal Propulsion Company, Inc. (formerly, OEA Aerospace, Inc.).
EX1987110210	UN0367	Universal Propulsion Company, Inc. (formerly, OEA Aerospace, Inc.).
EX1987110212	UN0367	Universal Propulsion Company, Inc. (formerly, OEA Aerospace, Inc.).
EX2018032147	UN0349	Virgin Orbit, LLC.
EX2018072098	UN0367	Virgin Orbit, LLC.
EX2009100075	UN0349	W.T. Bell International, Inc.
EX2000090134	UN0349	W.T. Bell International, Inc., (Formerly, Specialty Completion Products LLC.).
EX2000090135	UN0349	W.T. Bell International, Inc., (Formerly, Specialty Completion Products LLC.).
EX2019022745	UN0349	Weatherford International, LLC.
EX1989030095	UN0349	Western Atlas International (form. Dresser Atlas).
EX1996100128	UN0367	Woerner Engineering, Inc.
EX2006040223	UN0367	Zaugg Elektronik AG.

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William S. Schoonover,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2023–12728 Filed 6–13–23; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activity: Approval for Collection of Information for the Planning and Execution of National and Regional Veterans Day Observations

AGENCY: National Veterans Outreach Office (NVO), Department of Veterans Affairs (VA).

ACTION: Notice.

SUMMARY: The National Veterans Outreach Office of the U.S. Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the agency's proposed collection of certain information. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''2900–0921''.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *Maribel.Aponte@va.gov*. Please refer to ''2900–0921'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21. Under the PRA of 1995 (Pub. L. 104–13; 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. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA. With respect to the following collection of information, NVO invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of NVO's functions, including whether the information will have practical utility; (2) the accuracy of NVO's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: National and Regional Veterans Day Planning Collection.

OMB Control Number: 2900–0921.

Type of Review: Approval of a proposed collection.

Abstract: The National Veterans Outreach Office is the VA team that plans and executes the National Veterans Day Observance. VA Forms 0918d, 0918e, 0918f, and 0918g are the instruments of collection for this activity. The information collected is used to collaborate with regional partners and select VA-approved Veterans Day observances across the country; evaluate Veteran-serving organizations for potential membership onto the Veterans Day National Committee; collect annual dues from Veterans Day National Committee members, per the committee's bylaws; and determine the number of custom Veterans Day lapel pins, National Observance invitations and bench seat tickets are required by each Veterans Day National Committee member

organization. The collection requires the public to provide only the information necessary to support the planning efforts.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at

Affected Public: State and local governments; Veteran-serving non-profit organizations.

Estimated Annual Burden: 28 hours.

Estimated Average Burden per Respondent: 11 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 158.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, U.S. Department of Veterans Affairs.

[FR Doc. 2023–12703 Filed 6–13–23; 8:45 am]

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Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 43, 60, et al.

Integration of Powered-Lift: Pilot Certification and Operations; Miscellaneous Amendments Related to Rotorcraft and Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 43, 60, 61, 91, 97, 111, 135, 136, 141, 142, and 194

[Docket No. FAA–2023–1275; Notice No. 23–8]

RIN 2120–AL72

Integration of Powered-Lift: Pilot Certification and Operations; Miscellaneous Amendments Related to Rotorcraft and Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes a Special Federal Aviation Regulation for alternate eligibility requirements to safely certificate initial groups of powered-lift pilots, as well as determine which operating rules apply to powered-lift on a temporary basis to enable the FAA to gather additional information and determine the most appropriate permanent rulemaking path for these aircraft. Powered-lift will be type certificated as special class aircraft under the existing regulations. Currently, there is not an established path for civilian pilots to be certificated with a powered-lift category rating. The general and commercial operating regulations do not contemplate operation of powered-lift. In addition to proposed changes for powered-lift, this action also proposes changes that would affect practical tests in aircraft that require type ratings, including airplanes and helicopters, training center rotorcraft instructor eligibility, training, and testing requirements, and training center use of rotorcraft in flight instruction.

DATES: Send comments on or before August 14, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–1275 using any of the following methods:

Federal eRulemaking Portal: Go to *https://www.regulations.gov/* and follow the online instructions for sending your comments electronically.

Mail: Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

Hand Delivery or Courier: Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *https://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to 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.

FOR FURTHER INFORMATION CONTACT: Christina Grabill, AFS–810, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591; telephone (202) 267–1110; email *christina.grabill@faa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

Abbreviations and Acronyms Used in This Document

ACO—Aircraft Certification Office
ACS—Airman Certification Standards
ALPA—Air Line Pilots Association
APD—Aircrew Program Designee
AIH—Aviation Instructor's Handbook
AQP—Advanced Qualification Program
ATC—Air Traffic Control
ATP—Airline Transport Pilot
ATO—Air Traffic Organization
CAMP—Continuous Airworthiness Maintenance Program
CFIT—Controlled Flight Into Terrain
CFR—Code of Federal Regulations
CLOA—Certificate and Letter of Authority
CVR—Cockpit Voice Recorder
DPE—Designated Pilot Examiner
GPS—Global Positioning System
GPWS—Ground Proximity Warning Systems
ELT—Emergency Locator Transmitter
ERT—Extended Review Team
FDR—Flight Data Recorder
FFS—Full Flight Simulator
FSB—Flight Standardization Board
FSBR—Flight Standardization Board Report
FSTD—Flight Simulation Training Device
FTD—Flight Training Device
HAA—Helicopter Air Ambulance
HTAWS—Helicopter Terrain Awareness Warning System
ICAO—International Civil Aviation Organization
IFR—Instrument Flight Rules
IMC—Instrument Meteorological Conditions
IOE—Initial Operating Experience
IPC—Instrument Proficiency Check

LOA—Letter of Authorization
MDA—Minimum Descent Altitude
MCTW—Maximum Certificated Takeoff Weight
MEL—Minimum Equipment List
MFD—Multifunction Display
MGTOW—Maximum Gross Takeoff Weight
MMEL—Master Minimum Equipment List
NAS—National Airspace System
NPRM—Notice of Proposed Rulemaking
NM—Nautical Mile
NSP—National Simulator Program
NTSB—National Transportation Safety Board
OEM—Original Equipment Manufacturer
PA—Public Address System
PDP—Professional Development Program
PIC—Pilot in Command
PFD—Primary Flight Display
POI—Principal Operations Inspector
PTS—Practical Test Standards
QPS—Qualification Performance Standards
RPA—Rules of Particular Applicability
SARPs—Standards and Recommended Practices
SFAR—Special Federal Aviation Regulation
SIC—Second in Command
SOE—Supervised Operating Experience
SVO—Simplified Vehicle Operations
TAPL—Technically Advanced Powered-Lift
TAWS—Terrain Awareness and Warning System
TC—Type Certificate
TCE—Training Center Evaluator
TCDS—Type Certificate Data Sheet
VFR—Visual Flight Rules
VMC—Visual Meteorological Conditions
VTOL—Vertical Takeoff and Landing

I. Executive Summary

This proposed rule would establish the requirements for pilot certification and operation of powered-lift. Powered-lift are defined in title 14 of the Code of Federal Regulations (14 CFR) part 1 as heavier-than-air aircraft capable of vertical takeoff, vertical landing, and low speed flight that depends principally on engine-driven lift devices or engine thrust for lift during these flight regimes and on nonrotating airfoil(s) for lift during horizontal flight. Powered-lift are capable of vertical takeoff and landing (VTOL) while being able to fly like an airplane during cruise flight. Currently, there are no type-certificated powered-lift in civil operations; however, there are several applicants seeking type certificates for such aircraft.[1]

Several of the powered-lift that the FAA expects to come to the civilian market have complex and unique design, flight, and handling characteristics with varying degrees of automation. The FAA anticipates that these aircraft will conduct an array of different operations such as transporting crew and material to offshore oil rigs, transporting passengers from point-to-point as an air ambulance, and transporting passengers in concentrated urban environments as an air taxi.

To safely integrate powered-lift in the national airspace system (NAS), the FAA proposes to make permanent changes to parts 61, 135, and 142 to train and certificate powered-lift pilots and instructors, as well as temporary changes through a Special Federal Aviation Regulation (SFAR) that would supplement existing rules, create temporary alternatives for airman certification, remove operational barriers, and mitigate safety risks for powered-lift. As discussed in section I.F, the FAA proposes a duration of 10 years for the SFAR.

Powered-lift will also be utilized to support the deployment of advanced air mobility (AAM) operations. AAM is an umbrella term for an air transportation system that moves people and cargo using revolutionary new aircraft. These aircraft are often referred to as air taxis or electric Vertical Takeoff and Landing (eVTOL) aircraft. Congress has recently directed the Department of Transportation to establish an advanced air mobility working group to plan for and coordinate efforts to integrate advanced air mobility aircraft into the national airspace system through the Advanced Air Mobility Coordination and Leadership Act.[2] This rulemaking is an important step in facilitating the integration of powered lift and AAM into the NAS. As discussed further in section X of this preamble, the proposed rule would promote competition and equity in air travel by enabling powered-lift and AAM to enter the market.

A. Aircraft Certification

The FAA is not proposing to establish any new requirements for the type certification of powered-lift, nor is it proposing to revise existing type certification requirements. The FAA has determined that existing aircraft certification requirements are sufficient to type certificate powered-lift as a special class under 14 CFR 21.17(b).

The special class process allows the FAA to address the novel features of unique and nonconventional aircraft without the need for additional processes such as special conditions or exemptions that would be required if the FAA used the airworthiness standards already in place. Under the special class process, the FAA designates applicable airworthiness requirements as the certification basis for each aircraft design, including its engines and propellers. This designation of applicable airworthiness requirements may include requirements from the existing airworthiness standards applicable to normal category and transport category airplanes, normal category and transport category rotorcraft, aircraft engines and propellers (parts 23, 25, 27, 29, 33, and 35), and it may also include unique airworthiness criteria developed specifically for the individual product.

The FAA will publish the proposed airworthiness criteria, along with an explanation of its equivalency determination, in the **Federal Register** for public notice and comment for each powered-lift project.

The aircraft certification requirements are discussed in more detail in section IV of this preamble.

B. Airman Certification

Although the FAA has existing regulations in part 61 for training and certificating powered-lift flight instructors and pilots, those regulations do not adequately address the unique challenges of introducing a new category of aircraft to civil operations. First, the existing regulations did not anticipate the diversity in design of the powered-lift that are beginning to work through the aircraft certification process. Second, the existing aeronautical experience requirements for powered-lift contain roadblocks for training and certificating the initial cadre of powered-lift flight instructors and pilots. In addition to the challenges with the existing regulations in part 61, the regulations for certain commercial operations in part 135 do not contain specific regulations addressing qualifications for powered-lift pilots which creates a safety gap when compared to the part 135 requirements for pilots of airplanes and helicopters.

The intention expressed by industry to introduce these aircraft immediately into passenger-carrying commercial operations has made more urgent the need to reconsider the existing airman regulations for powered-lift and address the absence of specific regulations for pilots in part 135. The FAA requires and the public expects that commercial operations be conducted with the highest regard for safety and by pilots who have extensive experience flying the particular category of aircraft in which paying passengers will be

[1] The General Aviation Manufacturers Association (GAMA) made several contacts with the FAA during the course of this rulemaking. On July 21, 2022, the General Aviation Manufacturers Association submitted a letter to the FAA providing its recommendations regarding consensus standards for powered-lift. The FAA did not take these recommendations into consideration while developing this NPRM. The FAA has placed a copy of this letter in the docket for this rulemaking. On August 17, 2022, the FAA met with GAMA to discuss eVTOL Entry Into Service. The FAA did not take into account the contents of this meeting while developing this NPRM.

[2] Public Law 117–203, 136 Stat. 4441.

transported. To maintain a level of safety commensurate with that expected for airplanes and helicopters, the FAA is proposing new requirements for pilots to hold type ratings for each powered-lift they fly and proposing qualification requirements for powered-lift pilots serving in part 135. To address the obstacles to airman certification in existing regulations, the FAA is proposing alternatives to certain requirements in part 61 to facilitate the training and certification of the initial cadre of powered-lift instructors and powered-lift pilots.

1. Type Rating

The lack of commonality in the design of powered-lift creates challenges for pilot training and certification. The powered-lift coming to the civilian market have complex and unique design, flight, and handling characteristics with varying degrees of automation. Because each powered-lift can have different configurations, unique inceptors, diversified flight controls, and complicated and distinctive operating characteristics, the FAA has determined that, unlike airplanes and rotorcraft, it is not feasible to establish classes within the powered-lift category at this time. As such, the FAA is proposing to require pilots to hold a type rating for each powered-lift they fly.[3] This proposal would ensure that the pilot in command (PIC) has received specific training on the unique aspects of each powered-lift and demonstrated proficiency during a practical test conducted by an FAA examiner. The proposed type rating requirement would also conform to the type rating standard established by the International Civil Aviation Organization (ICAO).

2. Flight Instructors

Flight instructors form the backbone of the airman certification framework. Every individual that learns to fly begins by obtaining flight training from an authorized instructor on the basic maneuvers, flight controls, and instruments of a particular category of aircraft (*e.g.,* airplanes). The FAA recognizes that, once the first powered-lift achieve type certification, there will be an insufficient number of qualified flight instructors to provide training to the pilots who will need to obtain certificates and ratings necessary to serve in powered-lift operations. For this reason, the FAA is proposing to allow certain pilots employed by the manufacturer to obtain the necessary training and experience for powered-lift through the test flights and crew training activities necessary for aircraft certification. Once the manufacturer's personnel obtain the necessary ratings, they would form the initial cadre of instructors who could conduct certification training in the manufacturer's aircraft for certain instructor personnel at part 141 pilot schools, part 142 training centers, and part 135 operators. These instructors under parts 141, 142, and 135 would then develop the curricula for the initial powered-lift training at their respective organizations.

The reliance on manufacturers to provide the initial training in a new aircraft is not without precedent in aviation. For years, manufacturers of new types of airplanes or rotorcraft have provided the necessary training for the initial cadre of pilots who will fly the new aircraft type (*e.g.,* B–787). In fact, a number of manufacturers hold air agency certificates under parts 141 and 142 for the purpose of providing this type of flight training to the pilots of prospective customers. As explained in greater detail later in this preamble, the current proposal provides flexibility for powered-lift manufacturers to conduct training that would facilitate the qualification of flight instructors and promote the use of their aircraft.

3. Pilots

Even with sufficient qualified flight instructors, the existing airman certification rules for powered-lift present obstacles for persons seeking to accomplish the training and experience necessary to obtain the certificates and ratings for commercial operations. In response to industry concerns, the FAA is proposing alternate requirements for meeting pilot in command (PIC) flight time and cross-country flight time requirements in part 61 and expanding the opportunity for pilots to obtain powered-lift ratings at the commercial pilot certificate level through part 135 training programs. Most of the alternative requirements would be available only to pilots who already hold a commercial pilot certificate and an instrument rating for another category of aircraft. In addition, although no FSTDs representing powered-lift are currently qualified, the FAA anticipates near-term qualification of such devices and is proposing to allow increased flight training opportunities through simulation.

4. Part 135 Pilot Qualifications

With the recent issuance of a separate NPRM that proposes to enable powered-lift operations in part 135, the FAA is proposing permanent changes in this NPRM to training and qualification requirements for pilots to align with the requirements established for pilots of airplanes and rotorcraft in part 135. These proposals include ATP certification and operating experience in make and model of powered-lift for PICs in commuter operations, part 121 training requirements for pilots who serve in commuter operations in certain powered-lift, and instrument ratings for all powered-lift pilots in part 135 operations. In addition to proposing to allow a part 135 operator to develop and provide training for powered-lift pilot certification at the commercial pilot level, the FAA is proposing to permit successful completion of part 135 pilot checks to be used to meet the practical test requirements for powered-lift ratings subject to certain conditions.

5. Dual Controls

Since 1938, aviation regulations have required aircraft to have dual controls for operations involving flight training. This requirement prevents a person not rated or inexperienced in an aircraft from having sole responsibility for the flight and permits a PIC to directly intervene when necessary in the interest of safety. The FAA is aware that some manufacturers have or intend to design powered-lift with a single set of controls. Because the FAA is proposing that all powered-lift would require the pilot to hold a type rating for the aircraft, a person would be required to receive training for a type rating in the specific powered-lift for the type rating sought, meaning the powered-lift must have a dual set of controls for flight training under § 91.109. To the extent that manufacturers have suggested that there are alternate safe means to conduct flight training without a dual set of controls, the FAA finds that those means have not been demonstrated or validated to a level that would allow the FAA to propose relief from the requirement to conduct flight training with a dual set of controls. The FAA invites public comments on this determination. Specifically:

- How would a flight instructor provide flight training in powered-lift with only a single set of flight controls without adversely affecting safety?
- How would an applicant meet the supervised operating experience

[3] If a manufacturer develops a powered-lift that is sufficiently similar to another powered-lift such that there is enough commonality in how they perform and handle for pilots (*e.g.,* flight controls), it is possible for those powered-lift to share a type rating. Based on what is being manufactured now, the FAA does not expect this to be a possibility in the near term. Should this realize, the FAA would determine whether a powered-lift should share a type rating with another powered-lift during the FSB process, which is discussed in section V.H of this preamble.

requirements with a single set of flight controls in powered-lift? [4]

- How would an operator fully qualify pilots for air carrier operations in an aircraft without dual flight controls while meeting the enhanced safety standard that is expected of air carrier operations?

Please provide any relevant data or technical analyses that could assist the FAA in evaluating these comments.

6. Impacts to Rotorcraft Training at Part 142 Training Centers

The FAA is also proposing some permanent changes that, in addition to establishing requirements for powered-lift, would affect certain part 142 training in FSTDs that represent rotorcraft. These proposed changes would harmonize requirements for airplanes, powered-lift and rotorcraft in part 142 with regard to training in an FSTD that represents an aircraft that requires the pilot to hold a type rating. In some instances, these proposed changes would provide additional flexibility to training and qualification for rotorcraft instructors consistent with allowances for airplane instructors and provide training and testing for rotorcraft instructors that is more specifically focused on rotorcraft, instead of airplanes.

C. Operational Requirements

Currently, parts 43 (Maintenance, Preventive Maintenance, Rebuilding, and Alteration), 91 (General Operating and Flight Rules), 97 (Standard Instrument Procedures), 135 (Operating Requirements: Commuter and on Demand Operations and Rules Governing Persons on Board Such Aircraft), and 136 (Commercial Air tours and National Parks Air Tour Management) include regulatory requirements applicable to aircraft, generally, and do not specify applicability to a particular kind of aircraft (*i.e.,* airplane, rotorcraft, powered-lift). Accordingly, these provisions currently apply to powered-lift.

In order to mitigate the safety gaps that exist due to the absence of operational regulations specifically applicable to powered-lift, the FAA proposes, through the SFAR, to apply specific airplane, rotorcraft, and helicopter rules contained in parts 43, 91, 97, 135, and 136 to powered-lift as appropriate. The FAA conducted a comprehensive review of the operational rules, taking into consideration the anticipated capabilities of powered-lift and the lack of operational data. Each rule was evaluated to determine whether the airplane or the rotorcraft/helicopter provisions would maintain a level of safety for powered-lift operations as is provided in the current rules. Based on this review, the FAA asserts that the proposed provisions will maintain an equivalent level of safety for operations conducted in powered-lift to those conducted in airplanes, rotorcraft, or helicopters.

Specifically, under part 91, the FAA proposes applying airplane rules, except for the helicopter provisions of §§ 91.126(b)(2) and 91.129(f)(2), when a powered-lift is operating in vertical-lift flight mode. These two regulations require helicopters, when conducting approaches, to avoid the flow of fixed-wing aircraft in Class G and Class D airspace, respectively. This proposal would provide the flexibility for powered-lift operators capable of landing vertically to land at most helicopter pads and heliports.[5]

Under part 135, the FAA proposes applying airplane rules, except for helicopter- or rotorcraft-specific regulations that outline: certain equipment requirements; certain emergency equipment and passenger briefing requirements for overwater operations; certain VFR or IFR requirements; requirements for operations in icing conditions; and certain airport requirements, as well as requirements for operating in remote areas. The FAA also proposes to require powered-lift operators conducting operations similar to helicopter air ambulance operations to utilize the requirements applicable to such operations in part 135. The FAA also proposes to make a permanent change to the regulatory requirements for the Pilot Records Database contained in part 111 to include powered-lift as a qualifying aircraft to meet the threshold requirement of whether a person operating in furtherance of a business needs to report pilot records to the Pilot Records Database.

In general, the FAA applies operational requirements specific to helicopter operations within part 136 to powered-lift operations because the FAA expects powered-lift will hover and operate similarly to helicopters when conducting air tours, except when relying on horizontal lift. Accordingly, for operational requirements related to cruise flight in wing-borne flight mode, the FAA applies airplane specific requirements because of a powered-lift's expected similarity to an airplane in that operational circumstance.

The FAA also proposes to allow powered-lift operators to use Copter Procedures as defined in part 97 if the aircraft has been type-certificated and equipped to utilize those procedures. That capability will be identified in the limitations section of the aircraft flight manual along with any other specific limitations and procedures necessary for safe operation of the aircraft.

For purposes of maintenance, preventive maintenance, rebuilding, and alteration, the FAA proposes to apply the current requirements under part 43, with only two modifications. First, the FAA proposes to apply the preventive maintenance requirements available to certificate holders operating rotorcraft under part 135 in remote areas, to certificate holders operating powered-lift under part 135 in remote areas. If approved by the Administrator, a certificate holder operating powered lift under part 135 would be permitted to allow a pilot who has completed training to perform certain specific preventive maintenance items.[6] Second, the FAA proposes that in lieu of complying with § 43.15(b), each person performing an inspection required by part 91 on a powered-lift, must inspect ''critical parts'' in accordance with the maintenance manual or Instruction for Continuous Airworthiness, or as otherwise approved by the Administrator. The FAA proposes that ''critical part'' have the same meaning as provided in §§ 27.602 and 29.602.

The operational requirements for powered-lift are discussed in more detail in section VI of this preamble.

D. International Operation of Powered-Lift

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 (SARPs) to the maximum extent practicable.

The FAA proposes to amend part 61 to require powered-lift pilots to have a type rating, which meets the standards outlined in ICAO Annex 1, Personnel

[4] A person subject to a supervised operating experience (SOE) limitation my not act as PIC of an aircraft but must perform the duties of PIC under the supervision of a qualified PIC. The FAA considers a person to be performing the duties of a PIC when the person performs all the functions of the PIC including landings and takeoffs, en route flying, low approaches, and ground functions. See Legal Interpretation to Duncan (Apr. 13, 2012). As such, both the PIC (the person responsible for the safe conduct of the flight) and the person completing SOE need access to flight controls.

[5] See section VI.A.1 for further discussion of ''heliport'' and the FAA's published interim guidance for vertiport design.

[6] The pilot must complete training under an approved training program. 14 CFR 43.3(h)(2).

Licensing. Under parts 91 and 135, the FAA requires U.S. operators to comply with ICAO Annex 2, Rules of the Air. ICAO Annex 8, Airworthiness of Aircraft, is silent on powered-lift; however, the FAA designates powered-lift as special class aircraft for type certification in accordance with § 21.17(b) and applies airworthiness criteria that meet an equivalent level of safety to the FAA's existing airworthiness standards and are consistent with the intent of ICAO Annex 8 to the Chicago Convention. Accordingly, U.S. operators of powered-lift that are type-certificated with a standard airworthiness certificate and conduct their operations in accordance with the standards outlined in Annex 2 would be eligible to operate over the high seas.

The requirements for the international operation of powered-lift are discussed in more detail in section VIII of this preamble.

E. Summary of the Costs and Benefits

Operations with powered-lift are anticipated to offer benefits over traditional airplanes and rotorcraft. A report published by the U.S. Government Accountability Office (GAO) stated that many of these newer category of aircraft could be easier to design, simpler to construct, less complicated to maneuver, quieter to fly, and more economical to operate compared to traditional aircraft.[7] Many use cases for these aircraft are envisioned, and this rulemaking is a step toward those use cases coming to realization.

While operators choosing to conduct operations with powered-lift would incur costs to comply with regulations proposed in this NPRM, these costs would be on a scale equivalent to those incurred by operators choosing to conduct operations with airplanes or rotorcraft under similar regulations. Likewise, costs imposed on individuals that choose to accomplish the required training and testing required to hold an airman certificate with a type rating in the powered-lift category would be on a scale equivalent to those incurred by individuals accomplishing training and testing to hold an airman certificate with a type rating in the airplane or rotorcraft category. In other words, the costs imposed on operators and individuals that choose to comply with regulations proposed by this rule would be no more burdensome than the costs incurred by entities and individuals complying with corresponding airplane and rotorcraft regulations that are already in effect.

However, to address the significant operational differences between each powered-lift, the FAA is proposing to require the PIC of a powered-lift to hold a type rating for the aircraft. The FAA has determined that requiring persons to hold type ratings for powered-lift would establish the appropriate level of safety, greater than would be established by only holding a powered-lift category rating, by ensuring persons receive adequate training and are tested on the unique design and operating characteristics of each powered-lift.[8]

The proposals in this NPRM can generally be grouped by those rules affecting airman certification and those rules enabling powered-lift to conduct operations under parts 91, 97, 135, and 136. For certification of airmen with a type rating in powered-lift, the FAA proposes alternative aeronautical experience and logging requirements. For the operational rules, the FAA proposes to apply specific airplane, rotorcraft, or helicopter rules to powered-lift, as appropriate. The FAA performed an analysis of each proposal in this NPRM and its impact. An overview of this analysis is included in the Regulatory Evaluation portion of this preamble. A regulatory impact analysis has also been prepared for this NPRM and can be found in the docket for this proposed rule.

The following table presents a summary of the primary estimates of the quantified costs of this rule, as well as estimates for a pessimistic and optimistic scenario. This analysis provides a range of costs from low to high based on these scenarios. The FAA considers the primary estimate of costs to be the base scenario. For the primary estimate, over a 10-year period of analysis this rule would result in present value costs of about $30.5 million at a three percent discount rate with annualized net costs of about $3.6 million. At a seven percent discount rate, the present value net costs are about $24.1 million with annualized net costs of $3.4 million.

Additional details are provided in the Regulatory Evaluation section of this proposed rule and in the Regulatory Impact Analysis available in the docket for this rulemaking.

TABLE 1—QUANTIFIED COSTS OF NPRM

[Millions $] *

Forecast scenario	10-Year present value (3%)	Annualized (3%)	10-Year present value (7%)	Annualized (7%)
Base—Primary Estimate	$30.5	$3.6	$24.1	$3.4
Pessimistic	27.4	3.2	21.0	3.0
Optimistic	33.7	4.0	27.3	3.9

Table notes: Columns may not sum to total due to rounding. Estimates are provided at three and seven percent discount rates per Office of Management and Budget (OMB) guidance.

F. SFAR Framework and Duration

The NPRM will enable powered-lift operations on a temporary basis and provide the FAA an opportunity to assess the operations and establish a comprehensive regulatory scheme.

In the past, when the FAA has found that it lacks sufficient experience regarding new operations, the use of an SFAR has been an effective way to gain such experience while enabling some degree of limited operations. Such SFARs have typically temporarily enacted conservative safety approaches to enabling operations, allowing both the FAA and industry to observe those operations and then subsequently make safety improvements in a later permanent change to the regulations. An example of this approach exists within

[7] Transforming Aviation: Stakeholders Identified Issues to Address for 'Advanced Air Mobility' | U.S. GAO.

[8] Official FAA forecasts related to the operation of powered-lift in the NAS have yet to be developed. Thus, a forecast for the number of pilots expected to conduct operations under part 135 or 91 was prepared solely to estimate costs imposed by this proposed SFAR. These costs include adding a type rating for powered-lift to an airman certificate. At this time, forecasts do not include an estimate for individuals seeking to operate powered-lift for personal use. Forecasts were developed using publicly available data related to orders and options for powered-lift.

the FAA's SFAR No. 29, which dealt with instrument helicopter operations.

In considering this approach, the FAA recognizes that several limited permanent changes will need to be made to various regulations to enable a more comprehensive SFAR covering powered-lift. This NPRM proposes both limited permanent changes and an SFAR to facilitate powered-lift operations and permit the FAA to gather data and better understand what a comprehensive permanent regulatory framework should look like.

Because the SFAR will affect several parts of 14 CFR, the FAA has determined that the most clear and comprehensive regulatory approach is through the creation of a new part to wholly contain the proposed SFAR. Specifically, the FAA proposes to add a new part 194, titled ''Special Federal Aviation Regulation No. 120—Powered Lift: Pilot Certification and Training; Operations Requirements,'' to 14 CFR under new subchapter L, titled ''Other Special Federal Aviation Regulations.'' New part 194 would utilize the traditional regulatory structure to supplement existing rules, create temporary alternatives for airman certification, remove operational barriers, and mitigate safety risks for powered-lift. As a result, requisite applicability revisions are proposed to parts 43, 60, 61, 91, 97, 111, 135, 136, 141, and 142 to clearly communicate that current regulations are intended to operate in tandem with proposed part 194, as subsequently discussed in this preamble. The FAA considers this approach to be consistent with previous rulemakings where, at initial inception, rotorcraft and helicopter regulations had similar requirements to the airplane rules. Helicopters were given relief or granted other minimums unique to their operation after an evaluation period provided by an SFAR.

The FAA is proposing that the SFAR be in effect for ten years after finalization of this proposed rulemaking. In selecting ten years as the appropriate duration for this SFAR, the FAA considered a number of factors including the time it will take to initiate operations after the adoption of this notice of proposed rulemaking (NPRM) as a final rule, considering the type certification status of the powered-lift that are commercially viable. After operators initiate commercially viable operations, the FAA also considered the appropriate length of time to collect operational data, and then complete a subsequent rulemaking to implement permanent amendments.

II. Authority for This Proposed 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.

The FAA is issuing this proposal under the authority described in Subtitle VII, Part A, Subpart i, Section 40113, Administrative, and Subpart iii, Section 44701, General Requirements; Section 44702, Issuance of Certificates; Section 44703, Airman Certificates; Section 44704, Type Certificates, Production Certificates, Airworthiness Certificates, and Design and Production Organization Certificates; Section 44705, Air Carrier Operating Certificates; and Section 44707, Examination and Rating of Air Agencies. Under these sections, the FAA prescribes regulations and minimum standards for practices, methods, and procedures necessary for safety in air commerce, including the authority to examine and rate civil schools and prescribe regulations to ensure the competency of instructors. The FAA is also authorized under these sections to issue certificates, including airman certificates, type certificates, and air carrier operating certificates, in the interest of safety.

This rulemaking is also proposed under the authority described in Subtitle VII, Part A, Subpart iii, Section 44712, Emergency Locator Transmitters; Section 44713, Inspection and Maintenance; 44715, Noise and Sonic Boom; 44716, Collision Avoidance Systems; and 44722, Winter conditions. These sections direct the Administrator to prescribe regulations to govern the use of emergency locator transmitters and collision avoidance systems, the standards for inspecting and performing maintenance on aircraft, and regulations to control aircraft noise and safety risks related to winter conditions, respectively.

This proposed rulemaking is issued under the authority described in each of the previously discussed sections of Title 49 of the United States Code.

III. Background

A. General

Powered-lift are unique in their ability to take off and land vertically like helicopters, and fly like an airplane during cruise flight. They can operate in different flight regimes utilizing features of helicopters or airplanes or both. The flight controls for such aircraft are also often unique to the individual aircraft design and can incorporate both traditional helicopter and airplane controls, or control systems that are dissimilar to either helicopters or airplanes. Likewise, the flight characteristics for powered-lift vary depending on the aircraft design and the different modes in which they operate.

The FAA began to contemplate the integration of powered-lift into the regulations in the 1990s. Specifically, in 1995, the FAA published an NPRM titled ''Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules.'' [9] The NPRM was drafted in anticipation of industry developing powered-lift to subsequently enter the civilian market. The FAA noted that powered-lift would require new pilot skills and abilities because the aircraft have VTOL capabilities but fly like airplanes at higher altitudes and airspeeds.

At that time, the FAA considered various approaches to pilot certification for powered-lift, including whether powered-lift should be a separate aircraft category or whether a powered-lift class rating should be created within the rotorcraft category. The FAA also considered powered-lift class ratings, such as tilt-rotor, tilt-wing, ducted fan, and vectored thrust; and whether to require a type rating for every make and model of powered-lift. Ultimately, the FAA proposed adding a new powered-lift airman certification category of aircraft without associated class or type ratings.[10]

Some commenters objected, stating that a proposal to add powered-lift as an aircraft category was premature because there were no powered-lift on the market and no evidence that powered-lift would find applications in the civil marketplace. Commenters also noted that the FAA was not proposing operating rules to accompany the pilot certification standards. The FAA published the final rule on April 4, 1997,[11] and introduced the powered-lift category into the airmen certification rules and various other parts of the regulations. In response to commenter concerns, the FAA reasoned that the regulations were necessary because the existing pilot certification standards did not adequately reflect the powered-lift certification requirements and were not drafted with the intent of certificating

[9] Pilot, Flight Instructor, Ground Instructor, and Pilot School Certificate Rules; NPRM, 60 FR 41160, 41165 (Aug. 11, 1995).

[10] Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules, NPRM 60 FR 41160, 41165 (Aug. 11, 1995).

[11] Flight Instructor, Ground Instructor, and Pilot School Certification Rules; Final Rule, 62 FR 16220, 16231 (Apr. 4, 1997).

powered-lift pilots.[12] The FAA emphasized that its regulations must evolve to accommodate advancements in aviation technology and considered the introduction of powered-lift as an aircraft category to be a necessary first step in building a regulatory framework for powered-lift.

Following the publication of the final rule, the FAA intended to update the operating rules. However, operational rulemaking initiatives never came to fruition because the market evolved differently than the FAA had envisioned and powered-lift did not enter the civilian market as quickly as the FAA anticipated. The FAA notes that in the years since the pilot certification rules were revised to include powered-lift in 1997, industry has developed new aircraft varying widely in complexity of operation. The powered-lift currently undergoing the type certification process are comparatively more sophisticated than the simple and uniform models of powered-lift proposed in the 1990s.

Currently, the FAA has several powered-lift in the type certification process. The powered-lift coming to the civilian market have varied greatly in design, flight, and handling characteristics with varying degrees of automation, more so than what was originally anticipated when applicants initially sought certification of powered-lift.

While none of the powered-lift for which type certification is being sought have yet been approved for civilian use, the powered-lift industry has identified many potential uses for these aircraft. The FAA anticipates the introduction of aircraft that vary in size and passenger seating configuration and employ both new and traditional kinds of propulsion systems into the civilian market. The initial expected entrant is the manufacturer of a four-passenger powered-lift with a maximum gross takeoff weight of 4,800 lbs., which is progressing through the FAA's type certification process.[13] This manufacturer proposed a powered-lift using six tilting electric engines with 5-blade propellers attached to a conventional wing and V-tail. The powered-lift has the characteristics of both a helicopter and an airplane and is intended to be used for operations under parts 91 and 135, with a single pilot onboard, under visual flight rules.

The FAA has previously described powered-lift as useful for civil applications, as these aircraft have ''vertical take-off and landing and hovering capability like helicopters,'' and are able to cruise and ''fly at higher airspeeds like airplanes.'' [14] This airspeed differentiation could result from aircraft configuration changes such as tilt-wing, tiltrotor, or tilt-propeller; thrust vectoring; direct-lift engines; or other means.

Manufacturers and initial operators of powered-lift indicate operations with powered-lift could offer many benefits over rotorcraft. For example, some powered-lift are capable of transporting heavier loads at higher altitudes and faster cruise speeds than rotorcraft. Such capability may increase efficiency in transporting crew and material to remote locations such as off-shore oil rigs and add diversity when considering landing points available that are currently available to helicopters and not airplanes. Certificate holders seeking to take advantage of these capabilities may also seek to use powered-lift for transporting passengers from point-to-point; for example, such transportation could occur from a heliport and proceed at turboprop airspeeds and ranges. Other opportunities may also exist in concentrated urban environments, where short point-to-point distances coupled with vertical capability may allow for more efficient transportation of passengers than existing ground transportation methods.

B. Related Rulemakings

The FAA is engaging in a multi-step process of updating the regulations that apply to powered-lift that traditionally have not operated in air carrier and commercial operations. On December 7, 2022, the FAA published the Update to Air Carrier Definitions NPRM.[15] As it pertains to this NPRM, the Update to Air Carrier Definitions NPRM proposed to amend the regulatory definitions in part 110, General Requirements, to add powered-lift to the definitions of ''commuter operation'' and ''on-demand operation.'' The definitions in part 110 apply to all operations under 14 CFR chapter I, subchapter G, which includes parts 119 and 135.[16] In accordance with § 119.21, all commuter and on-demand operations must be conducted in accordance with part 135.[17] Accordingly, powered-lift must be added to the definitions of commuter operation and on-demand operation before powered-lift may be operated under part 135. For both definitions, the FAA proposed that powered-lift be added consistent with the existing requirements for airplane. As a result, all the part 135 proposals in this NPRM are based on an underlying premise that powered-lift is included in the definitions of commuter operation and on-demand operation. These proposals include the pilot certification proposals based on completion of a part 135 training curriculum, the part 135 training and qualification proposals, and the part 135 operational rule proposals. The FAA will reconcile this proposal with the Update to Air Carrier Definitions final rule as appropriate.

Additionally, on December 12, 2022, the FAA published the ''Airman Certification Standards and Practical Test Standards for Airmen; Incorporation by Reference'' (ACS IBR) NPRM.[18] As it pertains to this NPRM, the ACS IBR NPRM proposed to revise certain part 61 regulations to incorporate the Airman Certification Standards (ACS) by reference into the requirements for powered-lift pilot and flight instructor certification. The ACSs establish the standard for what an applicant must know, consider, and do to demonstrate proficiency to pass the practical tests required for issuance of the applicable airman certificate or rating. Specifically, for powered-lift, the ACS IBR NPRM proposed to incorporate by reference the ACSs for the following: Airline Transport Pilot and Type Rating for Powered-Lift Category, Commercial Pilot for Powered-Lift Category, Private Pilot for Powered-Lift Category, Instrument Rating-Powered-Lift, Flight Instructor for Powered-Lift Category, and Flight Instructor Instrument Powered-Lift. Several proposals in this NPRM are based on the proposed incorporation of the powered-lift ACSs. Therefore, throughout the remainder of this NPRM, the FAA presumes that the powered-lift ACSs are incorporated by reference as proposed. The FAA will reconcile this proposal with the ACS IBR final rule as appropriate.

C. Part 1 Considerations

The FAA first notes that throughout this preamble and proposed regulatory text, the FAA utilizes certain terms that are defined in 14 CFR part 1. Currently, part 1 applies only to subchapters A through L of 14 CFR chapter I. In 1966, 14 CFR part 1 was originally limited in scope to apply to Federal Aviation Regulations (*i.e.,* subchapters A through L) specifically because the agency codified certain subchapters in chapter I that were unrelated to aviation safety

[12] Id.

[13] 87 FR 67399 (Nov. 8, 2022).

[14] 60 FR 41165.

[15] RIN 2120–AL80, 87 FR 74995.

[16] See 14 CFR 110.1 and 110.2.

[17] See 14 CFR 119.21(a)(4) and (5).

[18] 87 FR 75955.

rules [19] at that time.[20] As discussed in this preamble, the FAA proposes to add subchapter L, which will contain the proposed SFAR in new part 194 (*i.e.,* aviation safety rules). To apply the definitions as set forth in part 1 to proposed subchapter L, and given the relocation or deletion of certain non-aviation safety related regulations within chapter I, the FAA proposes to expand applicability of part 1 to apply to the entirety of 14 CFR chapter I.[21] This expansion would be effectuated through revisions to the introductory text of §§ 1.1, 1.2, and 1.3(a).

IV. Powered-Lift Type Certification and FSTD Qualification

A. Type Certification

The FAA is not proposing to establish any new requirements for the type certification of powered-lift, nor is it proposing to revise existing type certification requirements. The FAA has determined that existing aircraft certification regulations are appropriate to type certificate powered-lift.

The FAA's rules for designating the applicable regulations for type-certificated products are in 14 CFR 21.17. Most products that have existing airworthiness standards (airplanes, rotorcraft, balloons, engines, and propellers) are type certificated in accordance with § 21.17(a). In general, the requirements for airplane type certification are in part 23 or 25, and rotorcraft are in part 27 or 29.

The FAA utilizes a tiered level of safety for the minimum certification standards for airplanes and rotorcraft and has established applicability standards to determine which minimum standard may be used for the certification of a particular aircraft. Part 23 provides the minimum certification standards for normal category airplanes, applicable to airplanes that have a passenger seating configuration of 19 or less and a maximum certificated takeoff weight of 19,000 pounds or less. Part 25 provides the minimum certification standards for transport category airplanes, applicable to airplanes that have a passenger seating configuration of 20 or more or a maximum certificated takeoff weight of greater than 19,000 pounds. Part 27 provides the minimum certification standards for normal category rotorcraft, applicable to rotorcraft that have a passenger seating configuration of 9 or less and a maximum weight of 7,000 pounds or less. Part 29 provides the minimum certification basis for transport category rotorcraft, applicable to rotorcraft with a passenger seating configuration of 10 or more or a maximum weight of more than 7,000 pounds. An applicant seeking to certificate a normal category airplane or rotorcraft under part 23 or 27, respectively, can request to use the higher certification standards of part 25 or 29 for such aircraft.

For aircraft for which the FAA has not established airworthiness standards under subchapter C of chapter I of 14 CFR (*e.g.,* gliders, airships, powered-lift, very light airplanes), the FAA uses the special class aircraft process in § 21.17(b). The special class process was created to address the novel features of unique and nonconventional aircraft without the need for additional processes such as special conditions or exemptions that would be required if the FAA used the airworthiness standards in place under existing parts of title 14.[22] Using the special class process, the FAA designates airworthiness requirements as the certification basis for each aircraft design, including its engines and propellers.[23] The FAA may designate appropriate and applicable airworthiness requirements from the existing airworthiness standards in parts 23, 25, 27, 29, 33, and 35, and it may also include unique airworthiness criteria developed specifically for the individual product, that provide an equivalent level of safety to existing standards.[24] The FAA has not yet established powered-lift airworthiness standards in subchapter C of chapter I of 14 CFR. Therefore, the FAA has determined that powered-lift will be type-certificated as a special class aircraft.

To type-certificate powered-lift as a special class aircraft, the FAA must designate airworthiness requirements as the certification basis for that aircraft, which provide an equivalent level of safety to existing airworthiness standards. When conducting the evaluation for determining an equivalent level of safety, the FAA will consider characteristics of the particular aircraft such as the aircraft size, seating capacity, and performance, among other things, in comparison to the capabilities of aircraft type-certificated under the existing airworthiness standards for airplanes and rotorcraft. When establishing the certification basis for a specific powered-lift project, the FAA will publish the proposed airworthiness criteria, including an explanation of its equivalency determination, in the **Federal Register** for public notice and comment.[25]

In certain instances, specific airworthiness or aircraft equipage requirements for the issuance of a type certificate may not be sufficient to meet the requirements of a particular operating rule or operation. Applicants seeking type design approval for powered-lift should identify areas where additional approvals are required to support the anticipated operational use of the aircraft to avoid having to obtain a subsequent type design change approval. In the case where an approved aircraft type-design does not include the required approvals or aircraft equipage needed for a specific operation or operating rule, then a type design change may be required to enable the use of that aircraft.

In certain cases, the operational rules in parts 91 and 135 cite specific airworthiness standards from the certification rules in part 23, 25, 27 or 29. When an airworthiness standard is referenced in a particular operating rule, those specific standards listed may or may not be used in their entirety due to some of the designs unique to each particular aircraft. When a particular airworthiness certification standard is

[19] For example, employee conduct was regulated through chapter I, subchapter O.

[20] Limitation of Applicability to ''Federal Aviation Regulations,'' Final Rule, 31 FR 5054 (Mar. 29, 1966).

[21] Applicability of part 1 would also expand to subchapter N (part 198, pertaining to aviation insurance), however, the FAA does not foresee substantive changes as a result.

[22] For products type certificated in accordance with § 21.17(a), the FAA may issue special conditions when it determines that existing airworthiness regulations do not provide adequate or appropriate safety standards because of a novel or unusual design feature of the product. Special conditions are issued in accordance with 14 CFR part 11 and contain such safety standards for the product as the FAA finds necessary to establish a level of safety equivalent to that established in the regulations. The FAA may grant an exemption from the requirements of a regulation when an applicant petitions for relief under 14 CFR part 11.

[23] Applicants of special class aircraft who propose engine and/or propeller designs with their aircraft will have the engine and propeller approved with the aircraft type certificate. This would result in a certification basis that includes criteria for the aircraft, engine, and/or propeller. Alternatively, applicants seeking certification for special class aircraft may propose the installation of engines and/or propellers that have been issued their own type certificate, which would result in a certification basis with criteria for only the aircraft. The engine and propeller would be type certificated under parts 33 and 35, respectively.

[24] For certain special classes of aircraft, the FAA has designated airworthiness criteria in an advisory circular (AC): AC 21.17–1A for airships, AC 21.17–2A for gliders, and AC 21.17–3 for very light airplanes (VLA). Currently, the FAA expects to issue airworthiness criteria for powered-lift, specific to the particular applicant. Although the FAA is not publishing an AC for powered-lift airworthiness criteria with this proposed rulemaking, the agency may publish powered-lift airworthiness standards through a future AC or rulemaking.

[25] E.g., see: Airworthiness Criteria: Special Class Airworthiness Criteria for the Joby Aero, Inc. JAS4–1 Powered-Lift, 87 FR 67399 (Nov. 8, 2022).

referenced, but it is not practical to use that standard in its entirety due to the design of the powered-lift, then to maintain an equivalent level of safety, the FAA will determine which existing airworthiness standards apply, or if another standard must be created. For example, §§ 91.609 and 135.152, the regulations requiring flight data recorders (FDR), both point to specific airworthiness standards found within part 23, 25, 27, or 29. In this case, the FAA will review the requirements contained within parts 23, 25, 27, and 29 and determine which standard or set of standards would apply, or if the FAA needs to create a new standard to ensure the data captured achieves an equivalent level of safety in these novel aircraft designs.

In an additional example, certain powered-lift type-certificate applicants may want their aircraft to have the capability to use Copter Procedures under part 97, which would require the aircraft to have specific equipage and stability capabilities equivalent to either appendix B to part 27 or 29 as part of the type-certification approval. The identified standards in each of the examples would be included in the aircraft's certification basis.

Throughout this preamble and the SFAR, the FAA applies certain operating regulations to large powered-lift that currently apply to large transport category airplanes. The FAA evaluated the weight parameters for both transport category airplanes and transport category rotorcraft and determined that the weight limit for large aircraft, which is 12,500 pounds (lbs.) and falls between the airplane (19,500 lbs.) and rotorcraft (7,500 lbs.) transport category weight limits, would be an appropriate weight at which to apply airplane transport category standards to powered-lift.

This approach is consistent with the agency's approach to type certification of powered-lift under § 21.17(b), in that the agency has previously identified 12,500 lbs. as an appropriate weight at which to apply certain transport category certification standards from part 25, even though the powered-lift may weigh less than 19,500 lbs. Accordingly, small powered-lift, weighing less than 12,500 lbs., would not be subject to transport category standards except in one instance in subpart I of part 135 (§ 135.397(b)), where a small powered-lift with more than 19 seats would be subject to certain airplane performance operating limitations. The FAA invites comment on whether the public believes there is a more appropriate weight at which to apply transport category airplane regulations to powered-lift.

B. Noise Considerations

The FAA is statutorily required to protect the public from aircraft noise by adopting noise standards and operating regulations as necessary. Noise certification regulations are contained in 14 CFR part 36 for jet airplanes, small airplanes, rotorcraft and tiltrotors. Given recent technological advancement regarding fabrication of small and powerful electric motors, actuators, and advance control system technologies, manufacturers have started to apply these technologies in the design and development of highly individualized and novel aircraft that are significantly different from the legacy conventional aircraft categories defined in the current noise certification standards of part 36. Such anticipated new entrant aircraft are expected to offer capabilities that range from a single-pilot recreational all-electric VTOL aircraft to piloted, powered-lift, multi passenger air taxis.

Rather than use the existing requirements for small propeller airplanes, jet transport airplanes, helicopters, or tiltrotors in part 36, such diverse conceptual designs may require noise certification requirements that are tailored to these new aircraft types. The FAA will examine each application and determine whether existing part 36 requirements are appropriate as a noise certification basis, as it does for all noise certification applicants. If the current regulations cannot be applied appropriately, the FAA may promulgate a rule of particular applicability to establish a noise certification basis for a new aircraft design. The dynamic noise sources from these aircraft have been shown to be complex, and the FAA does not yet have much data on the aircraft types and noise signatures expected from these new entrants. Accordingly, until sufficient data are collected, the FAA would not be able to promulgate standards of general applicability for these aircraft.

The FAA invites comment on whether any manufacturer anticipates undergoing noise certification as a turbojet-powered-lift as required in accordance with part 36. If a turbojet-powered-lift certification applicant begins the noise certification process, the FAA would propose to amend the SFAR to include the operating noise limits in subpart I of part 91 as applicable to turbojet-powered-lift. The FAA also seeks comment on this approach to the noise certification of turbojet-powered-lift.

C. Qualification of Powered-Lift Flight Simulation Training Devices (FSTD)

Part 60 prescribes the rules governing the initial and continuing qualification of all aircraft Flight Simulation Training Devices (FSTDs), which includes full flight simulators (FFSs) and flight training devices (FTDs)[26] used to meet the training, evaluation, or flight experience requirements for flightcrew member certification or qualification. These rules apply to each person using or applying to use an FSTD to meet any requirement in 14 CFR chapter I, including in parts 61, 91, 135, 141, and 142.[27] As specified in § 60.11(b), no person may use nor allow the use of an FSTD for flightcrew member training or evaluation, or for obtaining flight experience, unless the FSTD is qualified under part 60.[28] In accordance with § 60.15, the FAA qualifies each FSTD at a specific level if that FSTD meets the applicable Qualification Performance Standards (QPS).[29] The QPS are published in the following appendices to part 60: A for airplane FFSs, B for airplane FTDs, C for helicopter FFSs, D for helicopter FTDs, E for the quality management system for all FSTDs, and F for definitions and abbreviations applicable to part 60. While appendices E and F will apply to powered-lift FSTDs, the FAA has not yet established the QPS for powered-lift FSTDs.

In recent years, rapid technological advancements in powered-lift have progressed across the industry, particularly with electric vertical takeoff and landing (eVTOL) aircraft. Many powered-lift are in various stages of development with many different unique designs and operating characteristics. Due to the wide variation of powered-lift and rapid pace of development, the FAA has determined that developing a new FSTD standard for powered-lift aircraft within the part 60 QPS framework would be premature, as any new FSTD standard may quickly become obsolete or inapplicable. As previously discussed, one intention of the SFAR is to inform the FAA of sufficient operational data of emerging powered-lift to establish future permanent regulations, including that information required to develop a powered-lift FSTD QPS.

The FAA recognizes, however, that powered-lift FSTDs are currently in development and emphasizes the need

[26] See 14 CFR 1.1, which defines for FFSs and FTDs.

[27] 14 CFR 60.1.

[28] 14 CFR 60.11 specifies additional requirements that must be met for FSTD use.

[29] FFSs are qualified as levels A through D; FTDs are qualified as levels 4 through 7.

to evaluate powered-lift FSTD fidelity and capability, much like airplane and helicopter FSTDs are evaluated.[30] Therefore, to enable the qualification of FSTDs for use in pilot training for powered-lift aircraft, the FAA is proposing to add flexibility to part 60 in proposed § 194.105 to permit qualification of FSTDs of powered-lift using components of existing standards for airplanes and helicopters in appendices A through D to part 60, where applicable, as determined by the FAA, that would provide an equivalent level of safety to existing QPS components.

While many of the existing FSTD qualification standards in the part 60 QPS may be applicable for evaluation of FSTDs representing powered-lift (*e.g.,* general flight deck configuration requirements), due to the unique characteristics of the many possible powered-lift designs and associated pilot training requirements, alternate testing and evaluation methods may be required to fully validate the characteristics of those FSTDs to support the required training (*e.g.,* transition modes from thrust-borne to wing-borne lift).

In these instances where existing standards are not found to be sufficient to fully evaluate an FSTD for a special class of aircraft, other FSTD qualification standards as proposed by the FSTD sponsor may be accepted by the Administrator as providing an equivalent level of safety. When establishing the qualification basis, the FAA will publish the proposed standard in the **Federal Register** for public notice and comment, including an explanation of the FAA's safety determination. The ability to qualify an FSTD for powered-lift in this manner, as well as the notice and comment process, would closely follow the established process used to certify special classes of aircraft as described in § 21.17(b).

While deviation authority currently exists in § 60.15(c)(5) for the initial qualification of FSTDs using alternate FSTD standards, the scope of the deviation authority does not extend to the qualification of FSTDs representing new categories of aircraft such as powered-lift. The FAA added deviation authority to § 60.15(c)(5), to deviate from the technical requirements in the part 60 QPS applicable to airplane and helicopter FFSs and FTDs.[31] Therefore, deviations issued in accordance with § 60.15(c)(5) may apply only to FSTD qualification where standards currently exist in the QPS of part 60 (currently airplanes or helicopters).

The FAA recognizes that, there are current FSTD qualification projects in process with the FAA through deviation authority found in part 60. Additionally, a small number of sponsors and manufacturers have applied for and obtained deviation for powered-lift FSTDs. The FAA notes that, while these persons have been granted deviations, there are currently no qualified powered-lift FSTDs as an outgrowth of these deviations because the powered-lift represented by the FSTD are not yet type-certificated, which is a contingency of deviation. The FAA will collaborate with these sponsors and manufacturers, as well as those with qualification projects in process, to accommodate an efficient transition to this new framework that does not result in a qualification gap.

Additionally, due to the high level of interest in the advancement of Advanced Air Mobility (AAM) aircraft, the FAA is aware of several international working groups, including consensus standards organizations that are in various stages of developing FSTD standards for powered-lift. While there are no such consensus standards currently published for use in FSTD qualification, the FAA anticipates forthcoming published standards. The FAA notes that these consensus standards may be considered during the qualification of powered-lift FSTDs under this part. However, the FAA declines to include them as a compulsory basis for qualification given the current lack of consensus standards to evaluate against a permanent QPS for powered-lift.

V. Certification of Powered-Lift Pilots

A. Establish a Type Rating Requirement for Persons Seeking To Act as PIC of Powered-Lift

Part 61 prescribes the requirements for issuing pilot and flight instructor certificates and ratings, the conditions under which those certificates and ratings are necessary, and the privileges and limitations of those certificates and ratings.[32] Pursuant to part 61, the FAA issues six levels of pilot certificates: student, sport, recreational, private, commercial, and ATP.[33] The FAA also issues category, class, and type ratings on the pilot certificate. To act as PIC of any aircraft, a person must hold the category, class, and type rating (if class and type rating are applicable) on their pilot certificate.[34] To obtain certificates and ratings, an applicant must meet aeronautical experience requirements and successfully complete a practical test in an aircraft appropriate to the rating(s) sought.[35]

For the purpose of airmen ratings, ''category'' is defined as a broad classification of aircraft (*e.g.,* airplane, rotorcraft, powered-lift), and ''class'' is defined as a group of aircraft within a category that have similar operating characteristics (*e.g.,* single engine, multiengine, helicopter).[36] In 1997, the FAA established a powered-lift category rating in part 61 for the private pilot through ATP certificates, as well as for the flight instructor certificate in anticipation of further developments in aviation technology.[37] At the time of that rulemaking, the FAA determined that it was not feasible to establish class ratings within the powered-lift category.[38] The FAA considered whether powered-lift should include class ratings and type ratings but ultimately decided not to create powered-lift classes or require type ratings for powered-lift beyond the type rating requirements set forth in § 61.31(a) (*i.e.,* large aircraft or as specified by the Administrator under aircraft type certificate procedures).[39] The FAA concluded that safety needs were met by establishing a separate aircraft category only, and requiring a type rating for every make and model of powered-lift might discourage the development of smaller powered-lift intended for general aviation.[40]

In light of powered-lift coming to market, the FAA has reconsidered whether a type rating should be required for each type[41] of powered-lift.

[30] The FAA has long recognized the safety advantages of flight training in FSTD. In many cases, flight simulators have proven to provide more in-depth training than can be accomplished in the aircraft. In particular, flight simulators allow training for emergency situations, such as fire, total loss of thrust, and systems failures that cannot be safely conducted in flight. See 61 FR 34508 (July 2, 1996).

[31] 81 FR 18205. Additionally, § 60.15(c)(5)(ii) states that deviation may only be considered from minimum requirements tables, objectives testing tables, functions and subjective testing tables, and other supporting tables and requirements in the part 60 QPS in appendices A through D.

[32] 14 CFR 61.1(a)(1).

[33] 14 CFR 61.5(a)(1).

[34] 14 CFR 61.31(d).

[35] For most pilot certificates, applicants also must receive training or complete home study on aeronautical knowledge areas and pass a knowledge test.

[36] 14 CFR 1.1.

[37] Flight Instructor, Ground Instructor, and Pilot School Certification Rules; Final Rule, 62 FR 16220 at 16231 (Apr. 4, 1997).

[38] Flight Instructor, Ground Instructor, and Pilot School Certification Rules; NPRM, 60 FR 41160 at 41165 (Aug. 11, 1995).

[39] Id.

[40] Id.

[41] The FAA defines type in § 1.1 to mean, in pertinent part, a specific make and basic model of aircraft, including modifications thereto that do not change its handling or flight characteristics and, as

Continued

This section discusses the current type rating requirements of § 61.31(a), the challenges with the current regulatory framework in part 61 for powered-lift, and the FAA's proposal to require the PIC of a powered-lift to hold a type rating on their pilot certificate.

Section 61.31(a) prescribes when a person must hold a type rating. Currently, to act as PIC of a large aircraft [42] (except lighter-than-air) or a turbojet-powered airplane, a person must hold a type rating for the aircraft on their pilot certificate. Additionally, a person must hold a type rating on their pilot certificate for other aircraft specified by the Administrator through the aircraft type certificate procedures.[43] To obtain a type rating, a person must receive aircraft-specific training and pass a practical test in the aircraft for the type rating sought.[44]

Initially, the FAA required type ratings only for large aircraft when passengers were carried onboard or when the large aircraft was operated for compensation or hire, and for helicopters that were operated by ATPs.[45] However, in 1965, the FAA expanded the aircraft for which it required a person to hold a type rating to all large aircraft and small turbojet-powered airplanes.[46] The FAA explained that the speed, complexity, and operating characteristics of large aircraft require the PIC to demonstrate their ability to operate the large aircraft regardless of the type of activity in which the aircraft is engaged.[47] For small, turbojet-powered airplanes, the FAA explained that the performance, environment, and operating characteristics of those airplanes are very similar to those of large turbojet-powered airplanes.[48] The FAA determined that, because turbojet-powered airplanes are so refined that improper or inept handling is likely to be immediately critical, a person must demonstrate their competency to operate those airplanes by obtaining a type rating for the particular type of airplane involved.[49]

Currently, the FAA's regulatory framework in part 61 allows for the issuance of a powered-lift category rating on a pilot certificate. Industry has begun developing new powered-lift varying widely in design from the relatively simple and uniform models of powered-lift that the FAA anticipated in the 1990s. The powered-lift coming to the civilian market have complex and unique design, flight, and handling characteristics with varying degrees of automation. More specifically, powered-lift designs vary in unique configurations from tilt-wing, tilt-propeller, lift plus cruise, and tilt plus cruise aircraft. These new powered-lift designs are capable of VTOL operations and many are also capable of takeoff and landings using wing-borne lift. As a result, the flight deck designs require new flight controls, commonly referred to as inceptors.[50] These aircraft have unique flight and handling qualities that are managed with indirect flight controls, meaning movement of the inceptor does not directly correlate to the movement of a specific flight control surface. Because each powered-lift can have different configurations, unique inceptors, diversified flight controls, and complicated and distinctive operating characteristics, the FAA has determined that it is still not feasible to establish classes within the powered-lift category at this time.

If the FAA were to generalize the training requirements based on classification of powered-lift, the training requirements would not sufficiently address the unique characteristics of each powered-lift that requires specific aircraft training and evaluation to determine pilot competency in flying the aircraft. To further underscore this need, similar to large aircraft and turbojet-powered airplanes, improper or inept handling of certain powered-lift is likely to be immediately critical. The kinds of operations envisioned for powered-lift include low altitude, dense urban environments, and congested airspace where there will be little room for error. Pilot knowledge and skill in operating powered-lift must be assessed and requiring a type rating most effectively accomplishes this safety objective.[51] Finally, to maintain consistency with international standards, ICAO requires that, in the absence of establishing powered-lift classes, a PIC of a powered-lift must hold a type rating for the aircraft flown.[52]

Requiring persons to hold type ratings for powered-lift would establish an appropriate level of safety by ensuring persons receive adequate training and are tested on the unique design and operating characteristics of each powered-lift. Specifically, as discussed in section V.H of this preamble, an FSB is typically formed for aircraft that require a type rating. The FSB would evaluate each powered-lift on a case-by-case basis to determine whether the training recommended by the manufacturer would enable the pilot to safely operate the aircraft in the NAS. Additionally, the FSB would identify the unique characteristics of each powered-lift that require special training. Subsequently, these findings are utilized in conjunction with the appropriate powered-lift ACS to conduct training and practical tests for a type rating, ensuring that an applicant is knowledgeable and capable of safely operating the unique powered-lift type.

Accordingly, the FAA proposes to revise § 61.31(a) by adding a new paragraph (a)(3), which would require a person who acts as PIC of a powered-lift to hold a type rating for the aircraft. The FAA also proposes to redesignate current § 61.31(a)(3), which requires a type rating for other aircraft specified by the Administrator through aircraft type certificate procedures, as new § 61.31(a)(4). The FAA proposes to make a conforming amendment to § 61.5, which sets forth the various certificates and ratings that may be issued under part 61. Specifically, § 61.5(b)(7) sets forth the aircraft type ratings that may be placed on a pilot certificate when the applicant satisfactorily accomplishes the training and certification requirements for the rating sought.

used with respect to the certification of aircraft, means those aircraft which are similar in design.

[42] Section 1.1 defines ''large aircraft'' as ''aircraft of more than 12,500 pounds, maximum certificated takeoff weight.''

[43] Aircraft type certification regulations are found in 14 CFR part 21. As discussed in section V.H.1 of this preamble, FSBs are established when the responsible FAA Aircraft Certification Office issues a Type Certificate for large aircraft, turbojet powered airplanes, and other aircraft specified by the Administrator through the aircraft certification process. Powered-lift will be evaluated under the existing FSB process, which will determine the requirements for a pilot type rating and develop training objectives for the type rating.

[44] 14 CFR 61.63(d), 61.157(b).

[45] In 1964, 14 CFR 61.15(d) stated that, in addition to category and class ratings, the name of each type of large aircraft for which a pilot is rated is placed on the person's certificate if that type of aircraft is certificated by the Administrator for civil operations, and, in the case of ATPs, a helicopter type rating is issued for each type of helicopter. In 1964, 14 CFR 61.159 stated that for ATP aircraft ratings, the category and class of aircraft and type, if it is a helicopter or large aircraft, are placed on the person's certificate.

[46] Pilot Rating Requirements, Final Rule, 30 FR 11903 (Sep. 17, 1965).

[47] Pilot Rating Requirements, NPRM, 29 FR 13038 (Sep. 17, 1964).

[48] Id.

[49] Id.

[50] For purposes of this preamble, the term ''inceptor'' refers to a wide variety of non-traditional pilot controls through which pilot inputs are managed for the purpose of operating the powered-lift.

[51] The FAA considered proposing an endorsement for each type of powered-lift but determined that it would be insufficient to address pilot proficiency for purposes of initial qualification. Current endorsements as set forth in § 61.31 generally involve limited training on a specific capability (*e.g.,* high performance aircraft) and have no independent evaluation of the pilot's proficiency.

[52] Annex 1, Section 2.1.3.2.

These type ratings include the aircraft currently identified in § 61.31(a) as well as the SIC pilot type rating for aircraft that are type-certificated for operations with a minimum crew of at least two pilots. The FAA proposes to add a new paragraph (b)(7)(iii) to reflect the proposed aircraft type rating for a powered-lift and to redesignate current § 61.5(b)(7)(iii) as new § 61.5(b)(7)(iv). With respect to current § 61.5(b)(7)(iv), which allows for the issuance of a SIC pilot type rating, the FAA has determined that this provision does not belong under § 61.5(b)(7), which contains aircraft type ratings, because a pilot type rating subject to ''SIC Privileges Only'' is not an aircraft type rating.[53] To more accurately depict the SIC pilot type rating as a rating that is placed on a pilot certificate, the FAA proposes to relocate the provision that currently exists in § 61.5(b)(7)(iv) to new § 61.5(b)(9).

In addition to the type-certificated powered-lift that will be coming to civil operations, the FAA already has issued special airworthiness certificates for experimental purposes in accordance with § 21.191 to several powered-lift and anticipates a continuing need to issue these special airworthiness certificates as more powered-lift are developed.[54] Because most of these aircraft do not have established type ratings, the proposed type rating requirement of § 61.31 would not apply.[55] In general, experimental aircraft are not subject to the same airworthiness standards as their counterparts holding standard airworthiness certificates. For instance, these aircraft are not required to satisfy many of the regulatory design, build, maintenance, and inspection requirements mandated for aircraft holding a standard airworthiness certificate. As a result of these differing standards, experimental aircraft are subject to certain operational requirements, including restrictions on the purpose of the operation,[56] a general prohibition on operating over densely populated areas unless otherwise authorized by the Administrator,[57] and other operating limitations assigned during the aircraft certification process to further mitigate risks associated with various hazards that may be introduced in experimental aircraft.

In accordance with § 91.319(i), the Administrator may prescribe additional operating limitations for experimental aircraft where necessary for safety. The FAA has employed the operating limitations issued with an experimental airworthiness certificate to require pilots to hold category and class ratings for all experimental aircraft and additional authorizations for certain experimental aircraft even when no passengers are carried on board.[58] As with experimental airplanes and experimental rotorcraft, the FAA will apply category ratings and other authorizations (*e.g.,* the authorization to act as PIC) through operating limitations for experimental powered-lift, as warranted.

Additionally, the FAA notes its use of certain terms throughout this preamble and the proposed SFAR pertaining to the operation of experimental powered-lift. To clearly delineate to whom the FAA is referring, the FAA proposes to define, in proposed § 194.103(b), the terms ''manufacturer,'' ''instructor pilot,'' and ''test pilot.'' First, the FAA proposes to define a manufacturer as any person who holds, or is an applicant for, a type or production certificate for an aircraft. An amateur builder under § 21.191(g), a builder of a kit aircraft under § 21.191(h), or the holder of a restricted category type certificate is not considered a manufacturer for purposes of the SFAR set forth by proposed part 194.[59] This definition will draw a distinction between persons who are amateur aircraft builders and manufacturers with a safety system program and quality control systems in place that meet a higher level of safety.

The FAA also proposes to define certain pilots employed or used by a powered-lift manufacturer, including in a contractor or consultant role. First, the FAA proposes to define an instructor pilot as a pilot employed or used by a manufacturer of a powered-lift to conduct operations of the powered-lift for the purpose of developing a proposed training curriculum[60] and providing crew training. Although some of these instructor pilots may hold FAA flight instructor certificates, their roles and responsibilities for the manufacturer do not involve flight training for meeting FAA airman regulations. Second, the FAA proposes to define a test pilot as a pilot employed or used by a manufacturer of a powered-lift to conduct operations of the powered lift for the purpose of research and development and showing compliance with the regulations. Additional discussion on the responsibilities of test pilots may be found in section V.D.

B. Applicability of the Type Rating Requirement to Military Pilots

For more than 80 years, the FAA's regulations have allowed military pilots to apply for FAA pilot certificates based on their military pilot experience.[61] Currently, § 61.73(a) permits a military

[53] There is no practical test required for the issuance of the SIC pilot type rating. 14 CFR 61.55(e)(7). A pilot type rating subject to ''SIC Privileges Only'' is solely intended to allow persons who met the SIC requirements found in § 61.55 to operate in international airspace. Second-in-Command Pilot Type Rating, Final Rule, 70 FR 45264 (Aug. 4, 2005). See Legal Interpretation to Mr. Counsil (Apr. 13, 2012).

[54] The FAA does not anticipate that part 141 pilot schools and part 142 training centers will have the capacity to provide training and testing for ratings and authorizations for each and every type of experimental powered-lift developed. This is particularly true for operators of experimental amateur-built powered-lift, amateur kit-built powered-lift, and exhibition powered-lift. Therefore, the FAA will maintain the current path to certification codified in part 61, which does not require training under an approved training program, for experimental powered-lift pilots at the private pilot level and above. See 14 CFR 61.109(e), 61.129(e), 61.163, and 61.187.

[55] Section 61.31(l)(1) excludes all aircraft not type-certificated as airplanes, rotorcraft, gliders, lighter-than-air aircraft, powered-lifts, powered parachutes, or weight-shift-control aircraft from § 61.31 applicability. This provision is meant to create an exception for aircraft for which there is no established category or class rating (*e.g.,* hoverboards, jetpacks). The use of the term ''type-certificated'' could create confusion since not all aircraft that meet the regulatory definition of airplane or rotorcraft will be type certificated. Because this provision could be read as conflicting with more specific exceptions for experimental aircraft in § 61.31(l)(2), the FAA is proposing to clarify the intent of this exception by specifying that the section does not require a category and class rating for aircraft that are not identified under § 61.5(b).

[56] See § 91.319(a)(1), which prohibits a person from operating an experimental aircraft for other than the purpose for which the certificate was issued.

[57] See § 91.319(c), which generally prohibits experimental aircraft operations over densely populated areas or in congested airways, unless otherwise authorized by the Administrator.

[58] The FAA provides guidance to its workforce in FAA Order 8130.2J, Appendix D, Table D–1, Operating Limitations on how to evaluate and apply operating limitations to experimental aircraft.

[59] The FAA notes that ''person'' is defined in § 1.1 as an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity, and includes a trustee, receiver assignee, or similar representative of any of them. Therefore, a broad range of entities, other than an amateur builder or builder of a kit aircraft under § 21.191(g) and (h) or a restricted category type certificate holder, could be considered manufacturers (*e.g.,* aerospace companies, transportation corporations) for purposes of proposed part 194.

[60] For purposes of this preamble, the term ''proposed training curriculum'' refers to the curriculum that the manufacturer is developing. The FAA is describing the training curriculum as ''proposed'' because the curriculum will not be validated at the time the instructor pilot provides the training to the test pilot.

[61] 14 CFR 20.149 (1938), Military competence, stated that an applicant who has been an active member of certain military branches may be deemed competent to have met certain requirements to be issued a pilot certificate, including aeronautical knowledge, experience, and skill.

pilot or former military pilot[62] who meets certain requirements to apply on the basis of their military pilot qualifications for a commercial pilot certificate with the appropriate category and class rating, an instrument rating with the appropriate aircraft rating, and a type rating.[63] Additionally, § 61.73(g) permits a military or former military instructor pilot or pilot examiner to apply for, and be issued, a flight instructor certificate with appropriate aircraft ratings, provided certain requirements are met.

Because there are no type-certificated powered-lift to date, there are no standard category powered-lift available for civilian pilots to obtain certification through the regular pathway of ground training, flight training, and successful completion of a knowledge test and practical test. The U.S. Armed Forces, however, maintains and uses powered-lift in military operations (*e.g.,* the Bell-Boeing V–22 Osprey, McDonald-Douglas AV–8 Harrier, F–35B STOVL), where pilots establish experience operating these powered-lift.[64] Therefore, as a result of the military pilot competency provisions set forth in § 61.73, the only pilots who currently hold commercial pilot certificates with powered-lift category ratings, instrument-powered-lift ratings, and flight instructor certificates with powered-lift category and instrument ratings are military pilots who obtained those certificates and ratings under § 61.73, based on their military pilot qualifications.

Due to the absence of any type-certificated powered-lift, military pilots who have received an FAA powered-lift category rating are currently limited in their ability to exercise those privileges in civil operations. At this time, the only powered-lift that have entered civil operations are those that have been issued experimental airworthiness certificates.[65] The FAA anticipates two additional avenues for powered-lift to enter civil operations: (1) new FAA type-certificated powered-lift, or (2) surplus military powered-lift, similar to military airplanes and rotorcraft that enter civil operations with an experimental or restricted category airworthiness certificate. There are no surplus military powered-lift that have come into civil operations through the special airworthiness certification process, and the FAA does not anticipate surplus military powered-lift to enter civil operations in the near term. If this were to occur, the FAA will follow the existing regulations, policies, and procedures to address surplus military powered-lift as currently used to evaluate surplus military airplanes and rotorcraft. Specifically, type ratings are designated for surplus military aircraft with civil certificate type ratings through the FSB process, which would evaluate each respective powered-lift, further discussed in section V.H of this preamble.

Under § 61.73(e), an aircraft type rating may be issued to a military pilot only for a type of aircraft that has a comparable civil type designation by the Administrator. Because there are currently no military powered-lift for which comparable civil type ratings have been designated, military pilots with powered-lift experience are unable to obtain a powered-lift type rating pursuant to § 61.73. As a result, military pilots seeking a commercial pilot certificate under § 61.73 are currently limited to the issuance of a powered-lift category rating and an instrument-powered-lift rating.[66] While these military pilots have extensive flight experience in a powered-lift operated by the U.S. Armed Forces, the FAA finds that this experience alone is insufficient for military pilots to transition safely to the types of powered-lift currently working through the FAA type certification process.[67] Specifically, military aircraft maintain certain characteristics that are unique to U.S. Armed Forces missions that will not be present in civil powered-lift. The technology, operating characteristics, and flight control implementation may not correspond to the civil operations anticipated for FAA type-certificated powered-lift. Further, as previously discussed, there are also significant differences between each civil powered-lift in performance, complexity, and operating characteristics. For these reasons, the FAA is not proposing any exception to the type rating requirement for military pilots who obtain powered-lift ratings through military competency.

Military pilots may continue to apply for commercial pilot certificates with powered-lift category ratings, instrument-powered-lift ratings, and flight instructor certificates with powered-lift category and instrument ratings pursuant to the existing requirements in § 61.73, based on their military pilot qualifications. However, to act as PIC of a type-certificated powered-lift, these military pilots would be required to pass a practical test to obtain a type rating on their pilot certificate for the type of civil powered-lift they seek to fly. Likewise, those military instructors who have obtained or will obtain a flight instructor certificate with a powered-lift category and instrument rating through military competency would be permitted to conduct flight training in a powered-lift only after obtaining a type rating on their pilot certificate for the powered-lift in which they conduct flight training.[68]

C. Applicability of the SIC Qualification Requirements of § 61.55 to Powered-Lift

Given the diverse characteristics of powered-lift discussed earlier, the FAA considered whether a person serving as SIC of a powered-lift should also be required to hold a powered-lift type rating on their pilot certificate. Upon evaluating the current SIC qualification requirements of § 61.55, the role of a PIC, and the reasons for requiring the PIC to hold a type rating, the FAA has determined that the SIC qualification requirements of § 61.55 are sufficient, provided the person serving as SIC has passed the practical test in a powered-lift that is capable of performing all the

[62] For purposes of this preamble, references to military pilots are inclusive of former U.S. military pilots.

[63] While military pilots may receive an FAA certificate through their military experience, they must continue to follow FAA regulations to exercise their FAA certificate(s) received through § 61.73 (*e.g.,* recency of experience requirements in § 61.57).

[64] Based on discussions with current and former military powered-lift pilots, a military powered-lift pilot will generally have between 1,000–2,500 hours of total powered-lift time, which includes about 500–1,250 hours of PIC powered-lift time. See Recognition of Pilot in Command Experience in the Military and Air Carrier Operations, 87 FR 57578, 57580 (Sep. 21, 2022).

[65] For those manufacturers currently developing powered-lift, operating limitations pertaining to pilot qualifications may be applied to experimental powered-lift. FAA Order 8900.1 Vol. 5, Chap. 9, Sec. 2.

[66] Should a civil type-certificated version of a military powered-lift become available, pilots with the appropriate military experience, as identified in § 61.73, would be eligible to receive the type rating in the same manner that airplane and rotorcraft military pilots currently receive them, pursuant to § 61.73(e).

[67] The FAA has historically found some differences between military aircraft/operations and civilian aircraft/operations and implemented safety measures to address them when necessary. For example, in 1967, a military branch began using ''pink'' instrument cards for instrument flight operations in tactical environments. Because these pilots were not trained in IFR airway operations or in the use of standard approach procedures, the FAA amended § 61.73 creating a restriction based on the incongruence between the military practice and an FAA instrument rating. The restriction was removed when the branch ceased issuing the cards. Final Rule, Condition for Issuing Instrument Rating Based on Military Competence, 23 FR 10643 (Jul. 20, 1967) (adding § 61.73(g)(6)); Final Rule, Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules, 62 FR 16220 (Apr. 4, 1997) (removing § 61.73(g)(6)).

[68] Under § 61.195(e), a flight instructor may not give flight training, including instrument training, in an aircraft that requires the PIC to hold a type rating unless the flight instructor holds a type rating for that aircraft on their pilot certificate.

tasks required by the applicable Powered-Lift Category ACS.[69]

Currently, to serve as SIC of an aircraft type-certificated for more than one required pilot flight crewmember or in operations requiring an SIC pilot flight crewmember in part 91 (excluding subpart K of part 91),[70] a person must satisfy the SIC qualification requirements set forth in § 61.55. Section 61.55(a) requires the person serving as SIC to hold (1) at least a private pilot certificate with the appropriate category and class rating, (2) an instrument rating or privilege that applies to the aircraft being flown if the flight is under IFR,[71] and (3) at least a pilot type rating (''SIC Privileges Only'') for the aircraft being flown unless the flight will be conducted as domestic flight operations within the U.S. airspace.

Section 61.55(b) requires the person serving as SIC to complete SIC familiarization training for the specific type of aircraft for which SIC privileges are sought within the 12 calendar months preceding the month of the flight.[72] The SIC familiarization training consists of two components. First, the person must become familiar with certain information for the specific type aircraft including operational procedures applicable to the powerplant, equipment, and systems; performance specifications and limitations; normal, abnormal, and emergency operating procedures; flight manual; and placards and markings. Second, the person must perform and log pilot time in the type of aircraft that includes three takeoffs and three landings to a full stop as the sole manipulator of the flight controls, engine-out procedures and maneuvering with an engine out while executing the duties of PIC, and crew resource management training.

This preamble explains why the qualification requirements of § 61.55 would ensure that a pilot is qualified to act as SIC of a powered-lift under part 91 (excluding operations conducted under subpart K of part 91), provided the person has passed at least the private pilot practical test in a powered-lift that is capable of performing all the tasks required by the applicable ACS.[73] The preamble also discusses the SIC pilot type rating that is required for international operations.

1. SIC Qualification Requirements

The FAA has imposed qualification requirements on persons seeking to serve as SIC of certain aircraft since 1972.[74] In fact, the requirement for an SIC to hold at least a private pilot certificate with the appropriate ratings and an instrument rating if the flight is conducted under IFR has remained unchanged since that time. Additionally, the SIC familiarization training requirements, which were also adopted in 1972, have been slightly expanded to include additional information and procedures[75] but otherwise remain unchanged. The FAA adopted the SIC qualification requirements in part 61 in recognition of the tremendous growth of part 91 operations and the introduction of more sophisticated aircraft to this large segment of aviation.[76] The FAA intended for the SIC qualification requirements to ensure that sufficiently qualified pilots occupy both flight crewmember positions.[77]

The SIC qualification requirements of § 61.55 apply to persons seeking to serve as SIC of an aircraft type-certificated for more than one required pilot flight crewmember or in operations requiring a SIC pilot flight crewmember. As such, this requirement without a regulatory amendment will apply to SICs of any powered-lift that is type-certificated for more than one required pilot flight crewmember. Additionally, the requirements of § 61.55 would apply during operations that require more than one pilot flightcrew member by regulation.[78]

Despite proposing to require the PIC to hold a type rating, the FAA has determined that, with the exception of the unique scenario when a powered-lift is not capable of performing all required ACS tasks as discussed in section V.G of this preamble, there is no need to impose requirements beyond those contained in § 61.55 for persons seeking to serve as SIC of a powered-lift, which have been deemed sufficient for other categories of aircraft for over 50 years.[79] As such, a person seeking to serve as SIC will hold the appropriate powered-lift ratings on their pilot certificate and complete familiarization training in the specific type of powered-lift for which SIC privileges are sought.

The requirements of § 61.55(a) ensure that the SIC has obtained experience in the powered-lift category and successfully passed a practical test to obtain the powered-lift rating. The FAA recognizes that this experience may be in a different type of powered-lift than the powered-lift for which SIC privileges are sought. For a pilot who has passed the practical test in a powered-lift that is capable of

[69] The FAA is proposing to permanently add new § 61.55(a)(4) to address SIC qualifications when a powered-lift is not able to perform all tasks on a practical test. This change is ''permanent'' because it would exist in 14 CFR part 61 as opposed to proposed part 194. To the extent a person would not be tested on a task specified in that ACS, section V.G of this preamble explains a proposal to impose additional training and an endorsement to ensure the person is trained and found proficient on any tasks that were omitted on the practical test prior to serving as SIC of a different powered-lift that is capable of performing the task.

[70] As discussed in this section, certain requirements in § 61.55 do not apply to a person who is designated and qualified as PIC or SIC under subpart K of part 91 (Fractional Ownership Operations).

[71] Section V.G of this preamble discusses the FAA's proposal to allow a pilot to obtain a powered-lift type rating and category rating without an instrument rating. In that circumstance, a ''VFR only'' limitation would be added to the pilot certificate, and the pilot could serve as SIC in VFR operations only.

[72] The familiarization training required in § 61.55(b) does not apply to a person who is designated and qualified as PIC or SIC under subpart K of part 91 (Fractional Ownership Operations). Rather, those pilots may satisfy the training required by that subpart to serve in fractional ownership operations in lieu of the familiarization training.

[73] As explained in section V.G. of this preamble, certain powered-lift designs may be precluded from performing a task required by the applicable Powered-Lift Category ACS. When this occurs, the proposed rule language in proposed § 194.207 of this SFAR would enable an examiner to waive the task on the practical test. Thus, a person may obtain a powered-lift category rating on their pilot certificate without being required to perform all the tasks specified in the ACS. This person may then seek to serve as SIC of a powered-lift type that is capable of performing the task for which the pilot was never trained or tested. Section V.G of this preamble discusses this issue in detail and proposes to require additional training and an endorsement to ensure all persons seeking to serve as SIC of a powered-lift have all been trained and found proficient on the tasks required in the applicable Powered-Lift Category ACS.

[74] Large and Turbine-Powered Multiengine Airplanes, Final Rule, 37 FR 14759 (Jul. 25, 1972). The SIC requirements were proposed as 14 CFR 61.47b but adopted in the final rule as 14 CFR 61.46 and were applicable to persons seeking to serve as SIC of a large or turbojet-powered multiengine airplane type-certificated for more than one required pilot flight crewmember. In 1973, the FAA relocated 14 CFR 61.46 to 14 CFR 61.55, as it is currently situated today.

[75] See 51 FR 40692 (Nov. 7, 1986) (applying SIC requirements to all aircraft type-certificated for more than one pilot and adding ''approved flight manual material, placards, and markings'' to the type specific information with which the pilot must become familiar); see also 62 FR 16220 (Apr. 4, 1997) (adding ''crew resource management training'' to time that must be performed and logged).

[76] Second-In-Command Qualifications and Pilot-In-Command Proficiency Checks, NPRM, 36 FR 5247 (Mar. 19, 1971). Second-In-Command Qualifications and Pilot-In-Command Proficiency Checks, supplemental notice of proposed rulemaking (SNPRM), 36 FR 11865 (Jun. 16, 1971). In adopting SIC qualification requirements in part 61 for persons serving as SIC in part 91 operations, the FAA also considered the improved safety record in part 121 operations, which stemmed from a modern system of pilot training and qualification for part 121 certificate holders.

[77] Id.

[78] See §§ 91.189, 135.99, 135.101, and 135.111 and subpart K of part 91.

[79] Large and Turbine-Powered Multiengine Airplanes, Final Rule, 37 FR 14759 (Jul. 25, 1972).

performing all the tasks required by the ACS, the FAA finds that the existing SIC familiarization training would ensure that the person seeking to act as SIC becomes familiar with and gains sufficient experience operating the specific type of powered-lift before acting as SIC of that aircraft.[80]

Pursuant to § 61.55(b)(1), the person seeking to serve as SIC of a powered-lift would be required to become familiar with information for the specific type of powered-lift for which SIC privileges are sought, including the operational procedures applicable to the powerplant, equipment, and systems; performance specifications and limitations; normal, abnormal, and emergency operating procedures; flight manual; and placards and markings. Additionally, pursuant to § 61.55(b)(2), the person seeking SIC privileges for a powered-lift would be required to log pilot time in the type of powered-lift[81] that includes the performance of three takeoffs and landings to a full stop as the sole manipulator of the flight controls, engine-out procedures and maneuvering with an engine out while executing the duties of PIC, and crew resource management training. Therefore, while the person seeking SIC privileges would hold only a powered-lift category rating, a person would become familiar with the unique operating characteristics of the specific type of powered-lift prior to serving as SIC of the powered-lift. Additionally, the SIC familiarization training requirements of § 61.55(b) serve as recency of experience requirements in that they require a person to accomplish the familiarization training specified in § 61.55(b)(1) and (2) in the specific type of aircraft within the 12 calendar months preceding the month of the flight. This requirement would ensure that the SIC of a powered-lift has recent experience handling the flight controls of the powered-lift for which the SIC privileges are sought.

Further, the FAA considered the role of a PIC versus a SIC in part 91 operations, the FAA has determined that it would be unnecessary to hold the SIC of a powered-lift to the same training and testing standards as the PIC of a powered-lift. While a person serving as SIC of a powered-lift may manipulate the controls of the powered-lift during an operation, the PIC, who would hold a type rating and would have demonstrated mastery of the specific type of powered-lift, remains directly responsible for, and is the final authority as to the operation of, that powered-lift.[82] Thus, as with other categories of aircraft, the PIC would have the ability to take over the flight controls at any point during the flight.

For the reasons discussed above, with the exception of the situation discussed in section V.G of this preamble, the FAA has determined that the existing SIC qualification requirements of § 61.55(a) and (b) ensure that the person serving as SIC of a powered-lift in part 91 operations (excluding operations conducted under subpart K of part 91) is sufficiently qualified to act as SIC. Accordingly, this proposed rule would not require the SIC of a powered-lift to hold a type rating for the powered-lift.

As for the initial cadre[83] of pilots who may serve as SIC of a powered-lift, § 61.55(a) requires the person seeking SIC privileges to hold at least a private pilot certificate with appropriate ratings (*i.e.,* powered-lift category rating) and, if the flight will be conducted under IFR, to hold an appropriate instrument rating (*i.e.,* instrument-powered-lift rating). As previously discussed in section V.B of this preamble, current or former military pilots of powered-lift may obtain commercial pilot certificates with powered-lift category ratings as well as instrument-powered-lift ratings pursuant to § 61.73(a) and (b) based on their military pilot qualifications. These military pilots may be qualified to serve as SIC of powered-lift without first obtaining a type rating for the type of powered-lift, provided they satisfy the applicable requirements of § 61.55. Additionally, pilots who obtain a commercial pilot certificate with a powered-lift category rating, an instrument-powered-lift rating, and a type rating pursuant to the alternate pathway proposed in the SFAR may be qualified to serve as SIC of any powered-lift, provided the applicable requirements of § 61.55 are met for the powered-lift in which they will serve as SIC.

2. SIC Pilot Type Rating

As previously discussed, § 61.55 provides for the issuance of a SIC pilot type rating, which is required unless the flight will be conducted as domestic flight operations within the U.S. airspace. The FAA established the SIC pilot type rating and associated qualifying procedures in 2005[84] to conform the FAA pilot type rating requirements to the ICAO pilot type rating standards.[85] The FAA intended for the SIC pilot type rating requirements in § 61.55 to allow U.S. flight crews to operate in international airspace.

The FAA codified two procedures for obtaining the SIC pilot type rating. Under § 61.55(d), a pilot who satisfactorily completes the SIC familiarization training requirements of § 61.55(b) may apply for and receive a pilot rating for SIC privileges in the particular aircraft type, provided the training was completed within the 12 calendar months before the month of SIC pilot type rating application. Additionally, under § 61.55(e), a pilot who satisfactorily completes an approved SIC training program, proficiency check, or competency check under subpart K of part 91 or under parts 125 or 135 may apply for and receive a pilot type rating for SIC privileges in the particular aircraft type, provided the training was completed within the 12 calendar months before the month of SIC pilot type rating application.

The SIC pilot type rating requirements set forth by § 61.55(d) and (e) are necessary for U.S. flight crews to operate powered-lift in international airspace. Therefore, the current SIC pilot type rating requirements of § 61.55 will apply to persons seeking SIC privileges in a powered-lift.

D. Supervised Operating Experience Requirements of § 61.64

Section 61.64 addresses the use and limitations of full flight simulators (FFSs) and FTDs for training or any portion of a practical test for certificates and ratings, including aircraft type ratings. As discussed in section IV.C, there are currently no FSTD

[80] For a pilot who was not required to demonstrate proficiency of each task required by the applicable Powered-Lift Category ACS, section V.G of this preamble discusses the proposed training and endorsement requirements that would apply.

[81] The FAA notes that § 61.55(b)(2) permits the individual to perform and log pilot time in a flight simulator that represents the type of aircraft for which SIC privileges are requested.

[82] A PIC has final authority and responsibility for the operation and safety of the flight per the definition of PIC contained at § 1.1. See also 14 CFR 91.3(a), Responsibility and authority of the pilot in command.

[83] The FAA uses the term ''initial cadre'' throughout this preamble. In some instances, initial cadre refers to a sufficient number of instructors and evaluators to train and qualify pilots for powered-lift ratings under an approved training program under part 135, 141, or 142. In other instances, the term refers to a sufficient number of pilots who are rated in powered-lift.

[84] Second-in-Command Pilot Type Rating, Final Rule, 70 FR 45264 (Aug. 4, 2005). This revision did not change the qualification requirements to serve as SIC; rather, the revision was primarily intended to conform U.S. SIC qualification requirements under § 61.55 to the ICAO standards under Annex 1 of the Convention on International Civil Aviation.

[85] See ICAO Annex 1, paragraphs 2.1.3.2, 2.1.4.1.b, and 2.1.4.1.1.

representing powered-lift that have been qualified under part 60. The FAA anticipates, however, that a powered-lift FSTD could obtain qualification under proposed § 194.105 within the 10-year period that the SFAR would be effective. As such, the FAA has evaluated the requirements in § 61.64 and is proposing changes.

Pursuant to § 61.64(a), an applicant for an aircraft type rating may use an FFS for training and testing, provided the FFS meets certain requirements. Section 61.64(a)(1) requires the FFS to represent the category, class, and type of aircraft for the rating sought.[86] Section 61.64(a)(2) requires the FFS to be qualified and approved by the Administrator and used in accordance with an approved course of training under part 141 or 142, or under part 121 or 135 if the applicant is a pilot employee of that air carrier operator.

Under § 61.64, an applicant for an aircraft type rating may accomplish the entire practical test (except for preflight inspection) in a Level C or higher FFS, the qualification of which is governed by 14 CFR part 60. However, to ensure the applicant has sufficient experience operating the aircraft prior to serving as PIC of that aircraft, § 61.64 requires the applicant to satisfy one of the aeronautical experience requirements set forth in § 61.64(b)(1) through (5) for turbojet airplanes, (c)(1) through (5) for turbo-propeller airplanes, (d)(1) through (4) for helicopters, or (e)(1) through (4) for powered-lift, as appropriate to the type rating sought. If the applicant meets one of the aeronautical experience requirements set forth in § 61.64(b), (c), (d), or (e), as appropriate to the type rating sought, then the applicant receives a type rating without limitation. If the applicant does not satisfy one of the aeronautical experience requirements, then the applicant receives a PIC limitation on the applicant's pilot certificate in accordance with § 61.64(f)(2).[87] The PIC limitation restricts the applicant from serving as PIC in the type of aircraft for which the applicant has obtained a type rating until the limitation is removed from the pilot certificate by completing the SOE requirements set forth in § 61.64(g). Specifically, the applicant must perform 25 hours of flight time in an aircraft of the category, class, and type for which the limitation applies under the direct observation of a qualified PIC who holds the appropriate ratings, without limitations, for the aircraft.[88] The applicant must obtain this SOE while performing the duties of PIC.[89]

The FAA has long required SOE for newly rated pilots who used FFS to accomplish the training and testing required for the new rating. The SOE requirements in part 61 originated from exemptions that the FAA issued in the 1990s.[90] In those exemptions, the FAA permitted applicants to exclusively use FFS for training and checking, provided the applicants met certain experience requirements specified in the conditions and limitations of the exemption. Applicants who met the experience requirements in an aircraft were entitled to a pilot certificate without limitation. For applicants who met only half of the prerequisite experience, the FAA permitted the issuance of a certificate with a limitation that restricted PIC privileges in the aircraft until the applicant accomplished 15 hours of SOE in the actual aircraft. In subsequent exemptions, the FAA extended the use of FFS to a greater number of pilots by permitting pilots to satisfy 25 hours of SOE in lieu of meeting the experience requirements in an aircraft.[91] The FAA stated that the 25 hours of SOE paralleled the initial operating experience (IOE) requirements of § 121.434.

In 1992, the FAA issued an NPRM that proposed to increase the use of FFS and FTDs by persons other than air carrier certificate holders and reduce the number of exemption petitions seeking to use FFS for part 61 training.[92] Specifically, the FAA proposed to permit an applicant seeking an additional rating to obtain the training for that rating in an FFS or FTD, provided the training was given in an approved course conducted by a part 142 certificated training center.[93] The FAA explained that it had permitted this practice for years pursuant to exemptions,[94] and the training had proven to be effective.[95] However, at that time, the FAA did not propose to require applicants to perform any SOE after obtaining the additional aircraft rating in the FFS or FTD.

In response to that proposal, the FAA received several comments pertaining to the importance of actual aircraft flight experience.[96] The National Transportation Safety Board (NTSB) acknowledged the limitations to simulation and stated that the proposed regulations must be sensitive to the safety needs served by retaining some aspects of actual flight experience. The NTSB explained that experience in training devices cannot fully replicate operational experience in the actual flight environment and the ''seasoning'' that such experience provides. The NTSB urged the FAA to review the proposed regulations to ensure that they achieve the intent while still safeguarding basic pilot and instructor skills provided by the physical operating environment. Similarly, the Air Line Pilots Association (ALPA) supported increased use of advanced simulation but cautioned against relying too heavily on simulator training in a pilot's early years and experience due to important safety factors. ALPA stated that one factor is a pilot's familiarity with and management of the air traffic control (ATC) environment, specifically the operation, decision-making experience, and interaction with other aircraft.

In the subsequent 1996 final rule,[97] the FAA agreed with the commenters' analysis of the importance of actual aircraft experience when an applicant uses flight simulation for a large portion of required training and testing. The FAA explained that, for years, it had mechanisms for part 121 air carriers and for operators under parts 91 and 125 to ensure that PICs obtain actual aircraft experience prior to acting as PIC for aircraft requiring a type rating. The FAA referenced the requirement in § 121.434 for a potential ATP-certificated PIC to receive IOE under the supervision of a check pilot. Additionally, the FAA referenced the terms of the exemptions, which imposed SOE requirements similar to those required by § 121.434

[86] The FAA recognizes that ''class'' is not applicable to powered-lift, as proposed. Section I.H. of this preamble discusses the FAA's proposal to update various references to category and class to ensure each reference appropriately accounts for powered-lift.

[87] Section 61.64(f)(1) provides an alternative to the PIC limitation specified in § 61.64(f)(2). Under § 61.64(f)(1), an applicant may obtain a type rating, without limitation, by completing the following tasks on the practical test in an aircraft appropriate to category, class, and type for the rating sought: preflight inspection, normal takeoff, normal instrument landing system approach, missed approach, and normal landing.

[88] 14 CFR 61.64(g)(1).

[89] 14 CFR 61.64(g)(3). Additionally, § 61.64(g)(2) requires the applicant to log each flight and the PIC who observed the flight to attest in writing to each flight. To have the limitation removed, the applicant must present evidence of the SOE to any examiner or Flight Standards office pursuant to § 61.64(g)(4).

[90] Exemption Nos. 3931E, 5158, 5169, 4652B.

[91] Exemption Nos. 5232D, 5988.

[92] Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers, NPRM, 57 FR 35888 (Aug. 11, 1992).

[93] Id., at 35894.

[94] At the time of the 1992 NPRM, there were 32 exemption holders that were permitted to use flight simulators to satisfy part 61 training and checking requirements. Id., at 35888.

[95] Id., at 35894.

[96] Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers, Final Rule, 61 FR 34508, 34522 (Jul. 2, 1996).

[97] Id.

on relatively inexperienced pilots who sought to obtain a type rating entirely by training and testing in an FFS for purposes of operating under parts 91 and 125. The FAA determined that it was essential to continue to require newly certificated or rated pilots to accomplish SOE prior to acting as PIC for the first time in the NAS in an aircraft that requires a type rating. As a result, the FAA adopted the first SOE requirements in § 61.64 for persons seeking to use FFS and FTDs to obtain additional aircraft ratings.[98]

Originally, the requirements of § 61.64 applied only to applicants seeking an airplane type rating. However, in 1997, the FAA expanded the regulation to permit applicants to use a Level C or higher FFS to obtain an aircraft type rating in a helicopter or powered-lift.[99] As a result, the FAA added regulatory provisions for helicopter and powered-lift type ratings that largely mirrored the requirements that existed for airplane type ratings. Subsequently, in 2009, the FAA issued a final rule that established 25 hours as the standard for SOE.[100] The FAA explained that 25 hours is an appropriate amount of time to ensure a pilot's qualifications.

As discussed in section V.F of this preamble, an applicant for a powered-lift type rating would be required to satisfactorily complete the training and testing for a type rating under an approved training program at a part 141 pilot school, a part 142 training center, or a part 135 operator. Upon completing the approved training program, the applicant may accomplish the practical test in an FFS. The requirements of § 61.64 would, therefore, be applicable. Upon consideration of the current requirements in § 61.64 and their applicability to applicants seeking a powered-lift type rating, the FAA finds it necessary to: (1) propose an amendment to § 61.64(e) that would require SOE for all powered-lift type rating applicants who do not have 500 hours of flight time in the powered-lift for which they are seeking a type rating; and (2) explain the FAA's expectations for the powered-lift that newly rated pilots would use to perform their SOE. Each of these items are subsequently discussed in detail.

Currently, under § 61.64(e), an applicant may accomplish the entire practical test for a powered-lift type rating in a Level C or higher FFS and obtain the powered-lift type rating without a PIC limitation on their pilot certificate if the applicant satisfies one of the experience requirements set forth in § 61.64(e)(1) through (4). Section 61.64(e) contains the following options to meet the experience requirement: (1) hold a type rating in a powered-lift without an SOE limitation; (2) have been appointed by the U.S. Armed Forces as PIC of a powered-lift; (3) have 500 hours of flight time in the type of powered-lift for which the rating is sought; or (4) have 1,000 hours of flight time in two different types of powered-lift. An applicant who does not satisfy one of these experience requirements must perform 25 hours of SOE in a powered-lift of the type for which the limitation applies under the direct observation of a qualified PIC prior to serving as PIC of the powered-lift.

The FAA recognizes the significant advancements in flight simulation technology that have contributed to the levels of realism experienced in simulation today. Additionally, the FAA has long recognized that the use of simulation in flight training provides an opportunity to train, practice, and demonstrate proficiency in a safe, controlled environment. For example, this environment enables comprehensive and in-depth training for the efficient application of critical emergency procedures. It is important to emphasize, however, that as powered-lift are coming to the civilian market for the first time, the only pilots with powered-lift experience are military pilots and test pilots, and there is a lack of commonality in the operating characteristics between types of powered-lift. Therefore, while applicants for a powered-lift type rating may accomplish their training and testing in FFS under an approved training program,[101] the FAA has determined that applicants must have sufficient experience operating the powered-lift for which a type rating is sought in the actual flight environment prior to acting as PIC of the aircraft for the first time in the NAS. To this end, the FAA has evaluated the current provisions in § 61.64(e) to ascertain whether an applicant who meets one of these requirements would have sufficient, transferable experience operating an actual powered-lift such that SOE in the powered-lift for which a type rating is sought would be unnecessary.

The experience requirements in § 61.64(e) were adopted in 1997 when the FAA added the powered-lift category to part 61. Therefore, several of the experience requirements for powered-lift type rating applicants are category-specific rather than class-specific, as class ratings do not exist for powered-lift. Upon comparing the experience requirements for powered-lift type rating applicants in § 61.64(e) to those experience requirements for airplane and helicopter type rating applicants in § 61.64(b), (c), and (d), the FAA finds that the category-specific experience requirements for powered-lift type ratings in § 61.64(e)(1), (2), and (4) do not achieve the same objective as the class-specific experience requirements for airplane and helicopter type ratings in § 61.64(b)(1) through (3); (c)(1) through (3); and (d)(1), (2), and (4), as subsequently discussed.

Section 61.64(e)(1) allows an applicant for a powered-lift type rating to receive a type rating without limitation if the applicant already holds a type rating in a powered-lift without a SOE limitation.[102] While this resembles the requirements in § 61.64(b)(1), (c)(1), and (d)(1), it does not achieve the same objective as those requirements. Specifically, § 61.64(e)(1) permits the applicant to hold a type rating in any powered-lift. This differs from § 61.64(b)(1), (c)(1), and (d)(1), which are tethered to commonalities between classes of aircraft (*i.e.,* paragraph (b)(1) requires the applicant to hold a type rating in a turbojet airplane of the same class of airplane; paragraph (c)(1) requires the applicant to hold a type rating in a turbo-propeller airplane of the same class of airplane; and paragraph (d)(1) requires the applicant to hold a type rating in a helicopter, which is a class of rotorcraft). Thus, the experience requirements in § 61.64(b)(1), (c)(1), and (d)(1) ensure the applicant for an airplane or helicopter type rating holds a type rating for an aircraft that shares similar operating characteristics as the aircraft for which an additional type rating is sought. By contrast, the experience requirement for powered-lift in § 61.64(e)(1) permits an applicant to forgo SOE in the powered-lift for which the type rating is sought if the applicant

[98] When § 61.64 was adopted in 1996, the requirements therein applied to additional aircraft ratings for other than ATP certificates and for other than use under parts 121 and 135.

[99] In 1997, the FAA consolidated the requirements of § 61.64 into § 61.63, which was revised and reorganized for clarity. 62 FR 16220, 16254.

[100] Pilot, Flight Instructor, and Pilot School Certification, Final Rule, 74 FR 42500, 42522 (Aug. 21, 2009). The 2009 final rule removed the regulatory provisions that permitted a newly rated pilot to remove the PIC limitation on their certificate by satisfying certain experience requirements and accomplishing only 15 hours of SOE. Additionally, the 2009 final rule added new § 61.64 to contain all use and limitation requirements for FFS and FTD. Thus, the requirements that were previously found in § 61.63(e), (f), and (g) (for other than ATP certification) were relocated to new § 61.64.

[101] 14 CFR 61.64(a)(2).

[102] The ''SOE limitation'' in current § 61.64(e)(1) refers to the PIC limitation specified in § 61.64(f)(2).

holds a type rating in the general powered-lift category, which may include powered-lift that vary significantly in design, handling, and operating characteristics.

Section 61.64(e)(2) permits an applicant for a powered-lift type rating to receive a type rating without limitation if the applicant has been appointed by the U.S. Armed Forces as PIC of a powered-lift. While this requirement appears to parallel the requirements in § 61.64(b)(3), (c)(3), and (d)(2), it differs from those requirements because it permits the military pilot to be qualified as PIC of any type of powered-lift rather than a powered-lift that shares similar operating characteristics with the powered-lift for which a type rating is sought (*i.e.,* a class of aircraft as promulgated in paragraphs (b)(3), (c)(3), and (d)(2)). The FAA recognizes that military pilots who are qualified to act as PIC of military powered-lift have undergone rigorous training and have a significant amount of flight time operating military powered-lift in complex environments. As explained in section V.B of this preamble, the U.S. Armed Forces have trained military pilots to operate military-specific powered-lift, such as the Bell-Boeing V–22 Osprey, McDonald-Douglas AV–8 Harrier, and F–35B STOVL. These military pilots may qualify for a powered-lift category rating based on military competency in accordance with § 61.73.[103] However, as discussed in section V.B of this preamble, the FAA finds that the experience a military pilot has obtained while operating powered-lift in the U.S. Armed Forces may not ensure the pilot has the knowledge and skills necessary to handle the unique flight qualities of the civil powered-lift for which a type rating is sought in the civil operating environment.

Under § 61.64(e)(4), an applicant for a powered-lift type rating may obtain the type rating without a PIC limitation if the applicant has 1,000 hours of flight time in two different types of powered-lift. While this requirement appears to mirror the requirements for airplane and helicopter type ratings in § 61.64(b)(2), (c)(2), and (d)(4), it does not achieve the same objective as those requirements because, again, it is category-specific rather than class-specific. The 1,000 hours of experience in § 61.64(b)(2), (c)(2), and (d)(4) must be obtained in the same category and class of aircraft, whereas the 1,000 hours of experience in § 61.64(e)(4) must be obtained in the same category of aircraft only (*i.e.,* any powered-lift). Requiring 1,000 hours in two different types of powered-lift, which the FAA again emphasizes may drastically differ in operating characteristics, may not ensure that an applicant for a powered-lift type rating will have flight time handling the unique flight qualities of the powered-lift for which a type rating is sought in the actual operating environment.

In sum, the FAA has determined that broad experience obtained in the powered-lift category should not relieve an applicant for a powered-lift type rating from accomplishing SOE to remove a PIC limitation in the powered-lift for which a type rating is sought. Consistent with the FAA's determinations in the 1996 final rule previously discussed, when an applicant uses flight simulation for a significant portion of the required training and testing, it is important to ensure that the applicant has experience in the actual aircraft prior to acting as PIC of that aircraft. The FAA finds that this is especially important for powered-lift because, as discussed in section V.A of this preamble, powered-lift vary widely in design. Each type of powered-lift can have different configurations, unique inceptors, diversified flight controls, and complicated and distinctive operating characteristics, which makes it infeasible for the FAA to establish classes of powered-lift at this time.

To ensure pilots have experience operating the powered-lift in the actual flight environment prior to serving as PIC of that powered-lift, the FAA is proposing to remove the category-specific experience requirements in § 61.64(e)(1), (2), and (4). Instead, where a powered-lift type rating applicant accomplishes the entire practical test in an FFS and would otherwise satisfy the current experience requirements in those paragraphs, the FAA would require a PIC limitation be placed on their certificate. The pilot would be required to accomplish SOE in the powered-lift under the observation of a qualified PIC to remove the limitation. As the NTSB noted in the 1996 final rule, FFS cannot fully replicate operational experience in the actual flight environment and the ''seasoning'' that such experience provides.

The only experience requirement in § 61.64(e) that is not category-specific is § 61.64(e)(3). Section 61.64(e)(3) permits an applicant for a powered-lift type rating to receive a type rating without limitation if the applicant has 500 hours of flight time in the type of powered-lift for which the rating is sought. This requirement mirrors the requirements in § 61.64(b)(4), (c)(4), and (d)(3) that apply to applicants seeking a type rating for a turbojet airplane, turbo-propeller airplane, and helicopter. The FAA recognizes that there are currently no type-certificated powered-lift. There are several manufacturers, however, that are pursuing a type certificate (TC) for their powered-lift. To obtain a TC for an aircraft, the manufacturer must apply in accordance with part 21 and show that the aircraft meets the applicable airworthiness requirements.[104] As part of the type certification process, manufacturers of powered-lift must conduct developmental and certification flight tests. To enable this flight testing in a non-type-certificated aircraft, the FAA issues an experimental certificate to the aircraft for certain purposes delineated in § 21.191, such as research and development and to show compliance with the FAA's regulations. The FAA also issues authorizations to the manufacturers' test pilots that allow the test pilots to act as PIC of the aircraft during experimental aircraft operations. Therefore, the only pilots who have significant experience operating the civil powered-lift that are coming to market are the manufacturers' test pilots. Upon analyzing the requirement in current § 61.64(e)(3), the FAA has determined that the manufacturer's test pilots may have at least 500 hours of flight time in the type of powered-lift for which they seek a rating.

The manufacturer's test pilots play a significant role in the development and certification of an aircraft. They are involved in the certification plan for the powered-lift from the earliest days and often have an engineering degree in addition to a pilot certificate. These test pilots that have engineering degrees are generally involved in the manufacturer's design and development of the aircraft's systems and components as well as the flight testing of such. Test pilots conduct both qualitative and quantitative flight tests of an aircraft to evaluate the flight controls, avionics, propulsion, mechanical and electrical systems, and equipment installations. The purpose of an aircraft flight test is to make determinations about an aircraft's performance and flying qualities, to ensure all safety features and redundant systems function as intended, and to operate the aircraft to its limits and beyond to determine the appropriate operating envelope. When issues arise during a flight test, the test pilot often works with the manufacturer

[103] As explained in section V.B of this preamble, these pilots would still be required to obtain a powered-lift type rating to operate a civil powered-lift.

[104] 14 CFR 21.17. Additionally, section IV of this preamble discusses powered-lift type certification in further detail.

to resolve such issues. Because test pilots have intricate knowledge of the aircraft systems, they are able to identify risks and mitigation techniques to ensure product safety. Test pilots are also immersed in authoring material for the aircraft flight manual, including systems descriptions, aircraft limitations, and normal and emergency procedures. Furthermore, test pilots are responsible for performing maintenance checks and post maintenance flight tests on an aircraft.

In light of the key role a test pilot plays in the development and certification of a powered-lift, the FAA finds that a test pilot who has at least 500 hours of flight time in the powered-lift of the type for which they seek a rating will have the knowledge and skills necessary to handle the unique flight qualities of the powered-lift in the actual aircraft. Furthermore, while the majority of the test pilot's duties may involve flight testing and certification activities, these flights are not conducted in a sterile environment. The test pilots are responsible for conducting the aircraft flight tests while also taking care of the operational aspects of the flight, including filing a flight plan, conducting departures and instrument approaches, communicating with ATC, and interacting with other aircraft. Therefore, the FAA has determined that these test pilots will have sufficient experience manipulating the controls of the actual powered-lift in the operational environment of the NAS such that an SOE limitation is unnecessary.

For these reasons, the FAA proposes to retain only the requirement that currently exists in § 61.64(e)(3), which allows applicants for a powered-lift type rating who use an FFS for the practical test to receive the type rating without a PIC limitation on their pilot certificate if they have at least 500 hours of flight time in the type of powered-lift for which they seek a rating. Powered-lift type rating applicants who do not use a powered-lift during the practical test and do not satisfy § 61.64(e)(3) must accomplish SOE in the type of powered-lift for which they obtain a type rating, pursuant to § 61.64(g). This requirement safeguards the knowledge and skills provided by physically operating the aircraft in the flight environment. For example, it would ensure these newly-rated powered-lift pilots obtain experience handling the flight controls of the powered-lift for which they obtain a type rating in a non-sterile operating environment where they must operate the powered-lift while simultaneously making decisions, communicating with ATC, and interacting with other aircraft.

Before the newly rated powered-lift pilots may perform SOE in powered-lift, there must first be a cadre of qualified PICs to directly observe the flight time.[105] These supervising PICs would be considered qualified if they hold a commercial pilot certificate with a powered-lift category rating and a type rating, without limitations. The lack of qualified FSTD for powered-lift means that most initial powered-lift ratings would be accomplished in the aircraft in flight. The proposed alternate pathways to certification in the SFAR would enable persons to obtain powered-lift ratings without a limitation on their commercial pilot certificates by training and testing in a powered-lift. By the time the first groups of pilots seek training and testing entirely in FFS, there will be sufficient numbers of qualified pilots who hold type ratings without limitations for the purpose of observing SOE.

The FAA also notes that an applicant may be qualified to be a PIC without the limitation set forth by § 61.64(f)(2) if, during the practical test, the applicant completes the tasks pursuant to § 61.64(f)(1) in a powered-lift. Specifically, the applicant must complete preflight inspection, normal takeoff, normal instrument landing system approach, missed approach, and normal landing, appropriate to the powered-lift category and type rating sought.

For the reasons previously explained, the FAA is proposing to amend § 61.64(e) by removing the category-specific experience requirements in paragraphs (e)(1), (2), and (4) that enable an applicant for a powered-lift type rating to obtain a type rating without limitation. Because three of the four paragraphs in current paragraph (e) would be removed, the FAA is proposing to consolidate the leading paragraph of current § 61.64(e) with the experience requirement that currently exists in paragraph (e)(3). Therefore, the only applicants for a powered-lift type rating who may forgo SOE after obtaining the type rating by completing the entire practical test in a flight simulator and receiving a PIC limitation are those applicants who have at least 500 hours of flight time in the type of powered-lift for which the rating is sought. The FAA also proposes to make a conforming amendment to § 61.64(f) that would remove the cross-references to the experience requirements currently contained in § 61.64(e)(1) through (4).

If the entire practical test (except for preflight inspection) for the proposed powered-lift type rating occurs in a flight simulator, the applicant would receive a type rating with a PIC limitation unless the applicant has at least 500 hours of flight time in the type of powered-lift for which the rating is sought. To remove the PIC limitation, the applicant would be required to perform the SOE required by § 61.64(g). Pursuant to § 61.64(g)(1), an applicant may remove the PIC limitation from their pilot certificate if the applicant performs 25 hours of flight time in a powered-lift of the type for which the limitation applies under the direct observation of a PIC who holds the appropriate ratings without limitations. Section 61.64(g)(3) states that the applicant must obtain this SOE while performing the duties of PIC.[106] Because the applicant has a limitation on their pilot certificate that prohibits the applicant from serving as PIC in an aircraft of that type, the applicant is not acting as PIC of the aircraft during the SOE. As a result, the qualified PIC observing the SOE is acting as PIC of the operation.

Pursuant to § 91.3(a), the PIC of an aircraft is directly responsible for, and is the final authority as to, the operation of the aircraft. Likewise, the definition of PIC in § 1.1 states, in relevant part, that a PIC ''has final authority and responsibility for the operation and safety of the flight.'' Therefore, while the requirements in § 61.64(g) do not expressly state that the aircraft used for SOE must have a dual set of controls,[107] it can be inferred from the regulatory requirements that the supervising PIC must have access to controls in the aircraft. Without access to a dual set of controls, the PIC would be unable to act as the person directly responsible for the operation of the aircraft and safety of the flight.

Under the current regulatory framework in part 61, a pilot is required to hold only a powered-lift category

[105] Pursuant to § 61.64(g)(2), the SOE must be under the direct observation of the PIC who holds a category, class, and type ratings, without limitations, for the aircraft.

[106] The FAA considers a person to be performing the duties of a PIC when the person performs all the functions of the PIC including landings and takeoffs, en route flying, low approaches, and ground functions. See Legal Interpretation to Duncan (Apr. 13, 2012). In the air carrier environment, the FAA generally uses the term ''pilot flying,'' which it defines as ''[t]he pilot who is controlling the path of the aircraft at any given time, in flight or on the ground.'' Advisory Circular 120–71B, Chapter 1, Sec. 1.4.

[107] Section 91.109(a) requires an aircraft that is being used for flight training to have fully functioning dual controls. However, because the SOE required under § 61.64(g) is not flight training, § 91.109(a) does not apply.

rating to operate a powered-lift. As a result, under the current regulations, a manufacturer may develop a powered-lift with a single set of controls with the expectation that a pilot could obtain flight training in a different powered-lift for purposes of meeting the aeronautical experience requirements and obtaining a powered-lift category rating under part 61. Upon obtaining the powered-lift category rating, the pilot would then be qualified to operate a powered-lift that has only one set of controls.

Because the proposed regulations would require the majority of newly-rated powered-lift pilots who use an FFS for the practical test to perform SOE in the powered-lift for which they obtain a type rating, the proposal would result in a different outcome for manufacturers that are developing powered-lift with only one set of controls. To enable the performance of SOE where the applicant is performing the duties of PIC but the PIC observing the flight is acting as PIC of the operation, each powered-lift would be required to have a version of the aircraft that contains fully functioning dual controls. The FAA recognizes that there are manufacturers who are currently seeking type certification of powered-lift that have only one pilot seat and a single set of controls.[108] To comply with the proposal, the FAA expects these manufacturers to develop a version of the aircraft to contain fully functioning dual controls, which is consistent with the FAA's expectations for flight training in airplanes and helicopters that require a type rating.

To the extent powered-lift manufacturers may experience additional compliance costs as a result of this proposal, the FAA notes that it has considered whether there are alternate ways to perform the SOE with only one set of controls in the aircraft. Currently, there is a movement towards Simplified Vehicle Operations (SVO), which is ''the use of automation coupled with human factors best practices to reduce the quantity of trained skills and knowledge that the pilot or operator of an aircraft must acquire to operate the system at the required level of operational safety.'' [109] Some manufacturers are in the process of demonstrating advanced automation technology as part of this movement; however, nothing has been certified yet. As a result, the FAA lacks operational data to analyze whether such technology would safely enable SOE in an aircraft without dual functioning controls. The FAA expects to obtain sufficient data over the duration of the SFAR that could inform a potential rulemaking on this subject.

The requirement for a dual set of controls for flight training in all aircraft originated in 1938.[110] It is a foundational safety regulation applicable to airplanes, helicopters, and powered-lift alike that prevents an inexperienced person from being solely responsible for the manipulation of the flight controls. The same safety rationale for requiring a dual set of controls during flight training applies equally to the SOE scenario for aircraft because the pilot seeking to accomplish SOE holds a limitation that prevents them from acting as PIC until they can demonstrate the ability to perform the duties of PIC in the operational environment under supervision of a fully-rated PIC. While there may be technological advancements in the future that enable the performance of SOE without a dual set of controls (*e.g.,* virtual SOE), the FAA has determined that it would be premature to codify alternate ways to accomplish SOE in the regulations at this time without a more robust understanding of the safety implications.

E. Establish an Alternate Pathway for Pilot Certification

The introduction of powered-lift as an entirely new category of civil aircraft creates unique challenges for the training and certification of airman. Typically, a person interested in becoming a professional pilot [111] follows an incremental path that builds piloting skills through an iterative series of training with a flight instructor, accumulation of other flight experience, and successful completion of a practical test with a designated examiner. A person generally begins as a student pilot under strict limitations (§ 61.89), obtains a private pilot certificate with limited privileges (§ 61.113), builds flight time as a private pilot, trains and tests for a commercial pilot certificate with expanded privileges (§ 61.133), and finally builds flight time as a commercial pilot toward the hours needed for the ATP certificate, which is necessary to serve as a PIC or SIC in part 121 operations as well as to serve as a PIC in certain part 135 operations.[112]

Under this building block approach, a pilot must meet minimum aeronautical experience requirements at each certificate level that include total time requirements (*e.g.,* 250 total hours to be eligible for a commercial pilot certificate) and subsets of flight time like pilot-in-command time, night time, and cross-country time. In many instances, a portion of this time must be accomplished in the aircraft for the category rating sought. For instance, to apply for a commercial pilot certificate in the airplane category, a person must have 250 hours of flight time as a pilot of which 50 hours must be in airplanes, 50 hours must be pilot-in-command time in airplanes, and 10 hours must be pilot-in-command time in cross-country flight in airplanes.

The predominant categories of aircraft (*i.e.,* airplane and rotorcraft) that operate in the NAS today have been in existence for over 80 years. There are currently over 470,000 certificated pilots (other than student pilots) including over 100,000 commercial pilots and 163,000 ATPs. Most importantly, there are over 121,000 certificated flight instructors.[113] These flight instructors form the backbone of the civil airman certification framework. As noted, the only powered-lift pilots and flight instructors with FAA certification have obtained those ratings through the recognition of military competency in § 61.73. Currently, the FAA has certificated 759 powered-lift pilots and 365 powered-lift flight instructors through this process.[114] While these powered-lift pilots and flight instructors form an initial cadre that can serve as pilots in powered-lift operations or provide training to persons seeking powered-lift ratings, it is likely

[108] The proposed type rating requirement would likewise present obstacles to powered-lift with single controls. Applicants for powered-lift type ratings would be required under §§ 61.63(d)(2) and 61.157(b) to obtain flight training in the type of powered-lift for the rating sought. Because the applicant would not be rated to act as PIC of the aircraft, the person providing the flight training must act as PIC. Under § 91.109, the aircraft would be required to have a dual set of controls, and the flight instructor as PIC must have access to controls in the aircraft to perform their duties under § 91.3.

[109] GAMA, A Rationale Construct for Simplified Vehicle Operations (SVO), (May 20, 2019).

[110] 14 CFR 20.655 (1938). ''Dual controls. No flying instruction shall be given in any aircraft, for or without hire, unless such aircraft is equipped with fully functioning dual controls and a certificated instructor is in full charge of one set of said controls. Such dual controls shall be fully functioning as set forth in § 20.53, except in aircraft manufactured prior to January 1, 1939.''

[111] Because the powered-lift that are currently working through the aircraft certification process are largely intended for commercial use, this discussion focuses on the training and certification necessary for those types of operations. The FAA understands that many pilots engage in aviation solely for recreational purposes and may not follow this path to higher certification.

[112] See 14 CFR 135.4(a)(2)(ii)(A), 135.243(a)(1) and (2).

[113] *https://www.faa.gov/data_research/aviation_data_statistics/civil_airmen_statistics.*

[114] According to the FAA's Airman Certification Branch, these numbers represent the powered-lift airmen certificate holders as of Sep. 21, 2022.

insufficient to meet the upcoming demands.

To add to the challenges, the FAA does not anticipate that the initial powered-lift that obtain type certification will be broadly available for basic airman training and certification at the private pilot level. Rather, manufacturers intend to produce powered-lift for commercial purposes, meaning the initial pilots will be required to hold at least commercial pilot certificates to act as required flightcrew members (*i.e.,* PIC or SIC) for compensation or hire. This situation disrupts the building block approach to flight training and certification that has worked for other categories of aircraft. As there are no civil powered-lift, a person would have difficulty obtaining flight training due to the low numbers of qualified flight instructors and would not have the necessary flight time in a powered-lift to be eligible for a commercial pilot certificate.[115]

Manufacturers and operators interested in using powered-lift in commercial operations have reached out to the FAA to express concern that the existing aeronautical experience requirements for powered-lift present an insurmountable obstacle to enabling powered-lift operations. The FAA understands the concerns but must find ways to enable operations in powered-lift without adversely affecting safety. The following sections lay out a proposed pathway for pilots to obtain powered-lift ratings through alternate aeronautical experience requirements and expanded logging provisions. The FAA notes that if no alternate aeronautical experience or logging provision is provided under proposed part 194, the person must meet the applicable part 61 requirements, as appropriate.[116]

1. Applicability of Alternate Requirements

Except for the alternate requirements for cross-country discussed later in this section, the FAA proposes to limit the alternate aeronautical experience and logging requirements for obtaining a powered-lift category rating and instrument-powered-lift rating to those persons who already hold at least a commercial pilot certificate with at least an airplane category and single- or multiengine class rating or a rotorcraft category and helicopter class rating.[117] The person would also be required to hold an instrument-airplane or instrument-helicopter rating that corresponds to a category rating held at the commercial pilot certificate level. These prerequisites would be set forth in proposed § 194.215(a).

To obtain a commercial pilot certificate with either airplane class ratings or a helicopter rating, a person must satisfy the aeronautical experience requirements in § 61.129(a), (b), or (c), as appropriate to the ratings sought, pass a knowledge test on the aeronautical knowledge areas specified in § 61.125, and pass a practical test on the areas of operation listed in § 61.127. To pass a practical test for a commercial pilot certificate with appropriate ratings, the applicant must demonstrate mastery of the aircraft by successfully performing each task specified in the areas of operation for the practical test. The applicant is also required to demonstrate proficiency and competency within the approved standards set forth for the commercial pilot certificate level, which are more stringent than the standards set forth for private pilots.[118]

Similarly, to obtain an instrument-airplane or -helicopter rating, the person must satisfy the instrument rating requirements of § 61.65 (as appropriate to the rating sought), which prescribes that the applicant must: obtain certain aeronautical experience, including a significant amount of instrument training; pass a knowledge test on the aeronautical knowledge areas that apply to the instrument rating sought; and pass a practical test on the areas of operation specified in § 61.65(c).

Based on these requirements, a person who already holds a commercial pilot certificate for airplanes or helicopters will have significant flight time[119] and valuable experience operating in the NAS, communicating with ATC, interacting with other air traffic, and acting as PIC of an airplane or helicopter. The proposed applicability requirements would ensure that the pilots taking advantage of the alternate requirements set forth in the SFAR have significant experience in either an airplane or helicopter and have demonstrated proficiency and competency in either an airplane or helicopter at the commercial pilot level. Furthermore, by requiring these persons to hold an instrument-airplane or -helicopter rating, persons seeking to meet the alternate requirements for a powered-lift category rating would have experience operating an airplane or helicopter under IFR and have demonstrated proficiency on the instrument rating practical test. These prerequisites for the alternate pathway would ensure that the initial cadre of powered-lift pilots have a solid foundational skill set and extensive experience prior to adding powered-lift ratings to their commercial pilot certificate.

2. Obtaining a Powered-lift Category Rating on the Commercial Pilot Certificate (§ 61.129(e))

To obtain a commercial pilot certificate with a powered-lift category rating, a person must satisfy the eligibility requirements for a commercial pilot certificate, which are contained in § 61.123. Section 61.123(f) requires a person to meet the aeronautical experience requirements of § 61.129 that apply to the aircraft category rating sought before applying for the practical test. The aeronautical experience requirements for a person seeking to obtain a commercial pilot certificate with a powered-lift category rating or seeking to add a powered-lift category rating to a commercial pilot certificate are contained in § 61.129(e).[120]

Section 61.129(e) requires a person who applies for a commercial pilot certificate with a powered-lift category rating to log at least 250 hours of total flight time as a pilot which must contain at least the subsets of aeronautical experience specified in § 61.129(e)(1) through (4). Section 61.129(e)(1) through (4) require specific flight time,

[115] The biggest obstacle to obtaining a new category rating at the commercial pilot certificate level is the required PIC time in the category because the only way to log PIC time when a person is not yet rated in the aircraft is as the sole occupant. All other logging requirements for PIC time require the pilot to be rated in the aircraft. When a person obtains a rating at the private pilot level, there is no requirement for PIC time, but a student pilot must accomplish 10 hours of solo flight time, which qualifies as PIC time. At the commercial pilot level, for someone not yet rated in the category of aircraft (*i.e.,* someone adding a new category rating), most of the 50 hours of PIC time required in category must be accomplished as solo flight time. See 14 CFR 61.51(e).

[116] *See* proposed § 194.215(b).

[117] As discussed in this section of this preamble, the FAA is proposing in § 194.237 to provide limited relief from the current cross-country time requirements to private pilots.

[118] 14 CFR 61.43.

[119] To obtain a commercial pilot certificate with an airplane category and single- or multiengine airplane rating, an applicant must log at least 250 hours of total flight time as a pilot that consists of certain flight time and training requirements. See § 61.129(a) and (b). Similarly, to obtain a commercial pilot certificate with a rotorcraft category and helicopter class rating, an applicant must log at least 150 hours of flight time as a pilot that consists of certain flight time and training requirements. See § 61.129(c).

[120] Section 61.63(b)(1) states that a person who applies to add a category rating to a pilot certificate, ''[m]ust complete the training and have the applicable aeronautical experience.'' Accordingly, a person seeking to add a powered-lift category rating to a commercial pilot certificate must meet the aeronautical experience requirements of § 61.129(e). See Legal Interpretation to McClellan (2015) (explaining that there is no shortcut available when adding a category rating to an existing certificate).

such as flight time in powered aircraft, flight time in powered-lift, PIC flight time (including a certain amount of PIC time in a powered-lift), cross-country time, flight training time, and solo flight time (or flight time performing the duties of PIC in a powered-lift with an authorized instructor onboard). The FAA established these aeronautical experience requirements for a powered-lift category rating in the 1997 final rule, when the FAA established the powered-lift category in part 61.[121]

At the time the FAA introduced aeronautical experience requirements for the powered-lift category, larger powered-lift were in production. Based on these powered-lift, the FAA decided to codify aeronautical experience requirements for powered-lift that mirrored the aeronautical experience requirements for airplanes. The preamble supporting the 1997 final rule was silent as to why the aeronautical experience requirements for airplanes were more appropriate for powered-lift compared to the aeronautical experience requirements for other categories of aircraft. Since the FAA added the powered-lift category to part 61, several powered-lift are in the type-certification process. The powered-lift currently coming to the civilian market do not align with the aircraft that the FAA anticipated at the time it codified the aeronautical experience requirements for the powered-lift category.[122] Additionally, powered-lift did not flood the civilian market as the FAA anticipated.

Currently, civilian pilots are unable to satisfy many of the aeronautical experience requirements in § 61.129(e) because there are no certificated powered-lift in civil operations in which they can build the necessary flight time. Even when powered-lift category aircraft are introduced to civil aviation, pilots will be unable to satisfy several of the aeronautical experience requirements for a commercial pilot certificate and an instrument rating, such as PIC flight time in powered-lift and cross-country experience in powered-lift. As subsequently discussed in more detail, the logging requirements of § 61.51(e) currently present obstacles for a pilot who is not rated in a powered-lift to log PIC flight time in a powered-lift. Additionally, several powered-lift coming to market are not capable of completing the long-range distances that are currently prescribed for cross-country flights in § 61.129(e)(3) and (4).

The FAA recognizes the need to enable a pathway for a person to obtain a powered-lift category on their commercial pilot certificate. However, because powered-lift are just beginning to enter the market, the FAA lacks the operational data necessary to properly inform a rulemaking that would permanently amend the aeronautical experience requirements in § 61.129(e). The FAA is therefore proposing in part 194 to enable certain applicants for a powered-lift category rating on their commercial pilot certificate to satisfy alternate aeronautical experience and logging requirements. Additionally, the proposed rule would permit the applicant to credit additional time obtained in an FFS towards certain flight time requirements.[123]

This section of the preamble discusses the alternate experience and logging requirements, as applicable, to obtain a powered-lift category rating on a commercial pilot certificate, for (1) test pilots and instructor pilots, (2) the initial cadre of instructors, (3) pilots receiving training under an approved training program, including provisions that would enable certain applicants to credit time obtained in an FFS toward certain flight time requirements. Alternate requirements for cross-country flights are discussed subsequently in this section because they are generally applicable to all applicants for a commercial pilot certificate with a powered-lift category rating. Section E.5.i of this preamble contains tables summarizing the proposed alternate requirements for persons seeking a powered-lift category rating on a commercial pilot certificate.

i. Test Pilots and Instructor Pilots: Alternate Aeronautical Experience and Logging Requirements for a Powered-lift Category Rating

Currently, several manufacturers are pursuing a type certificate for powered-lift, which requires developmental and certification flight tests to establish that the aircraft meets the applicable certification standards.[124] To enable this flight testing in a non-type-certificated aircraft, the FAA issues an experimental certificate to the aircraft for certain purposes, such as for research and development and showing compliance with the FAA's regulations, as discussed in section V.A of this preamble. Powered-lift manufacturers also have instructor pilots who are tasked with developing and validating the training for experimental powered-lift. To enable these training flights, the FAA issues experimental certificates for the purpose of crew training. At this time, the manufacturers' test pilots and instructor pilots are the only pilots who have significant experience operating the civil powered-lift that are coming to market.

As discussed in section V.D of this preamble, the manufacturers' test pilots play a significant role in the development and certification of an aircraft. For example, they are involved in the certification plan for the powered-lift; the manufacturer's design, development, and flight testing of the aircraft's systems and components; and conducting both qualitative and quantitative flight tests for aircraft evaluations. As a result, test pilots have intricate knowledge of the aircraft systems, which enables the test pilot to identify risks and mitigation techniques to ensure product safety. Test pilots are also responsible for authoring certain material for the aircraft flight manual and for performing maintenance checks and post-maintenance flight checks. Furthermore, instructor pilots are responsible for developing the manufacturer's training curriculum, which includes the development of training requirements for the aircraft. These duties of a test pilot and instructor pilot establish significant experience in a particular powered-lift and intricate knowledge of the aircraft's systems and components, thereby exceeding the duties of a pilot operating in a normal flight environment. The FAA has determined that it would be beneficial to leverage the experience these pilots have in powered-lift to create an initial cadre of powered-lift pilots.

Accordingly, the FAA is proposing alternate aeronautical experience and logging requirements that would remove certain obstacles that currently preclude a test pilot or instructor pilot from obtaining a powered-lift rating pursuant to § 61.129(e). Each of the proposed alternate requirements are discussed below.

[121] Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules, Final Rule, 62 FR 16220 (Apr. 4, 1997).

[122] Powered-lift coming to market today are much different in size, capabilities, range, performance, and propulsion than what was present in 1997. The larger transport category size aircraft at that time differ greatly from powered-lift coming to market today, many of which have electric propulsion concepts, simplified flight controls, and other operational considerations that were not present when the FAA first codified powered-lift in the rule.

[123] The FAA notes that part 60 does not currently contain qualification standards for powered-lift FSTDs (*i.e.,* FFSs and FTDs); however, the FAA intends to qualify powered-lift FSTDs in accordance with proposed § 194.105, as discussed in section IV.C of this preamble.

[124] See 14 CFR 21.35.

a. Aeronautical Experience Requirements Concerning Training (§ 61.129(e)(3))

Currently, § 61.129(e)(3) requires an applicant for a powered-lift category rating to log at least 20 hours of training from an authorized instructor [125] on the areas of operation listed in § 61.127(b)(5), which include the following: preflight preparation; preflight procedures; airport and heliport [126] operations; hovering maneuvers; takeoffs, landings, and go-arounds; performance maneuvers; navigation; slow flight and stalls; emergency operations; high-altitude operations; special operations; and post flight procedures.

While the flight experience of a test pilot for a powered-lift manufacturer far exceeds that of a civilian pilot conducting operations in a normal flight environment, the test pilot does not receive flight training in accordance with part 61 as part of their duties performing flight tests required for aircraft certification.[127] Therefore, a test pilot will not obtain the 20 hours of flight training from an authorized instructor that is a prerequisite for applying for a powered-lift rating. However, the manufacturer will have instructor pilots who develop a proposed training curriculum for its experimental powered-lift during the aircraft certification process. These instructor pilots deliver the proposed training curriculum to a pool of pilots as part of its validation process with the FAA's Aircraft Evaluation Division.[128]

In proposed §§ 194.217 and 194.219, the FAA proposes alternate means for test pilots and instructor pilots, respectively, to meet the requirement of 20 hours of training on the areas of operation listed in § 61.127(b)(5) in an experimental powered-lift at the manufacturer. Specifically, the FAA proposes to permit test pilots to satisfactorily complete the manufacturer's proposed training curriculum in the experimental powered-lift with an instructor pilot for the manufacturer rather than with an authorized instructor. As proposed in § 194.217(b)(1), the curriculum would be required to include the 20 hours of training on the areas of operation set forth in § 61.127(b)(5), as required by § 61.129(e)(3). The training would meet the part 61 requirements in all other respects (except as discussed later in this section with regard to cross-country time requirements). To verify this training, proposed § 194.217(b)(1)(ii) would require the test pilot to receive a logbook or training record endorsement from the instructor pilot certifying that the test pilot satisfactorily completed the training curriculum.[129]

Because the instructor pilots are most familiar with the training curriculum and its development, the FAA finds it is appropriate to allow them to conduct the training required by § 61.129(e) even if they are not authorized instructors as defined in § 1.1. The proposed requirement to allow for the completion of the manufacturer's proposed training curriculum with an instructor pilot would apply to the test pilots as they have a solid foundational knowledge of powered-lift prior to receiving any training from an instructor pilot, and the instructor pilot was responsible for developing the training curriculum. The quality of flight training provided by the instructor pilot combined with the test pilot's previous experience operating the powered-lift for type certification purposes would ensure that there is no adverse impact to safety.

Furthermore, in light of the quality of flight training provided by the instructor pilot who is intimately familiar with the powered-lift and has developed the training for the manufacturer, the FAA is proposing an alternate requirement in § 194.219(b)(1) that would allow the instructor pilot who provides the proposed training curriculum to the test pilot to credit the time providing the training towards § 61.129(e)(3) for purposes of the instructor pilot obtaining a commercial pilot certificate with a powered-lift category rating. To verify to the examiner who will conduct the practical test that the instructor pilot satisfied this alternate experience requirement, the FAA is proposing in § 194.219(b)(1)(ii) to require the instructor pilot to receive an endorsement from a management official within the manufacturer's organization certifying that the instructor pilot has provided the manufacturer's proposed training curriculum to a test pilot on the areas of operation listed in § 61.127(b)(5). This section subsequently discusses the reasons underlying this proposal, including those regarding prohibition against self-endorsements.

Section 61.129(e)(3)(iv) currently requires that, within the 20 hours of training for a powered-lift category rating, an applicant must log at least 3 hours in a powered-lift with an authorized instructor in preparation for the practical test within the preceding two calendar months from the month of the test. To enable the test pilot (or instructor pilot) to take the practical test after satisfactorily completing (or providing) the manufacturer's proposed training curriculum, the FAA proposes in §§ 194.217(b)(2) and 194.219(b)(2) to permit the preparation for a practical test to be completed with an instructor pilot rather than an authorized instructor, as required by part 61. Because the instructor pilot would deliver the training, the FAA finds that it would be appropriate to permit the instructor pilot to also ensure that test pilot is prepared for the practical test.[130] Additionally, to enable the examiner to verify that the applicant received the preparation for the practical test, the applicant would be required to receive a logbook endorsement under § 61.123(e)(2). As subsequently discussed in this section, the FAA proposes in § 194.213 to allow the

[125] Section 61.1 defines ''authorized instructor'' as: a person who holds a ground instructor certificate issued under part 61 of this chapter and is in compliance with § 61.217, when conducting ground training in accordance with the privileges and limitations of their ground instructor certificate; a person who holds a flight instructor certificate issued under part 61 and is in compliance with § 61.197, when conducting ground training or flight training in accordance with the privileges and limitations of their flight instructor certificate; or a person authorized by the Administrator to provide ground training or flight training under part 61, 121, 135, or 142 when conducting ground training or flight training in accordance with that authority.

[126] As discussed in section V.I of this preamble, the FAA proposes in this SFAR to extend the definition of heliport in 14 CFR 1.1 as applicable to powered-lift, thereby facilitating the use of heliports as a means for powered-lift take-off and landing.

[127] The FAA reemphasizes that, for airplanes and helicopters, a test pilot for a manufacturer will hold the necessary certificates and ratings before becoming a test pilot by completing flight training and building flight time through the usual building block approach for certification. The introduction of powered-lift into civil operations creates a unique situation because so few individuals (*i.e.,* military pilots and former military pilots) hold the required ratings.

[128] The manufacturer provides a minimum training program to get initial qualification and issuance of the associated pilot type rating. The FSB evaluates and validates the applicant's training proposal using a standard process that includes multiple 'test subjects' not previously aware of or trained on the new aircraft.

[129] While a test pilot would be required to receive an endorsement from an instructor pilot verifying that the test pilot satisfactorily completed the manufacturer's proposed training curriculum, the test pilot would also be required to receive the endorsement in § 61.123(e). Proposed 194.213(a) would permit instructor pilots to provide the required logbook or training record endorsements under part 61 for a commercial pilot certificate with a powered-lift category rating. Therefore, the endorsement required under § 61.123(e) may be provided by an instructor pilot in lieu of an authorized instructor.

[130] The FAA notes that, while the instructor pilot is providing training to the test pilot rather than receiving training, the instructor pilot would still be required to receive 3 hours of training time in preparation for the commercial pilot practical test. The instructor pilot would receive this training time from another instructor pilot at the manufacturer.

applicant to obtain the part 61 logbook or training record endorsement from an instructor pilot certifying that the applicant is prepared for the practical test rather than from an authorized instructor. For the same reasons discussed above, the FAA finds that permitting this flight to take place with an instructor pilot rather than an authorized instructor would not adversely affect safety.

b. Aeronautical Experience Requirements Involving Time Performing the Duties of PIC in Experimental Powered-Lift (§ 61.129(e)(4))

Section 61.129(e)(4) currently requires an applicant for a powered-lift category rating to obtain either 10 hours of solo flight time in a powered-lift under an endorsement from an authorized instructor [131] or 10 hours of flight time performing the duties of PIC in a powered-lift with an authorized instructor onboard. Either of these flight times may be credited towards the flight time requirement in § 61.129(e)(2), which requires 100 hours of PIC flight time.[132]

To preserve the option of obtaining solo flight time, the FAA is proposing in §§ 194.217(b)(3) and 194.219(b)(3) to allow test pilots and instructor pilots to obtain the solo endorsement from an instructor pilot in lieu of an authorized instructor. The FAA is also proposing to allow test pilots and instructor pilots to complete the 10 hours of flight time performing the duties of PIC in an experimental powered-lift without an authorized instructor onboard. Instead of the authorized instructor, §§ 194.217(b)(3) and 194.219(b)(3) would require an additional test pilot or instructor pilot to be onboard. The FAA finds that this proposal would not adversely affect safety because both the test pilot and the instructor pilot are authorized by the FAA to act as PIC of the experimental aircraft. Additionally, the test pilot has significant experience acting as PIC of the powered-lift in operations conducted for the purpose of research and development and showing compliance with the regulations. Similarly, the instructor pilot has experience acting as PIC of the powered-lift in operations conducted for the purpose of crew training.

[131] Under § 61.31(d)(2), to obtain solo flight time, a person must have received training and an endorsement from an authorized instructor.

[132] Of the 100 hours of PIC time required by § 61.129(e)(2), 50 hours must be accomplished in a powered-lift and 50 hours must be accomplished in cross-country flight. Ten hours of the cross-country flight time must be in a powered-lift. 14 CFR 61.129(e)(2)(i), (ii).

c. Aeronautical Experience Requirements Involving Logging PIC Flight Time (§ 61.129(e)(2))

Not all manufacturer test pilots or instructor pilots will hold a powered-lift category rating. The aeronautical experience requirement in § 61.129(e)(2)(i) requires an applicant for a powered-lift rating at the commercial pilot certificate level to obtain 50 hours of PIC flight time in powered-lift. Under § 61.51(e)(1), as relevant, a pilot may log PIC time when the pilot is the sole manipulator of the controls of an aircraft for which the pilot is rated (category, class, and type rating, if appropriate), or the sole occupant of an aircraft.[133] The FAA has identified obstacles in each of these logging provisions with respect to test pilots and instructor pilots.

Section 61.51(e)(1)(i) precludes a test pilot from logging PIC flight time in a powered-lift for which the pilot is not rated, even if the test pilot is solely manipulating the controls. Furthermore, while the current regulations permit a test pilot to log PIC flight time when the test pilot is the sole occupant of the aircraft, the test pilot may not be the sole occupant of the powered-lift when the test pilot is conducting operations for research and development or for showing compliance with the regulations.[134] Additionally, the powered-lift may require two pilot flightcrew members, in which case the test pilot would not be the only pilot onboard.

As previously discussed at length, test pilots play a key role in the development and certification of a powered-lift. While these pilots may not be rated in a powered-lift, they are authorized by the FAA to act as PIC of the experimental powered-lift and have extensive experience manipulating the controls of the aircraft in operations conducted for research and development and for showing compliance with the regulations. Furthermore, when a test pilot conducts a qualitative or quantitative flight test in the powered-lift, that flight test is not conducted in a sterile environment. Instead, the test pilot is responsible for conducting the aircraft flight tests while also considering the operational aspects of the flight, including filing a flight plan, conducting departures and instrument approaches, communicating with ATC, and interacting with other aircraft.

Upon evaluating the various duties that a test pilot performs, the FAA has determined that certain flight time obtained by these test pilots should count towards the PIC flight time requirement for a powered-lift category rating in § 61.129(e). The FAA is therefore proposing an alternate logging requirement in proposed § 194.217(c) that would permit the test pilots to log PIC flight time for flights when they are the sole manipulator of the controls of the experimental powered-lift despite the fact that they are not rated in the aircraft. The FAA finds that this alternate logging requirement would enable these test pilots to more easily attain the 50 hours of PIC flight time in a powered-lift.

The FAA also proposes an alternate logging requirement for instructor pilots. Under § 61.51(e)(3), a CFI may log PIC flight time for all flight time while serving as the authorized instructor in an operation if the instructor is rated as PIC of that aircraft. Similar to test pilots, instructor pilots for a powered-lift manufacturer may not be authorized instructors as defined in FAA regulations and may not hold powered-lift ratings. However, as discussed previously, these instructor pilots are involved in developing, validating, and delivering the manufacturer's proposed training curriculum. Additionally, an instructor pilot is authorized by the FAA to act as PIC of the experimental powered-lift.

Therefore, in light of the instructor pilot's experience with the powered-lift, their involvement with the manufacturer's proposed training curriculum, and their authorization to

[133] Under § 61.51(e)(1)(iii), a person may log PIC time when acting as PIC of an aircraft for which more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is conducted. Because an experimental aircraft is not type-certificated and is not operated under regulations requiring a second pilot (*e.g.,* § 135.101), this PIC logging provision would not apply to test pilots and instructor pilots. Additionally, under § 61.51(e)(1)(iv), a pilot may log PIC time when the pilot performs the duties of PIC while under the supervision of a qualified PIC, provided certain requirements are met. Because test pilots and instructor pilots would not meet the certification requirements and the training would not be completed under an approved training program, the PIC logging provision of § 61.51(e)(1)(iv) would also not apply to test pilots and instructor pilots.

[134] The ''sole occupant'' provision is intended to recognize the solo flight time that is required under the aeronautical experience requirements for certificates and ratings. Because student pilots seeking an initial category and class rating or certificated pilots who are adding a new rating to their pilot certificate are not yet rated, this section recognizes this solo time as PIC time without the pilot having to be rated in the aircraft. Section 61.31(d)(2) permits pilots to act as PIC of an aircraft when not rated in the aircraft provided, they have received the required training that is appropriate to the pilot certification level, aircraft category, class, and type rating (if a class or type rating is required) for the aircraft to be flown and have received an endorsement for solo flight in that aircraft from an authorized instructor.

act as PIC, the alternate logging requirement in proposed § 194.219(c) would permit the instructor pilots to log PIC flight time for flights when they are serving as an instructor pilot for the manufacturer of an experimental powered-lift for which the pilot is not rated. This logging provision would enable these instructor pilots to log PIC flight time for flights when they are providing the proposed training curriculum to the test pilots. This logging provision would also facilitate the instructor pilot's ability to obtain 50 hours of PIC time for purposes of obtaining a powered-lift category rating on their commercial pilot certificate.

The FAA notes that this proposal would permit pilots to log the time that meets the criteria set forth in this SFAR retroactively if the rule becomes final. Flight time that a pilot is currently accruing, and has previously accrued, that meets these conditions may be applied towards the 50-hour requirement when the pilot applies to take the practical test.

ii. Initial Cadre Instructors: Alternate Aeronautical Experience and Logging Requirements for Powered-Lift Category Ratings

While the proposed alternate experience and logging requirements for test pilots and instructor pilots would enable those individuals to obtain powered-lift ratings on their pilot certificates, the FAA finds that those alternate requirements alone would be insufficient to develop sufficient personnel to support training in a powered-lift under an approved training program under part 135, 141, or 142. Before an operator under part 135, a pilot school under part 141, or a training center under part 142 may provide an approved training curriculum for a powered-lift, the operator, pilot school, or training center must have persons who are fully qualified under those parts to provide the training.

To serve as a check pilot in an approved part 135 training curriculum, a person must hold the certificates and ratings required to serve as PIC in the aircraft. As discussed in section V.I of this preamble, the FAA is proposing that a person must hold at least a commercial pilot certificate with a powered-lift category rating, instrument-powered-lift rating, and an appropriate type rating for the powered-lift to serve as PIC in part 135. As such, a part 135 check pilot would be required to hold the same ratings as a PIC on their pilot certificate under § 135.337(b)(1). To be designated as an assistant chief instructor or chief instructor for a course of training in a powered-lift under part 141, a person must hold a powered-lift category rating on both their commercial pilot certificate and their flight instructor certificate in addition to holding the type rating on their commercial pilot certificate.[135] Lastly, to instruct in a powered-lift in flight under part 142, a training center instructor must be qualified in accordance with subpart H of part 61, which requires a flight instructor to hold the appropriate category ratings on both their pilot and flight instructor certificates, in addition to holding the type rating on their commercial pilot certificate. To obtain the necessary powered-lift category rating on their pilot certificate, these persons would be required to comply with the aeronautical experience requirements in § 61.129(e).

Persons seeking to provide training under an approved training curriculum in a powered-lift under part 135, 141, or 142 would encounter the same obstacles with the aeronautical experience requirements in § 61.129 as test pilots and instructor pilots at a manufacturer. These regulatory obstacles are further complicated by the challenges associated with creating and building an initial cadre of instructors who are qualified to provide training under part 135, 141, or 142. Because test pilots and instructor pilots would be the first pilots who obtain powered-lift ratings under this SFAR, the FAA proposes to use them to build the initial cadre of instructors who would provide training under approved training programs. Specifically, the FAA proposes to allow certain persons employed by part 135 operators, part 141 pilot schools, and part 142 training centers to receive training in a powered-lift from an instructor pilot at the manufacturer for the purpose of qualifying sufficient personnel to conduct training in a powered-lift in accordance with an approved training program under parts 135, 141, and 142.[136]

The FAA considered permitting any person who meets the qualifications to serve as an authorized instructor under part 135, 141, or 142 to receive training at the manufacturer. However, recognizing the diversity in flight time and experience across such a broad group of instructors, the FAA decided that there were insufficient risk mitigations to ensure an appropriate level of safety would be maintained by permitting such an expansive group of individuals to receive training at the manufacturer in place of the approved training under part 135, 141, or 142. The FAA concluded that, where a manufacturer does not hold an air agency certificate, it is necessary to confine the training population to a more select group of individuals. These individuals should be the most qualified instructors at a part 135 operator, part 141 pilot school, or part 142 training center. Therefore, the FAA is proposing in § 194.221(a) to permit persons who are authorized to serve as initial check pilots, chief instructors, assistant chief instructors, or training center evaluators to receive the training for powered-lift ratings at a manufacturer.

Under part 135, check pilots are airmen approved by the FAA who have the appropriate knowledge, training, experience, and demonstrated ability to evaluate and to certify the knowledge and skills of other pilots during competency and instrument proficiency checks. The role of a check pilot is to ensure that the flightcrew member (1) has met competency standards before the check pilot releases the flightcrew member from training and (2) maintains those standards while continuing in line service. A check pilot under part 135 must be knowledgeable in the applicable requirements of parts 61, 91, 110, 119, and 135, other applicable FAA policies, safe operating practices, and the certificate holder's policies and procedures.

For part 141, the FAA is proposing to permit persons who are authorized to serve as initial chief instructors and assistant chief instructors for powered-lift courses to receive training from an instructor pilot at a manufacturer. Consistent with the reasons for selecting check pilots under part 135, the FAA chose these individuals because they would be among the most qualified instructors at the pilot school. Sections 141.35 and 141.36 prescribe the qualification requirements for chief instructors and assistant chief instructors, respectively. Under these regulations, chief instructors and assistant chief instructors must meet PIC recent flight experience requirements of § 61.57; pass a knowledge test on teaching methods, applicable provisions of the ''Aeronautical Information Manual,'' the applicable provisions of parts 61, 91, and 141, and the objectives and course completion standards of the

[135] 14 CFR 141.35(a)(1), 141.36(a)(1), 141.37(a)(2)(ii).

[136] As discussed in section V.G of this preamble, certain manufacturers may choose to pursue certification as a part 141 pilot school or part 142 training center to facilitate the flight training of their customers' personnel. This model has been employed by other manufacturers such as Boeing and Airbus. In those cases, the manufacturer would not need to limit its training to the individuals identified in this section. This proposal is intended to facilitate training administered by manufacturers when the manufacturer does not hold an air agency certificate.

approved training course for which the person seeks to obtain designation; pass a proficiency test on the instructional skills and ability to train students on the flight procedures and maneuvers appropriate to the course; and meet certain PIC flight time and flight training experience requirements. For a course of training leading to a commercial pilot certificate, a chief instructor and assistant chief instructor would be required to have at least 2,000 hours and 1,000 hours of PIC time, respectively. Additionally, the chief instructor and assistant chief instructor would be required to have significant experience providing flight training. A chief instructor would be required to have flight training experience that consists of at least (1) 3 years and 1,000 flight hours, or (2) 1,500 flight hours. An assistant chief instructor would be required to have flight training experience that consists of at least (1) 1.5 years and a total of 500 flight hours, or (2) 750 flight hours. Furthermore, the responsibilities of a chief instructor, which may be delegated to an assistant chief instructor, include conducting stage checks, end-of-course tests, and flight instructor proficiency checks.[137]

For part 142, the FAA is proposing to permit persons who are authorized to serve as initial training center evaluators (TCE) to receive training for powered-lift ratings from an instructor pilot at a manufacturer. TCEs are airmen who are designated by the FAA in accordance with part 183 to be pilot examiners on behalf of the Administrator. Part 142 outlines the prerequisites, training requirements, operating procedures, and limitations of TCEs. Pursuant to § 142.55(a), a TCE must be approved by the Administrator and meet the instructor qualification and training requirements of subpart C of part 142. Additionally, a TCE must be qualified in each specific curriculum and the associated flight training equipment for which TCE privileges are requested.

At the time an operator, pilot school, or training center sends an individual to the manufacturer for training in a powered-lift, the individual will not be fully qualified as a check pilot, chief instructor, assistant chief instructor, or TCE for powered-lift. The first step to becoming fully qualified is for the person to obtain the appropriate ratings on their pilot certificate. Therefore, the individuals attending the training at the manufacturer will be candidates for their respective positions. The operator, pilot school, or training center would have the discretion in selecting the individuals they wish to send to the manufacturer for training. Given the functions and duties associated with being the first person to provide training under an approved training program, the FAA anticipates that individuals would be selected based on their pilot and flight instructor qualifications and experience, their record as an airman regarding accidents and incidents, their reputation for integrity and dependability within the industry, and their knowledge and skill as it relates to learning how to operate and instruct in a new aircraft.

To ensure an appropriate level of oversight, the FAA is proposing in § 194.221(a) to require these individuals to be authorized by the Administrator.[138] The FAA intends this authorization to be issued in the form of a temporary letter of approval that states the individual is approved as a candidate to serve as an initial cadre check pilot, chief instructor, assistant chief instructor, or TCE for the purpose of establishing sufficient qualified personnel to conduct training with the powered-lift type under an approved training program under part 135, 141, or 142. The FAA notes that, upon receiving training in the powered-lift at the manufacturer, the individual would complete a practical test with an FAA inspector or designee to receive the appropriate powered-lift ratings. The individual could subsequently obtain a powered-lift category rating on their flight instructor certificate in accordance with the current requirements in subpart H of part 61. In accordance with current practice, when the newly rated individual returns to their operator, pilot school, or training center, they would become proficient in the proposed training curriculum under their respective part by providing instruction to other initial cadre check pilots, chief instructors, assistant chief instructors, or TCEs, become fully qualified to serve in their designated function, and receive a permanent letter of approval after becoming fully qualified.

a. Aeronautical Experience Requirements Concerning Training (§ 61.129(e))

With respect to the alternate experience and logging requirements for these persons, the FAA is proposing alternate requirements that are largely similar to those proposed for test pilots and instructor pilots in that they provide relief from the same obstacles that exist in §§ 61.129(e) and 61.51(e)(1). First, in place of the requirement in § 61.129(e)(3), which requires 20 hours of training on the areas of operation listed in § 61.127(b)(5) from an authorized instructor, the FAA is proposing in § 194.221(b)(1) to permit the individual to satisfactorily complete the manufacturer's training curriculum in the powered-lift. The training curriculum must include 20 hours of flight training on the areas of operation listed in § 61.127(b)(5) and be provided by an instructor pilot at the manufacturer. Additionally, for verification purposes, the individual would be required to receive an endorsement in their logbook or training record from the instructor pilot certifying that the training was completed, pursuant to proposed § 194.221(b)(1)(ii).

The FAA recognizes that these individuals do not have the same extensive experience with the powered-lift as the test pilots. However, at this stage of the process, the powered-lift would be type-certificated, the manufacturer's training curriculum would be validated, and the instructor pilot would be appropriately rated in the powered-lift. Given the knowledge and familiarity an instructor pilot has with a powered-lift type and the manufacturer's training curriculum, the FAA finds that an instructor pilot would be the most knowledgeable and skilled to provide instruction to the initial group of pilots who would serve as the first instructors at a part 135 operator, part 141 pilot school, or part 142 training center.

Additionally, as stated previously, to mitigate risk, the FAA is proposing to narrowly confine the population of persons who may receive training from an instructor pilot at a manufacturer that does not hold an air agency certificate. In light of the qualification requirements for check pilots, chief instructors, assistant chief instructors, and TCEs, which must be met by the individual prior to the individual providing initial training under an approved training program, the FAA finds that the persons selected would be among the most highly qualified at the operator, pilot school and training center. As a result, the FAA finds that these persons would be the most capable pilots to receive training in the new powered-lift type for the purpose of becoming rated in the aircraft and subsequently initiating training in the aircraft at their certificate holders. Furthermore, requiring the individual to be authorized by the FAA would ensure the FAA has regulatory oversight over

[137] The flight instructors at a part 141 pilot school must receive an initial proficiency check prior to being assigned instructing duties in an approved training course as well as recurrent proficiency checks every 12 calendar months.

[138] See proposed §§ 194.203, 194.213, 194.217, 194.219, 194.221, 194.225, 194.227, and 194.229.

the individuals selected, which would further mitigate risk. For the reasons stated above, the FAA finds that temporarily permitting a small population of instructors to receive training from the manufacturer for the purpose of developing sufficient personnel to provide training in powered-lift under parts 135, 141, and 142 would not adversely affect safety.

Second, the aeronautical experience requirement in § 61.129(e)(3) would present the same obstacle for individuals receiving training at the manufacturer from an instructor pilot. As with test pilots and instructor pilots, the person receiving the manufacturer's training from an instructor pilot would not have an authorized instructor, as defined in § 61.1, to provide the flight training in preparation for the practical test. The FAA is therefore proposing in § 194.221(b)(2) to permit the preparation for the practical test to be completed with an instructor pilot rather than an authorized instructor.[139] Consistent with the reasons for proposing the same alternate requirement for test pilots and instructor pilots, which is previously discussed, the FAA finds that it would be appropriate to permit the instructor pilot who provided the training to also ensure that the person is prepared for the practical test. This proposed alternate requirement would enable the person to take the practical test after satisfactorily completing the manufacturer's training curriculum. Because of the instructor pilot's experience with the powered-lift and their involvement with the manufacturer's training curriculum, the FAA finds that temporarily permitting the instructor pilot to replace the authorized instructor specified in § 61.129(e)(3) would not adversely affect safety, especially in light of the small population of pilots who would require this relief.

Third, § 61.129(e)(4) requires an applicant for a powered-lift category rating to obtain either 10 hours of solo flight time in a powered-lift or 10 hours of flight time performing the duties of PIC in a powered-lift with an authorized instructor onboard. Either of these flight times may be credited towards the flight time requirement in § 61.129(e)(2), which requires 100 hours of PIC flight time, of which 50 hours must be in powered-lift. Consistent with the alternate requirements proposed for test pilots and instructor pilots, the FAA is proposing in § 194.221(b)(3) to permit the instructor pilot to replace the authorized instructor in § 61.129(e)(4). For the reasons stated in the previous paragraph, the FAA finds that an instructor pilot is qualified to temporarily serve in this role. Additionally, the FAA finds that any risk to safety would be mitigated by the scope of the relief because the alternate requirement would apply only to those individuals who were authorized by the FAA to serve as an initial check pilot, chief instructor, assistant chief instructor, or TCE for the purpose of initiating training in a powered-lift under part 135, 141, or 142; the temporary nature of the relief; and the qualifications and experience held by the initial cadre of instructors to whom the relief would apply.

b. Alternate Aeronautical Experience Logging PIC Flight Time (§ 61.129(e)(2))

The FAA finds that the aeronautical experience requirement in § 61.129(e)(2)(i), which requires 50 hours of PIC flight time in powered-lift, presents an obstacle in light of the PIC logging requirements set forth in § 61.51(e) for the initial cadre of instructors who would train with the manufacturer under this proposal. As discussed, under § 61.51(e)(1), as relevant, a pilot may log PIC time when the pilot is the sole manipulator of the controls of an aircraft for which the pilot is rated (category, class, and type rating, if appropriate), or the sole occupant of an aircraft. The initial cadre of instructors who attend training at a manufacturer will not yet be rated in the powered-lift, so they will not be able to log PIC time as sole manipulator of the controls. Additionally, because the majority of the flight time with the manufacturer would consist of training time with an instructor pilot, the person would not be able to log this time as PIC time as the sole occupant of the powered-lift.

To establish the initial cadre of persons who would initiate training in a powered-lift in accordance with an approved training program under part 135, 141, or 142, the FAA is proposing in § 194.221(c) to temporarily permit those persons who would receive training at the manufacturer to log up to 40 hours of PIC flight time towards the 50-hour requirement during flights when the person is the sole manipulator of the controls of the powered-lift for which the person is not rated, provided the person is manipulating the controls of the powered-lift, performing the duties of PIC with an instructor pilot onboard, and the flight is conducted in accordance with the manufacturer's training curriculum.

This proposed alternate logging requirement would enable persons to log 40 hours of PIC flight time for flights when they are obtaining flight training on the areas of operation specified in § 61.127(b)(5). To the extent these pilots would not be held to the same logging provisions required for pilots operating other categories of aircraft, the FAA finds that risk would be mitigated for the same reasons previously discussed. The scope of this relief would be both narrowly applicable and temporary, and the persons who may exercise this alternate logging requirement would be the most qualified and experienced instructors at a part 135 operator, part 141 pilot school, and part 142 training center. The FAA finds that the flight time permitted under the proposed alternate requirement would be valuable for the purposes of logging PIC flight time for a powered-lift category rating because the pilot would be solely manipulating the controls of the powered-lift, thereby obtaining experience with its flight and handling characteristics, while simultaneously exercising the duties of PIC. By exercising the duties of PIC, the pilot would experience increased responsibilities during the flight (compared to a typical training flight in an aircraft in which they are not yet rated), including heightened decision-making.

The FAA notes that, as proposed, these pilots would still be required to obtain the last 10 hours of PIC flight time as solo flight time under § 61.51(e).[140]

iii. Pilots Receiving Training Under an Approved Training Program

a. Alternate Requirements for a Commercial Pilot Certificate With a Powered-Lift Category Rating

The PIC logging requirements in § 61.51(e)(1) would also create obstacles for persons seeking to obtain a powered-lift category rating on their commercial pilot certificate outside a manufacturer's training curriculum. Because this is a new category of aircraft that is entering the civilian market, pilots would be unable to log PIC flight time in the powered-lift in accordance with § 61.51(e)(1)(i) because they would not yet be rated in the aircraft. Thus, at the commercial pilot level, a person would have to obtain the 50 hours of PIC time required by § 61.129(e)(2)(i) as the sole

[139] To the extent that instructor pilots may hold the necessary certificates and ratings to be an authorized instructor as defined in § 61.1 in a powered-lift, those instructor pilots would be able to provide endorsements without need for the proposed relief.

[140] The solo flight endorsement required under § 61.31(d)(2) may be provided by an instructor pilot in lieu of an authorized instructor in accordance with proposed § 194.213(a).

occupant of the powered-lift under solo endorsements from an authorized instructor.

To springboard the initial cadre of powered-lift pilots, the FAA is proposing in § 194.221(c) to permit certain applicants for a commercial pilot certificate with a powered-lift category rating to log up to 40 hours of PIC flight time towards the 50-hour requirement during flights when the pilot is the sole manipulator of the controls of the powered-lift for which the pilot is not rated, provided the applicant is manipulating the controls of the powered-lift, the applicant is performing the duties of PIC with an authorized instructor onboard, and the flight is conducted in accordance with an approved training program under part 135, 141, or 142.[141]

This proposed 40 hours of PIC flight time would be logged when the applicant is obtaining flight training on the areas of operation specified in § 61.127(b)(5) under an approved part 135, 141, or 142 training program. The FAA acknowledges that this proposal relaxes the standards for logging PIC flight time from the standard applied to other categories of aircraft. Given the unique challenges presented by the introduction of powered-lift for commercial operations, the FAA has weighed the safety concerns of a relaxed standard against the need to enable pilot certification and concluded that this proposal appropriately mitigates any risk that may be introduced during the transitional period in which it would be permitted.

Even though the pilots are not rated in a powered-lift, the FAA finds that this flight time would be valuable for purposes of logging PIC flight time for a powered-lift category rating for the same reasons discussed in the previous section. By requiring the flight to be conducted in accordance with an approved training program under part 135, 141, or 142, the FAA would ensure that the pilot is logging alternate PIC time only for those training flights that are conducted in an approved training program environment. The FAA has oversight of training conducted through program approval under parts 135, 141, and 142, and the approved training programs would be monitored and validated to ensure the instructional quality is consistent and the training is effective. The proposed requirement for the flight to be conducted in accordance with an approved training program under part 135, 141, or 142 would serve as a risk mitigation to ensure that the proposed alternate PIC logging requirement would not result in an adverse impact to safety.

As with the initial cadre of instructors, an applicant would be required to obtain the remaining 10 hours of PIC time as the sole occupant of the powered-lift under an instructor endorsement.

b. Use of a Full Flight Simulator for PIC Time for a Commercial Pilot Certificate With a Powered-Lift Category Rating

Currently, § 61.129(i) contains the permitted credit for use of an FFS or FTD in lieu of an aircraft for a commercial pilot certificate. Section 61.129(i)(1) permits an applicant who has not accomplished the training required by § 61.129 in a course conducted by a training center certificated under part 142 to credit a maximum of 50 hours toward the total aeronautical experience requirements of § 61.129 for an airplane or powered-lift rating, or a total of 25 hours toward the total aeronautical experience requirements of § 61.129 for a helicopter rating, provided the aeronautical experience was obtained from an authorized instructor in an FFS or FTD that represents the aircraft.[142] For applicants who have accomplished the training required by § 61.129 in a course conducted by a training center certificated under part 142, § 61.129(i)(2) permits the applicant to credit a maximum of 100 hours toward the total aeronautical experience requirements of § 61.129 for an airplane or powered-lift rating or a total of 50 hours toward the total aeronautical experience requirements of § 61.129 for a helicopter rating, provided the aeronautical experience was obtained from an authorized instructor in an FFS or FTD that represents the aircraft.

While the regulation currently permits applicants for a commercial pilot certificate with a powered-lift category rating to credit time obtained in an FFS or FTD towards the aeronautical experience requirements of § 61.129(e), the time obtained in an FFS or FTD may be credited only towards the total flight time. To allow for more flexibility and to foster the development of an initial cadre of powered-lift pilots, the FAA has decided to temporarily permit time obtained in a Level C or higher FFS to be credited toward a certain subset of aeronautical experience.

Specifically, the FAA is proposing in § 194.223(d) to permit an applicant for a commercial pilot certificate with a powered-lift category who is accomplishing training under an approved program under part 135, 141, or 142 to credit a maximum of 15 hours obtained in an FFS toward the 50-hour PIC flight time requirement in § 61.129(e)(2)(i), provided the aeronautical experience was obtained performing the duties of PIC in a Level C or higher FFS that represents the powered-lift category. The FAA finds that this provision would not adversely affect safety because the applicant would still be required to obtain 35 hours of PIC flight time in the powered-lift, which aligns with the aeronautical experience requirement in § 61.129(c)(2)(i) for a helicopter rating. While the amount of PIC flight time that would be required in the actual powered-lift would be reduced to 35 hours, most operations in the powered-lift currently seeking type certification are sufficiently similar to helicopter operations in that the flight is of shorter range,[143] which condenses the critical phases of flight [144] and results in an operation during which the pilot is actively engaged in performing the most critical PIC duties to ensure the safety of the flight. Operations in an airplane are generally of longer duration, which results in the pilot experiencing less time performing the duties of PIC in the critical phases of flight.

Additionally, in proposed § 194.223(d)(2), the FAA is proposing to permit 15 hours of PIC time in a Level C or higher FFS only for those applicants who are undergoing an approved training program under part 135, 141, or 142. By limiting this credit to applicants who are conducting flights in accordance with an approved training program, the FAA would ensure that the only FFS time that may be credited towards the 50-hour PIC flight time requirement is time acquired in a controlled environment in accordance with a structured curriculum for which the FAA has provided approval and retains continuing oversight.

The FAA finds that permitting the pilot to obtain 15 hours of PIC time in a Level C or higher FFS, provided the flight is conducted in accordance with

[141] Training under part 135, 141, or 142 is discussed in more detail in section V.F of this preamble.

[142] The FFS and FTD must represent the class of airplane or powered-lift category and type (see § 61.129(i)(1)(i) and (i)(2)(i)), or helicopter and type (see § 61.129(i)(1)(ii) and (i)(2)(ii)), if applicable, appropriate to the rating sought.

[143] The FAA notes that this comparison is based on the current type certification projects for powered-lift.

[144] The FAA considers the critical phases of flight to include all ground operations involving taxi, takeoff and landing, and all other flight operations conducted below 10,000 feet, except cruise flight. The FAA emphasizes the importance of operations involving the critical phases of flight. See 14 CFR 121.542(c), 135.100(c) (commonly referred to as the ''sterile cockpit rule'').

an approved training program, would enable the pilot to gain experience performing the duties and functions of a PIC in situations that the pilot would not typically encounter while attaining PIC time operating a small aircraft in the NAS. For example, this proposal would enable the pilot to acquire experience performing the duties of PIC, which includes exercising decision-making abilities, during critical emergency procedures that could not otherwise be performed in the aircraft. Furthermore, for the purpose of establishing an initial cadre of powered-lift pilots, these alternate requirements would not adversely affect safety because they would be narrowly focused on a select population of seasoned pilots who already hold commercial pilot certificates and instrument ratings, they would be in effect for a temporary duration, and the requirement for the applicant to pass the commercial pilot practical test in a powered-lift with an FAA inspector or examiner would serve as a safeguard.

The FAA determined that a minimum of Level C FFS is required because these devices provide the highest level of aerodynamic modeling, visual fidelity, and motion cueing to replicate the powered-lift for motion-based pilot training. The 3-degree-of-freedom motion cues provided by Level A and B devices do not provide the level of fidelity required to meet the flight training objectives as compared to the 6-degree-of-freedom requirements for Level C and higher devices. The use of a Level C or higher FFS is also consistent with § 61.64, which allows a practical test to be completed only in a Level C or higher FFS.

3. Obtaining an Instrument-Powered-Lift Rating § 61.65(f)

To obtain an instrument-powered-lift rating, a person must satisfy the aeronautical experience requirements for an instrument-powered-lift rating in § 61.65(f). Section 61.65(f)(1) requires a person who applies for an instrument-powered-lift rating to log at least 50 hours of cross-country time as PIC, 10 of which must be in a powered-lift. Section 61.65(f)(2) requires 40 hours of actual or simulated instrument time in the areas of operation listed under § 61.65(c), of which 15 hours must be received from an authorized instructor who holds an instrument-powered-lift rating. The instrument time must include 3 hours of instrument flight training from an authorized instructor in a powered-lift within 2 calendar months before the date of the instrument rating practical test. Additionally, the instrument time referenced in § 61.65(f)(2) must include instrument flight training on cross-country flight procedures, including one cross-country flight in a powered-lift with an authorized instructor that is performed under IFR, when a flight plan has been filed with an ATC facility. The cross-country flight must include 250 nautical miles along airways or by directed routing from an ATC facility, an instrument approach at each airport, and three different kinds of approaches with the use of navigation systems.

Civilian pilots are unable to satisfy several of the aeronautical experience requirements for an instrument-powered-lift rating for the same reasons as civilian pilots are unable to satisfy certain requirements for a commercial pilot certificate with a powered-lift rating, as previously discussed. The FAA therefore finds it necessary to enable an alternate pathway for persons to obtain an instrument-powered-lift rating similar to the alternate pathway proposed for powered-lift category ratings at the commercial pilot certificate level. The FAA proposes in § 194.215 to limit the alternate aeronautical experience and logging requirements for obtaining an instrument-powered-lift rating to those persons who already hold at least a commercial pilot certificate with at least an airplane category and single- or multiengine class rating or a rotorcraft category and helicopter class rating. The person would also be required to hold an instrument-airplane or instrument-helicopter that corresponds to the category (airplane) or class rating (helicopter) held at the commercial level.

In addition, consistent with the alternate pathway proposed for the commercial pilot aeronautical experience requirements, the FAA is proposing alternate experience and logging requirements to obtain an instrument-powered-lift rating for (1) test pilots and instructor pilots, (2) the initial cadre of instructors, and (3) pilots receiving training under an approved training program.[145] Alternate requirements for cross-country flights, which are generally applicable, are discussed later in this section. Section E.5.ii of this preamble contains tables summarizing the proposed alternate requirements for an instrument-powered-lift rating.

i. Test Pilots and Instructor Pilots: Alternate Aeronautical Experience and Logging Requirements for Instrument-Powered-Lift Rating

Sections 194.225 and 194.227 would contain the alternate aeronautical experience and logging requirements for test pilots and instructor pilots seeking an instrument-powered-lift rating. The FAA is proposing in §§ 194.225(a) and 194.227(a) that these alternate requirements would apply if the flights are conducted in an experimental aircraft at the manufacturer and the test pilots or instructor pilots seeking to take advantage of the alternate requirements are authorized by the Administrator to act as PIC of the experimental powered-lift. The alternate training requirements would be set forth in § 194.225(b)(1) through (4) for test pilots and § 194.227(b)(1) through (4) for instructor pilots. The alternate logging requirements would be set forth in §§ 194.225(c) and 194.227(c). Each of the proposed alternate requirements are discussed below.

a. Aeronautical Experience Requirements Involving Instrument Training (§ 61.65(f)(2))

First, the FAA is proposing alternate requirements for test pilots or instructor pilots to accomplish the 15 hours of instrument training on the areas of operation listed in § 61.65(c), as required by § 61.65(f)(2). Under proposed § 194.225(b)(1), a test pilot would be permitted to satisfactorily complete the manufacturer's training curriculum in the experimental powered-lift with an instructor pilot. Similarly, under § 194.227(b)(1), the instructor pilot would be able to credit the time spent providing the manufacturer's training curriculum towards the training required by § 61.65(f)(2). The manufacturer's training curriculum would be required to include 15 hours of instrument training on the areas of operation listed in § 61.65(c).

For the purpose of verifying satisfactory completion of the alternate experience requirement to an examiner, the FAA is proposing to require the test pilot or instructor pilot to receive an

[145] The FAA recognizes that, pursuant to § 91.109(c)(1)(i), to operate a civil aircraft in simulated instrument flight, a safety pilot must occupy the other control seat and possess at least a private pilot certificate with category and class ratings appropriate to the aircraft being flown to operate a civil aircraft. However, because test pilots and instructor pilots may not yet possess the powered-lift category rating to meet this requirement while conducting operations to meet the proposed alternate experience requirements set forth in the SFAR, proposed § 194.311 would except operations conducted to meet the alternate aeronautical experience requirements set forth in proposed §§ 194.225, 194.227, and 194.229 from meeting § 91.109(c)(1)(i). For the reasons explained previously about the depth of knowledge and operating experience of test pilots and instructor pilots, the FAA has determined there would be no adverse impact to safety.

endorsement in their logbook or training record. Under proposed § 194.225(b)(1)(ii), a test pilot would be required to receive an endorsement from the instructor pilot who provided the training, certifying that the test pilot satisfactorily completed the manufacturer's training curriculum in the experimental powered-lift. Under proposed § 194.227(b)(1)(ii), an instructor pilot would be required to receive an endorsement from a management official within the manufacturer's organization certifying that the instructor pilot has provided the manufacturer's training curriculum to a test pilot.

Second, the FAA is proposing an alternate requirement to § 61.65(f)(2)(i) that would permit the preparation for the instrument rating practical test to be completed with an instructor pilot rather than an authorized instructor. These requirements set forth in proposed §§ 194.225(b)(2) and 194.227(b)(2) would enable the test pilot or instructor pilot to take the instrument rating practical test after satisfactorily completing three hours of instrument flight training with an instructor pilot in a powered-lift within two calendar months before the date of the practical test. To enable the examiner to verify that the preparation was completed, the applicant would be required to receive a logbook or training record endorsement under § 61.65(a)(6); however, under proposed § 194.213, the applicant may obtain the endorsement from the instructor pilot, who certifies that the applicant is prepared for the practical test.

Third, the FAA is proposing alternate requirements in §§ 194.225(b)(3) and 194.227(b)(3) that would allow test pilots or instructor pilots to perform instrument training on cross-country flight procedures referenced in § 61.65(f)(2)(ii) in an experimental powered-lift with an instructor pilot rather than an authorized instructor. The applicant would also be required to receive a logbook or training record endorsement from the instructor pilot to certify that the applicant completed the cross-country flight with the instructor pilot. For the same reasons discussed earlier in this section with regard to training for a powered-lift category rating, the FAA finds that permitting the instrument training, the preparation for the practical test, and the cross-country instrument flight to take place with an instructor pilot rather than an authorized instructor would not adversely affect safety.

b. Aeronautical Experience Requirements Involving Logging PIC Flight Time (§ 61.65(f)(1))

The FAA recognizes the obstacle with logging PIC time in accordance with § 61.51(e)(1) for the reasons stated previously. These obstacles are relevant to persons seeking an instrument-powered-lift rating because § 61.65(f)(1) requires 10 hours of cross-country time as PIC in a powered-lift. Accordingly, consistent with the alternate logging requirements proposed for persons seeking to add a powered-lift category rating on a commercial pilot certificate, the FAA proposes in §§ 194.225(c) to permit test pilots at the manufacturer to log PIC flight time for the purpose of satisfying the 10-hour cross-country requirement in § 61.65(f)(1) when the test pilot is the sole manipulator of the controls of an experimental powered-lift even if the test pilot is not rated for the aircraft. To log this time, the test pilot would be required to be acting as PIC of the experimental powered-lift in accordance with a letter of authorization issued by the Administrator. In addition, the flight would have to be conducted for the purpose of research and development or showing compliance with the regulations in accordance with the experimental certificate issued to the powered-lift pursuant to § 21.191.

Similarly, the FAA is proposing in § 194.227(c) to allow instructor pilots to log PIC flight time for the purpose of satisfying the 10-hour cross-country requirement in § 61.65(f)(1) when the pilot is serving as an instructor pilot for the manufacturer of an experimental powered-lift for which the instructor pilot is not rated, provided the pilot is acting as pilot-in-command of the experimental powered-lift in accordance with a letter of authorization issued by the Administrator and the flight is conducted for the purpose of crew training in accordance with the experimental certificate issued to the powered-lift pursuant to § 21.191.

For the reasons provided in the discussion of PIC flight time for powered-lift ratings at the commercial pilot certificate level, the FAA finds that there would be no adverse impact to safety by allowing this time to be logged for instrument-powered-lift ratings.

ii. Initial Cadre Instructors: Alternate Aeronautical Experience and Logging Requirements for Instrument-Powered-Lift Ratings

The FAA is proposing alternate experience and logging requirements for certain requirements in § 61.65(f) that would facilitate initial training and certification of persons who have been authorized to serve as the initial cadre of check pilots, chief instructors, assistant chief instructors and TCEs for the purpose of developing sufficient personnel to provide initial training in powered-lift in accordance with approved training programs under parts 135, 141, and 142. These alternate requirements would apply if the flights are conducted in type-certificated powered-lift at the manufacturer.

a. Aeronautical Experience Requirements Involving Training (§ 61.65(f))

As with test pilots, the FAA is proposing in § 194.229(b)(1) to permit these persons to receive the 15 hours of instrument training on the areas of operation listed in § 61.65(c) from an instructor pilot in lieu of an authorized instructor. The instructor pilot would be required to conduct the training in accordance with the manufacturer's training curriculum. These persons would be required to obtain a logbook or training record endorsement from the instructor pilot certifying satisfactory completion of the manufacturer's training curriculum for the same reasons the test pilot is required to receive such an endorsement.

The FAA is also proposing to permit the instructor pilot to replace the authorized instructor for (1) the 3 hours of instrument flight training in a powered-lift in preparation for the practical test for an instrument-powered-lift rating within 2 calendar months before the date of the practical test in § 61.65(f)(2)(i), set forth by proposed § 194.229(b)(2), and (2) the cross-country flight prescribed by § 61.65(f)(2)(ii), set forth by proposed § 194.229(b)(3). The FAA notes that the person receiving the training at the manufacturer would also be required to obtain an endorsement from the instructor pilot certifying the completion of this cross-country flight. For reasons previously discussed, the FAA finds that there would be no adverse impact on safety by permitting an instructor pilot to temporarily replace the authorized instructor for the purpose of satisfying these alternate experience requirements.

b. Aeronautical Experience Requirements Involving Logging PIC Flight Time (§ 61.65(f)(1))

The FAA recognizes the obstacle with logging PIC time in accordance with § 61.51(e)(1) for the reasons stated previously. These obstacles are relevant to persons seeking an instrument-powered-lift rating because § 61.65(f)(1) requires 10 hours of cross-country time

as PIC in a powered-lift. Accordingly, consistent with the alternate logging requirements proposed for persons seeking to add a powered-lift category rating on a commercial pilot certificate, the FAA is proposing in § 194.229(c) to allow a person receiving training at the manufacturer to log PIC flight time, despite not being rated in the powered-lift, for flights when the person is solely manipulating the controls of the powered-lift with an instructor pilot onboard, is performing the duties of PIC, and the flight is conducted in accordance with the manufacturer's training curriculum for the powered-lift. The FAA finds that, for this select group of pilots, the risk mitigations discussed earlier in this section with regard to test pilots and instructor pilots would also apply to the proposed alternate logging requirements discussed in this paragraph, thereby resulting in no adverse impact to safety.

iii. Pilots Receiving Training Under an Approved Training Program: Use of a Full Flight Simulator for Instrument Training for an Instrument-Powered-Lift Rating

Because the FAA has proposed alternate pathways for pilots to obtain the experience necessary to be eligible for the initial cadre of instructors, parts 135, 141, and 142 approved training programs will have access to a pool of authorized instructors. Therefore, the FAA does not find it necessary to enable alternate experience requirements for pilots receiving training under an approved training program that substitute instructor or test pilots for authorized instructors. Rather, the only necessary relief for pilots receiving training under an approved training program is that of FSTD credit, as subsequently explained.

With regard to the completion of instrument training in an FSTD, § 61.65(h) currently permits applicants for an instrument rating to credit a certain amount of time in an FFS or FTD towards the instrument time in § 61.65, if the time was accomplished with an authorized instructor. Specifically, an applicant may credit a maximum of 30 hours performed in an FFS or FTD if the instrument time was completed in accordance with part 142. If the instrument time is not completed in accordance with part 142, the applicant may credit a maximum of 20 hours performed in an FFS or FTD. While the regulation currently permits applicants for an instrument-powered-lift rating to credit time obtained in an FFS or FTD, the time may be credited only towards the instrument time specified in § 61.65(f)(2).

The FAA is proposing in § 194.231(c) to temporarily permit a maximum of 4 hours obtained in a Level C or higher FFS to be credited towards the flight time requirement in § 61.65(f)(1), which requires an applicant to obtain 10 hours of cross-country time as PIC in a powered-lift.[146] The 4 hours must include experience performing the duties of PIC during a simulated cross-country flight in a Level C or higher FFS that represents the powered-lift category and that includes the performance of instrument procedures under simulated instrument conditions. The FAA likewise is proposing in § 194.231(c)(3) to permit 4 hours of PIC cross-country time in a Level C or higher FFS only for those applicants who are undergoing an approved training program under part 135, 141, or 142.

Because this cross-country time must be time as PIC under § 61.65(f)(1), the FAA finds that the reasons discussed for permitting FFS credit towards the PIC flight time requirement in § 61.129(e)(2)(i) (*e.g.,* reasons pertaining to the approved training program, the structured curriculum, and the value of gaining experience performing the duties and functions of PIC in a simulated environment) are equally applicable to the permitted FFS credit towards § 61.65(f)(1). Additionally, with respect to obtaining cross-country time as PIC, the FAA finds that temporarily permitting a maximum of 4 hours in a Level C or higher FFS would not adversely affect safety in light of the skills the pilot would develop in the FFS and the narrow applicability of the alternate requirement to seasoned pilots who already hold a commercial pilot certificate with an instrument rating. Concerning the skills attained in the FFS, the FAA finds that, for the purpose of establishing an initial cadre of powered-lift pilots, the FFS enables the applicant to attain valuable experience for the purpose of acquiring cross-country time for an instrument rating.

Pursuant to § 61.1, cross-country time must involve the use of dead reckoning, pilotage, electronic navigation aids, radio aids, or other navigation systems to navigate to the landing point. In a Level C or higher FFS that represents a powered-lift, the applicant would acquire experience navigating to different airports by reference to the instruments with the use of navigation aids and other navigation systems. The applicant would also obtain experience interpreting different approach charts and conducting a variety of instrument approaches and departures. To the extent this experience would not include communications with ATC, flight planning, or filing a flight plan under IFR, the FAA finds that the skills a pilot would acquire during these 4 hours combined with the skills a pilot would acquire from conducting 6 hours of cross-country time in the NAS, which would include those tasks, would ensure the pilot has sufficient experience to apply for an instrument-powered-lift rating. Additionally, the instrument rating practical test in a powered-lift, which includes a task on cross-country flight planning, would serve as an adequate safeguard to ensure the applicant is proficient with planning IFR cross-country flights and filing IFR flight plans. Furthermore, the FAA has determined that a minimum of Level C FFS would be required to ensure the appropriate level of aerodynamic modeling, visual fidelity, and motion cueing to replicate the powered-lift.

4. Alternate Requirements for Cross-Country Flights for Commercial Pilot Certificate, Instrument Rating, and Private Pilot Certificate

Cross-country training and experience has been included in the aeronautical experience required for pilot certification since the issuance of the first Civil Aviation Regulations in 1938.[147] Cross-country experience develops the necessary air navigation skills to operate an aircraft outside of a local flying environment that the pilot is familiar with.[148] Cross-country time ensures that the pilot has experience applying knowledge during preflight planning that is essential to the safety of flight including plotting a course on an aeronautical chart, selecting checkpoints, measuring distances, obtaining pertinent weather information, and computing flight time,

[146] Generally, the FAA does not allow for cross-country time to be credited in a FFS because it does not depict a realistic enroute environment under VMC. Verifying waypoints utilizing pilotage and dead reckoning is not achievable with the visual displays in a FFS because entire portions of the routes are usually not depicted within databases that replicate the enroute environment. However, under IMC conditions the pilot is not being trained and tested on verifying visual reference with the use of visual waypoints, but rather the pilot's ability to utilize instrument navigation to fly along routes depicted on enroute and terminal charts. These charts depict pertinent navigation information that is not related to visually referencing waypoints but utilizing information in the cockpit to verify an aircraft's position. For these reasons, the FAA finds that allowing for this time to be credited in a FFS is appropriate because the display and cockpit information would be identical to that which a pilot would operate in flight.

[147] Pilot Rating, 14 CFR 20.126, 20.146 (1938).

[148] Air navigation is the process of piloting an aircraft from one geographic position to another while monitoring one's position as the flight progresses.

headings, and fuel requirements.[149] The FAA also ensures the pilot has experience executing cross-country flights during which the pilot employs various skills and tools, including the use of dead reckoning,[150] pilotage,[151] electronic navigation aids, radio aids, and other navigation systems to navigate to the landing point. By requiring a minimum amount of cross-country time in the category of aircraft for which the rating is sought, the FAA ensures the pilot has developed knowledge and skills that are specific to operating that category of aircraft on a flight outside of the pilot's local flying environment.

For example, manipulating the flight controls of an airplane differs from manipulating the flight controls of a helicopter. A pilot conducting a cross-country flight in an airplane may take their hands off the controls while performing the tasks required during the cross-country. By contrast, a pilot conducting operations in a helicopter generally has their feet and hands on the controls at all times. These differences affect the performance of certain tasks, flight deck management, and risk management during a cross-country flight and ultimately require a skill set that is unique to the category of aircraft. Furthermore, by requiring specific cross-country flights that land at a point that is a specified distance from the original departure point, the FAA ensures that trainees are exposed to realistic cross-country flying conditions over terrain with which they are not intimately familiar.[152]

The FAA continues to support this type of experience as an essential element of all pilot training, including training required to pilot a powered-lift. Since aircraft are generally used for transporting persons and property from one location to another, it is imperative that a pilot be trained on and possess the aeronautical experience involved in navigating a powered-lift safely from takeoff to a destination other than the original point of departure.[153]

Upon evaluating the expected range capabilities of powered-lift, however, the FAA has determined that the distances specified in the definition of ''cross-country time'' in § 61.1 and the specific cross-country flights prescribed in part 61 may not be feasible for the powered-lift coming to market. In the following sections, the FAA explains its proposal to adopt alternate provisions in proposed part 194 that would facilitate a pilot's ability to log cross-country time in a powered-lift and complete cross-country flights over extended terrain while still realizing the objectives of cross-country flight. The FAA also explains its proposal to correct a cross-reference in the definition of cross-country time and to ensure consistent usage of the defined term throughout part 61.

i. Alternate Means To Log Cross-Country Time in Powered-Lift

Cross-country time is currently defined in § 61.1(b).[154] Within § 61.1(b), there are multiple definitions of cross-country time that are applicable based on how the cross-country time is used to meet aeronautical experience [155] requirements. Paragraph (i) of the definition of cross-country time in § 61.1(b), provides a generalized definition of cross-country time that is applicable except as provided in paragraphs (ii) through (vi).[156] The current definitions of cross-country time in paragraphs (ii), (vi), and (vii) apply to the aeronautical experience requirements for powered-lift ratings (including an instrument-powered-lift rating) for a private pilot certificate, commercial pilot certificate, ATP certificate, or a military pilot who qualifies for a commercial pilot certificate under § 61.73. To meet the definition of cross-country time for aeronautical experience for powered-lift ratings, the flight time [157] must include a landing point that is at least a straight-line distance of more than 50 nautical miles from the original point of departure, except for an ATP certificate and military pilots who qualify for a commercial pilot certificate under § 61.73, whereby cross-country time for aeronautical experience does not require a landing point.

Initially, when the FAA adopted the cross-country definition for meeting the aeronautical experience requirements for powered-lift ratings, the FAA adopted the same distance of 50 nautical miles that applies to airplane ratings. After comparing the range capabilities for popular single-engine airplanes with those for powered-lift, the FAA has reconsidered the appropriate distance for logging cross-country time in a powered-lift. Many of the popular single-engine airplanes have ranges of 600–800 nautical miles. Thus, a 50 nautical mile distance in these airplanes would equate to 6.25 to 8.3% of their capable range. Based on a sampling of the powered-lift projects currently undergoing the type certification process, the range capabilities for the powered-lift coming to market span from 105–162 nautical miles.[158] As such, a 50 nautical mile distance in these powered-lift would equate to 31 to 48% of their capable range.

Given the significant disparity between the range capabilities, the FAA finds it unnecessary to require cross-country time in a powered-lift to include the same distance as that required for airplanes. The FAA is therefore proposing to add § 194.201 as a temporary provision that would reduce the general distance for logging cross-country time in a powered-lift from 50 nautical miles to 25 nautical miles. Specifically, the proposed rule would permit a person to log flight time in a powered-lift as cross-country time when that time (1) includes a point of landing that is at least a straight-line distance of more than 25 nautical miles

[149] Pilot's Handbook of Aeronautical Knowledge, Chapter 16, Introduction. *https://www.faa.gov/regulations_policies/handbooks_manuals/aviation/phak.*

[150] Dead reckoning is navigation solely by means of computations based on time, airspeed, distance, and direction.

[151] Pilotage is navigation by reference to landmarks or checkpoints.

[152] Cross-Country Experience Requirements for Pilot Certification, Final Rule, 47 FR 46064, 46065 (Oct. 14, 1982).

[153] Legal Interpretation to James Hilliard (2009) (stating that the rationale behind the cross-country requirement is to provide a pilot with aeronautical experience flying a significant distance to and landing at an airport that is not the pilot's home airport).

[154] Prior to 1997, part 61 did not contain a formal or universal definition of cross-country time. Rather, where a regulation did not specify parameters of flight that qualified as cross-country, whether specific flight experience was considered cross-country in character was a technical determination made by the FAA. Legal Interpretation to Troy Wambolt (1993). In 1997, the FAA added a new section, § 61.1(b), *Applicability and definitions,* to ensure consistent use of terms throughout part 61 (62 FR 16220 (April 4, 1997)); Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules; Correction, Final Rule, 62 FR 40888 (Jul. 30, 1997). The FAA adopted specific definitions of cross-country time to be applicable to separate circumstances of aeronautical experience, which have been updated through subsequent rulemaking. See Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft, Final Rule, 69 FR 44772 (Jul. 27, 2004); Pilot Certification and Qualification Requirements for Air Carrier Operations, Final Rule, 78 FR 42324 (Jul. 15, 2013).

[155] The FAA also defines aeronautical experience in § 61.1(b) as pilot time obtained in an aircraft, flight simulator, or FTD for meeting the appropriate training and flight time requirements for an airman certificate, rating, flight review, or recency of flight experience requirements of part 61.

[156] Paragraph (i) in the current definition of cross-country time defines cross-country except as provided in paragraphs (ii) through (vi) of the definition. As explained in section V.F of this preamble, the FAA proposes to update the cross-reference to include paragraph (vii) of the definition.

[157] See 14 CFR 1.1 for the definition of flight time.

[158] The FAA notes that, currently, only one certification project involves a powered-lift with a greater range.

from the original point of departure,[159] and (2) involves the use of dead reckoning, pilotage, electronic navigation aids, radio aids, or other navigation systems to navigate to the landing point.

Reducing the general distance for logging cross-country time in a powered-lift from 50 nautical miles to 25 nautical miles would not adversely affect a pilot's ability to develop the necessary air navigation skills to operate a powered-lift outside of a local flying environment. The FAA is not proposing to reduce the minimum amount of cross-country time that must be obtained in a powered-lift. While the FAA would permit a pilot to log shorter cross-country flights as cross-country time, the pilot is nevertheless required to obtain the hours of cross-country time in a powered-lift for the certificate or rating sought. The reduction in nautical miles would not diminish the value of the cross-country experience obtained. Because the FAA expects powered-lift to operate flights of shorter duration (compared to airplanes) and to landing points other than airports, reducing the distance to 25 nautical miles would facilitate the pilot's ability to acquire more realistic cross-country experience in a powered-lift. For example, reducing the distance to 25 nautical miles would ensure powered-lift pilots are executing cross-country flights of a length that are commensurate with those operations that will be conducted in the operating environment after the pilot obtains the powered-lift category rating.

The reduction in distance would also provide the pilot and their flight instructor greater flexibility in selecting routes to landing locations other than airports used for airplane takeoffs and landings, such as heliports and helipads, which would result in valuable cross-country experience for those pilots seeking to operate powered-lift. Furthermore, despite the shorter distances, the pilot would still gain experience with preflight planning, including plotting a course on an aeronautical chart, selecting checkpoints, measuring distances, obtaining pertinent weather information, and computing flight time, headings, and fuel requirements. The pilot would also still gain category-specific cross-country experience from handling the flight controls of a powered-lift while simultaneously navigating the powered-lift on the planned route to a destination other than the point of departure, which includes finding en route checkpoints and using navigation systems and radar services.

While an applicant for a powered-lift category rating or instrument-powered-lift rating would be able to log cross-country time in powered-lift that consists of shorter general distances (*i.e.,* at least more than 25 nautical miles), these applicants would still be required to complete longer cross-country flights as part of the specific aeronautical experience required for the certificate and rating.[160] As noted later in the discussion of alternate cross-country flight requirements, applicants for a powered-lift rating would still be required to conduct several cross-country training flights that include distances of at least 50 nautical miles. Most pilots would obtain the total hours of category-specific cross-country flight time required to apply for a pilot certificate with a powered-lift category rating by completing the specific cross-country flights proposed in the SFAR.[161] However, to the extent a pilot acquires fewer hours,[162] the proposed alternate definition in § 194.201 would permit that pilot to log shorter cross-country flights to meet the remaining hours of cross-country flight time required for the powered-lift category rating.

The FAA's proposed provision in § 194.201 would govern the logging of cross-country time in powered-lift for the purpose of meeting the aeronautical experience requirements of part 61 that apply to a powered-lift rating, including the cross-country time required for an ATP certificate with a powered-lift category rating. Thus, upon obtaining powered-lift ratings, a person would be permitted to log cross-country time in accordance with § 194.201 towards the 500 hours of cross-country time in § 61.163(a)(1).

ii. Specific Cross-Country Requirements for a Commercial Pilot Certificate

In addition to the alternate requirements for test pilots, instructor pilots, and select pilots from parts 135, 141, and 142 discussed earlier, the FAA is proposing alternate cross-country aeronautical experience requirements to those set forth in § 61.129(e) for all applicants for a powered-lift category rating at the commercial pilot certificate level. Section 61.129(e) requires three specific cross-country flights in a powered-lift. Section 61.129(e)(3)(ii) requires one 2-hour cross country flight in a powered-lift in daytime conditions that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure. Section 61.129(e)(3)(iii) requires the same cross-country flight but in nighttime conditions. Lastly, § 61.129(e)(4)(i) requires one cross-country flight of not less than 300 nautical miles total distance with landings at a minimum of three points, one of which is a straight-line distance of at least 250 nautical miles from the original departure point.

The FAA mirrored the nautical mile distances required for airplanes when it adopted these powered-lift cross-country requirements. As explained in the previous section, the powered-lift coming to the market have limited range capabilities when compared to the widely-used single-engine airplanes. These ranges are well under what is currently required by § 61.129(e)(4)(i), which prescribes a long cross-country flight that includes straight-line distance of at least 250 nautical miles from the original departure point. Because the long cross-country flight specified in § 61.129(e)(4)(i) will be insurmountable for several powered-lift, the FAA finds it necessary to provide an alternate means for applicants to obtain valuable cross-country experience over unfamiliar terrain.

In place of the long cross-country flight in § 61.129(e)(4)(i), proposed § 194.233(b) would permit an applicant to complete a cross-country flight that consists of landings at a minimum of three points, with one segment

[159] Powered-lift would not be the only aircraft for which cross-country time must include a point of landing that is at least a straight-line distance of more than 25 nautical miles from the original point of departure. The FAA has defined cross-country time for meeting the aeronautical experience requirements for a rotorcraft rating in this manner since the definitions were first adopted in 1997. Like powered-lift, smaller helicopters have shorter range capabilities than airplanes. For example, the widely-used helicopters that weigh between 2500–7500 pounds have ranges of 250–440 nautical miles.

[160] Since the FAA adopted the cross-country time definitions in 1997, the specific aeronautical experience requirements for certificates and ratings have prescribed cross-country flights with minimum legs that exceed the general minimum distance specified in the applicable definitions of ''cross-country time.'' For example, cross-country time for airplanes as defined in § 61.1 requires the flight include a distance of at least 50 nautical miles, but § 61.129(a)(3)(iii) contains discrete cross-country training requirements that require completion of cross-country flights that include a distance of at least 100 nautical miles.

[161] While the FAA is proposing to adopt provisions in the SFAR that would require cross-country flights with shorter minimum legs than those currently specified in § 61.129(e), the FAA notes that these requirements would serve as an alternative to the requirements set forth in § 61.129(e). Thus, an applicant for a commercial pilot certificate with a powered-lift category rating still has the option to complete the cross-country flights specified in § 61.129(e).

[162] Section 61.129(e)(2)(ii) requires an applicant for a commercial pilot certificate with a powered-lift category rating to acquire 10 hours of cross-country flight time as PIC in a powered-lift. Section 61.65(f) requires an applicant for an instrument-powered-lift rating to obtain 10 hours of cross-country flight time as PIC in a powered-lift.

consisting of a straight-line distance of at least 50 nautical miles from the original point of departure. In determining the appropriate distance, the FAA considered the current aeronautical experience requirements for persons seeking a commercial pilot certificate with a rotorcraft category and helicopter class rating under § 61.129(c) because, as previously explained, helicopters also tend to have shorter range capabilities than airplanes. The aeronautical experience requirements for persons seeking a commercial pilot certificate with a helicopter rating have traditionally required cross-country flights that include a distance of 50 nautical miles.[163]

The distance of 50 nautical miles would be more compatible with the range capabilities of current powered-lift coming to market and with the intended operational use of these powered-lift (*e.g.,* flights of shorter duration compared to airplanes).[164] However, because the current regulation requires an applicant for a powered-lift rating to navigate the powered-lift over a greater distance, the FAA finds it necessary to impose an additional requirement to ensure the applicant for a powered-lift rating obtains cross-country experience comparable to that which would be obtained under the current powered-lift regulation. As a result of reducing the straight-line distance from 250 nautical miles to 50 nautical miles, proposed § 194.233(b) would require an applicant seeking to comply with the alternate requirement to complete an additional cross-country flight of the same specified distance of 50 nautical miles. The proposed additional cross-country flight would have to be conducted to different points of landing than the initial cross-country flight. The FAA notes, however, that the original point of departure may be the same, as pilots generally begin cross-country flights at their home airport. These additional requirements are intended to serve as risk mitigations to ensure the alternate requirement does not have an adverse impact on safety.

The proposed alternative requirement would result in less distance over which the pilot would navigate the powered-lift in cruise flight; however, the applicant would still obtain valuable cross-country experience because they would be required to navigate the powered-lift to twice as many landing locations as prescribed under the current regulation. The proposed requirement for the second cross-country flight to include landings at different points than the initial cross-country flight would result in the applicant navigating the powered-lift to at least four different landing locations other than the pilot's home airport. Because the applicant would be required to plan an additional cross-country flight to points that differ from those selected for the initial cross-country flight, the applicant would receive increased exposure to preflight planning. For example, the applicant would be required to plot a new course on an aeronautical chart, select new checkpoints over unfamiliar terrain, measure distances to the landing points selected, and obtain pertinent weather information on the day of the flight, all of which would differ from that obtained for the initial cross-country flight. The applicant would also be required to compute the flight time, headings, and fuel requirements for the second cross-country flight, as well as monitor the checkpoints while navigating the powered-lift to the different points of landing.

Requiring the second cross-country flight to include landings at different points than the initial cross-country flight would also ensure the applicant obtains experience navigating the powered-lift to destinations with which they are not intimately familiar, which would increase the applicant's exposure to the use of navigational systems and radar services. Additionally, because the conditions of the second flight would inherently differ from the initial cross-country flight, the applicant would be exposed to new cross-country scenarios that require decision-making and risk management. Furthermore, requiring two cross-country flights, each of which include a minimum of three points with one segment consisting of a straight-line distance of at least 50 nautical miles, would ensure the pilot is exposed to realistic cross-country flying conditions over at least 100 total nautical miles of unfamiliar terrain. As a result, the applicant would still be exposed to realistic cross-country flying while navigating the powered-lift to locations outside of the pilot's local flying environment, which would enable the pilot to apply and expand their knowledge of cross-country flight and foster the development of air navigation skills. Accordingly, the FAA concludes that the alternate cross-country requirements proposed in the SFAR would not adversely affect safety because they would ensure that the applicant obtains cross-country experience that is comparable to that provided by the current regulation.

The FAA is likewise proposing alternate requirements for the cross-country flights that currently exist in § 61.129(e)(3)(ii) and (iii) (*i.e.,* straight-line distance of at least 100 nautical miles from the original departure point) for the reasons discussed earlier. Under proposed § 194.233(a), an applicant would be required to log at least one 2-hour cross country flight in a powered-lift in daytime conditions (proposed § 194.233(a)(1)) and one 2-hour cross-country flight in a powered-lift in nighttime conditions (proposed § 194.233(a)(2)). Each of these proposed cross-country flights must consist of a total straight-line distance of 50 nautical miles from the original point of departure (rather than 100 nautical miles, which is currently required by § 61.129(e)(3)).

While the proposal would reduce the required distances for the cross-country flights in § 61.129(e)(3) from 100 nautical miles to 50 nautical miles, it would not reduce the required flight time (*e.g.,* 2 hours). Therefore, the pilot would still obtain cross-country experience in the powered-lift for the duration of time that is currently required by the regulations. However, consistent with the previous explanation concerning the alternate requirements for § 61.129(e)(4)(i), because the current regulation requires an applicant for a powered-lift rating to navigate the powered-lift over a greater distance, the FAA finds it necessary to impose an additional requirement to ensure the applicant obtains the necessary air navigation skills under the proposed alternate requirements. As a result of reducing the straight-line distance from 100 nautical miles to 50 nautical miles, the FAA proposes in § 194.233(a)(3) to require an additional cross-country flight of the same specified distance of 50 nautical miles. Except for the original point of departure, the additional cross-country flight must include landings at different points than the points selected for the day and night cross-country flights. For the same reasons discussed above, the FAA concludes that the alternate requirements for the cross-country flights that currently exist in § 61.129(e)(3)(ii) and (iii) would not adversely affect safety, provided the applicant completes the additional

[163] 14 CFR 61.129(c)(3)(ii) and (iii) and (c)(4)(i).

[164] Powered-lift may emerge with greater range capabilities and higher airspeeds. The proposed requirements are intended to be temporary measures that would remove obstacles in the current regulations and facilitate pilot certification for the powered-lift coming to market. The FAA will continue to evaluate the powered-lift seeking type certification and monitor the affect the proposed rule on cross-country training. Based on this evaluation, the FAA will reevaluate the appropriate distances for cross-country flight in a powered-lift.

cross-country flight in accordance with proposed § 194.233(a)(3).

In addition to the proposed safety mitigations discussed above, the FAA finds that there are sufficient safeguards in the regulations to prevent any reduction in safety. The applicant for a commercial pilot certificate with a powered-lift category rating would still be required to receive and log ground training from an authorized instructor on the aeronautical knowledge areas specified in § 61.125(b), which includes several areas related to cross-country planning and air navigation (*e.g.,* meteorology, weight and balance computations, use of performance charts, use of aeronautical charts and a magnetic compass for pilotage and dead reckoning, use of air navigation facilities, aeronautical decision making and judgment, and procedures for operating within the NAS). The applicant would also still be required to receive and log flight training from an authorized instructor on the areas of operation specified in § 61.127(b)(5), which includes ''navigation.'' [165] Additionally, the applicant must meet the aeronautical experience requirements that apply to the powered-lift category rating (*e.g.,* 10 hours of cross-country time in a powered-lift) and pass the practical test on the areas of operation listed in § 61.127(b), which includes tasks on cross-country planning and navigation.[166]

iii. Specific Cross-Country Requirements for an Instrument-Powered-Lift Rating (§ 61.65(f))

In addition to the alternate requirements for test pilots, instructor pilots, and select pilots from parts 135, 141, and 142 discussed earlier, the FAA is proposing alternate cross-country aeronautical experience requirements for all applicants for an instrument-powered-lift rating under § 61.65(f). Currently, the instrument training on cross-country flight procedures required in § 61.65(f)(2)(ii) must include a flight of 250 nautical miles along airways or by directed routing from an ATC facility. For the reasons stated previously, this cross-country distance is not appropriate for the powered-lift coming to the market. Therefore, the FAA has reconsidered the appropriate distances for cross-country flights for an instrument-powered-lift rating.

While the 250 nautical mile requirement in § 61.65(f)(2)(ii) is not required to be in a straight-line distance, the FAA still finds that it would be an obstacle for several powered-lift based on the range capabilities that the FAA has evaluated. Therefore, in place of the long cross-country flight in § 61.65(f)(2)(ii)(A), proposed § 194.235(a)(2)(i) would permit an applicant to complete a cross-country flight that involves a distance of 100 nautical miles along airways or by directed routing from an ATC facility. The FAA again considered the aeronautical experience requirements for persons seeking an instrument-helicopter rating because, as previously explained, helicopters also tend to have shorter range capabilities than airplanes. As explained in this section the distance for helicopters would be more compatible with the range capabilities of current powered-lift coming to market and with the intended operational use of these powered-lift (*e.g.,* flights of shorter duration compared to airplanes).

Consistent with the alternate requirements proposed for the cross-country experience for a commercial pilot certificate, the FAA finds it necessary to impose an additional requirement to ensure the applicant for an instrument-powered-lift rating obtains experience comparable to that which would be obtained under the current regulation. Thus, the FAA is proposing to require the applicant to complete an additional cross-country flight of the same specified distance of 100 nautical miles.

Under the proposed cross-country experience requirements, the applicant would navigate under IFR for a shorter overall distance. By requiring the applicant to plan and conduct two cross-country flights under IFR rather than one, the FAA would ensure the applicant receives additional experience planning a cross-country flight under IFR and navigating a powered-lift to destinations with which the applicant is not intimately familiar while operating along airways or by receiving direct routing from an ATC facility. Furthermore, the applicant would acquire additional experience filing, activating, and closing an IFR flight plan; navigating under IFR; interpreting appropriate and current approach procedure charts; and performing instrument approaches with the use of navigation systems. Therefore, while the proposed requirements would result in less distance over which the applicant would navigate the powered-lift under IFR, the additional cross-country flight would serve as a risk mitigation to ensure the alternate requirement does not adversely affect safety.

Similar to the proposed alternate cross-country experience requirements discussed in this section of this preamble, there are sufficient safeguards in the regulations to prevent any reduction in safety. Under proposed § 194.235(a)(1), the applicant for an instrument-powered-lift rating would still be required to receive and log ground training from an authorized instructor (or from an instructor pilot) on the aeronautical knowledge areas set forth in § 61.65(b), which would ensure the applicant has the foundational knowledge to plan and execute IFR cross-country flights. The applicant would also still be required to receive and log flight training from an authorized instructor (or from an instructor pilot) on the areas of operation specified in § 61.65(c), which includes ATC clearances and procedures, flight by reference to the instruments, navigation systems, and instrument approach procedures.[167] Furthermore, the applicant must meet the existing aeronautical experience requirements that apply to the instrument-powered-lift rating (*e.g.,* 10 hours of cross-country flight time as PIC in a powered-lift) and pass the practical test on the areas of operation in § 61.65(c).

The FAA is also proposing in § 194.235(b) to provide relief from the requirement in § 61.65(f)(2)(ii) to perform instrument training on cross-country procedures under instrument flight rules and a flight plan filed with an air traffic control facility when an aircraft is not certificated for IFR. This relief is necessary to prevent a person from filing a flight plan for a powered-lift that is certificated for VFR only operations in violation of § 91.9. This relief is available only when the pilot already holds an instrument airplane rating, an instrument helicopter rating, or an ATP certificate. These pilots would already have experience operating under IFR and will have been tested on instrument procedures and regulations governing IFR operations.[168]

[165] 14 CFR 61.127(b)(5)(vii).

[166] Specifically, Cross-Country Planning is a Task under Area of Operation Preflight Preparation in the Commercial Pilot for Powered-Lift Category ACS to ensure that applicants exhibit satisfactory knowledge, risk management, and skills associated with cross-country flights and VFR flight planning (*e.g.,* route planning, calculating fuel requirements, creation of navigation logs).

[167] The introductory language in § 61.65(f)(2) requires that the flight time under that section cover the areas of operation in § 61.65(c); therefore, the cross-country flight required under § 61.65(f)(2)(ii)(A) must cover those areas.

[168] Based on the narrow applicability of this relief and the temporary nature of the SFAR, the FAA finds that requiring the applicant to hold either an instrument rating in an airplane or helicopter or an ATP certificate would appropriately mitigate any risk that may be introduced.

iv. Specific Cross-Country Flights for Private Pilot Certificate (§ 61.109)

This proposed SFAR is intended to enable experienced pilots to become the initial cadre of commercial powered-lift pilots. Once this initial pathway is enabled, those individuals will be able to branch out into the general aviation community with the experience garnered through compliance with this SFAR. The FAA is proposing an alternate pathway for these individuals at the commercial level as discussed in this section of this preamble because they possess the knowledge, skills, and abilities to a degree higher than what is expected of private pilots. Moreover, the powered-lift currently working through the aircraft certification process are complex aircraft intended to be used for commercial passenger-carrying operations. The FAA does not deem it necessary to grant relief from existing regulations at the private pilot level initially due to an expected lack of trainer aircraft for powered-lift limiting the ability to conduct student pilot training in powered-lift.

The FAA expects this SFAR and accompanying permanent regulatory amendments will facilitate flight training under part 61 in powered-lift, including for those individuals seeking a powered-lift rating at the private pilot certificate level. The rationale for offering relief from the cross-country requirements for commercial pilots applies equally to an applicant for a private pilot certificate. Therefore, the FAA is proposing to reduce the nautical mile distances in the aeronautical experience required to be eligible for a private pilot certificate.

To obtain a private pilot certificate with a powered-lift category rating, a person must satisfy the eligibility requirements for a private pilot certificate, which are contained in § 61.103. Section 61.103 contains several requirements, including the requirement for a person to meet certain aeronautical experience set forth by § 61.109 that apply to the aircraft category rating sought before applying for the practical test.[169] The aeronautical experience requirements for a person seeking to obtain a private pilot certificate with a powered-lift category rating or seeking to add a powered-lift category rating to a private pilot certificate are contained in § 61.109(e).

Specifically, § 61.109(e) requires a person who applies for a private pilot certificate with a powered-lift category rating to log at least 40 hours of total flight time as a pilot, which must include at least 20 hours of flight training from an authorized instructor and 10 hours of solo flight training on the areas of operation listed in § 61.107(b)(5). Additionally, this flight training must include the subsets of training set forth in § 61.109(e)(1) through (5), including specified cross-country flight training. First, § 61.109(e)(1) requires training to include three hours of cross-country training in a powered-lift. Section 61.109(e)(2)(i) requires training to include one cross-country flight of over 100 nautical miles total distance. Lastly, § 61.109(e)(5) requires 10 hours of solo flight time consisting of at least 5 hours cross-country time with one solo cross-country flight of at least 150 nautical miles total distance with full-stop landings at three points, of which one segment consists of more than 50 nautical miles between the takeoff and landing locations.

As previously discussed in this section of the preamble, when the FAA adopted the cross-country flight time requirements for a commercial pilot certificate with a powered-lift category rating, the FAA mirrored the nautical mile distance that was required for airplanes. The FAA similarly mirrored the nautical mile distance required for airplanes for the cross-country flight time requirements in obtaining a private pilot certificate with a powered-lift category rating. For reasons discussed in section E of this preamble, the FAA finds it unnecessary to require cross-country flights in powered-lift at the private pilot level to include the same distances as those required for airplanes. Therefore, the FAA is proposing alternate aeronautical experience requirements that would allow an applicant for a private pilot certificate with a powered-lift category rating to complete the cross-country flights in § 61.109 at a reduced nautical mile distance.

First, in place of the cross-country flight in § 61.109(e)(2)(i) (*i.e.,* night flight training that includes one cross-country flight over 100 nautical miles), proposed § 194.237(a) would require an applicant to receive three hours of night flight training that includes two cross-country flights with each flight consisting of a total distance that exceeds 50 nautical miles. Consistent with the prior explanation concerning the alternate cross-country experience requirements for § 61.129(e)(3)(ii) and (iii) and (e)(4)(i), the second cross-country flight would serve as a risk mitigation to ensure that the applicant obtains the necessary air navigation skills under the proposed alternate requirements. Therefore, for the same reasons as previously discussed, the FAA finds the proposed alternate cross-country experience requirements for the cross-country flight that exists in § 61.109(e)(2)(i) would not adversely affect safety.

Additionally, in place of the solo cross-country flight that is currently listed in § 61.109(e)(5)(ii) (*i.e.,* 150 nautical miles total distance with one segment of the flight consisting of a straight-line distance of more than 50 nautical miles), proposed § 194.237(b) would set forth alternate solo cross-country experience. Specifically, the applicant would be required to complete one solo cross-country flight of 100 nautical miles total distance with landings at three points and with one segment of the flight consisting of a straight-line distance of more than 25 nautical miles (proposed § 194.237(b)(1)).

However, consistent with the discussion in this section of this preamble, it will be necessary to impose an additional requirement to ensure the applicant obtains cross-country experience comparable to that which would be obtained under the current regulation. Therefore, the FAA proposes to require an additional solo cross-country flight to be conducted in a powered-lift (proposed § 194.237(b)(2)). This additional solo cross-country flight would require landings at a minimum of three points, with one segment consisting of a straight-line distance of at least 50 nautical miles from the original point of departure. The additional cross-country flight would be required to be conducted to different points of landing than the initial cross-country flight. The applicant would still obtain valuable cross-country experience because the applicant would be required to navigate the powered-lift to twice the number of landing locations than as currently prescribed under § 61.109(e), providing additional exposure to preflight planning and experience at myriad landing points. The earlier discussion of cross-country alternatives for commercial pilot certificates further details the benefits of navigating the powered-lift to twice as many landing locations, which is equally applicable in this context.

While proposed § 194.237 would reduce the required distances for the cross-country flights in § 61.109, it does not propose to reduce the required flight time. A person seeking a private pilot certificate with a powered-lift category rating would still be required to obtain 3 hours of cross-country flight training in a powered-lift, pursuant to § 61.109(e)(1), and 5 hours of cross-

[169] 14 CFR 61.103(g).

country solo flight time in a powered-lift under proposed § 61.109(e)(5)(i).[170] The SFAR proposal simply accounts for the operational capabilities of powered-lift by the reduction of required nautical miles, while continuing to ensure that the pilot has sufficient cross-country experience and has developed skills that are specific to operating a powered-lift on a flight outside of the pilot's local flying environment corresponding to the private pilot level.

Furthermore, as previously discussed in this section, notwithstanding the current definitions of cross-country time in § 61.1(b), the FAA is proposing to allow flight time logged in a powered-lift as cross-country time provided, in pertinent part, that the time was acquired during a flight that includes a point of landing that was at least a straight-line distance of more than 25 nautical miles from the original point of departure. The FAA notes that this proposal would apply to cross-country flight training time in a powered-lift required by § 61.109(e)(1) and solo cross-country time required by § 61.109(e)(5)(i).[171]

v. Part 141 Appendices

The FAA notes that certain existing minimum curriculum requirements for a part 141 pilot school seeking approval to utilize a powered-lift specified in the part 141 appendices mirror the cross-country requirements set forth in §§ 61.65(f), 61.109(e), and 61.129(e). For example, paragraph 4.(b)(5)(ii) and (iii) of appendix D requires one 2-hour cross country flight in daytime conditions in a powered-lift and one 2-hour cross country flight in nighttime conditions in a powered-lift that each consist of a total straight-line distance of more than 100 nautical miles from the original point of departure; these requirements correspond to those set forth in § 61.129(e)(3)(ii) and (iii). This is also the case with the minimum cross-country curriculum requirements in appendix B, paragraphs 4.(b)(5)(ii)(A) and 5.(e)(1) for a private powered-lift certification course (mirroring § 61.109(e)(2)(i) and (e)(5)); appendix C, paragraph 4.(c)(3)(ii) for an instrument-powered-lift rating course (mirroring § 61.65(d)(2)(ii)); appendix D, paragraph 5.(e)(2) for a commercial powered-lift certification course (mirroring § 61.129(e)(4)(i)); and appendix M, paragraphs 4.(b)(4)(ii)(A), 4.(b)(4)(iii)(A), and 5.(d)(1) for a combined private pilot certification and instrument rating course.

For the reasons discussed in section V.E, the FAA has found that the alternate cross-country requirements in proposed §§ 194.233, 194.235, and 194.237 would not adversely impact safety, and that part 141 pilot schools should be able to utilize these alternate cross-country distances. Therefore, FAA proposes § 194.239(b) to facilitate this substitution, on the condition that the training course include an additional cross-country flight consistent with the requirements of §§ 194.233, 194.235, and 194.237, as applicable.

vi. Technical Correction and Nomenclature Change

While considering the alternate cross-country requirements proposed in the SFAR, the FAA became aware of the need for a technical correction in the definition of cross-country time in § 61.1(b). Currently, paragraph (i) of the definition provides the general definition of cross-country time ''[e]xcept as provided in paragraphs (ii) through (vi) of this definition.'' However, the definition of cross-country time includes paragraphs (ii) through (vii). Paragraph (vii) contains the cross-country time definition for a military pilot who qualifies for a commercial pilot certificate (except with a rotorcraft category rating) under § 61.73. Thus, like paragraphs (ii) through (vi), paragraph (vii) contains an exception to the general definition of cross-country time in paragraph (i). The FAA is, therefore, proposing to correct the cross-reference in paragraph (i) of the definition to refer to paragraphs (ii) through (vii) of the definition.

Further, while considering the alternate requirements for the cross-country aeronautical experience in § 61.129(e), the FAA noted that the nomenclature concerning ''cross-country time'' is inconsistent throughout part 61. The definition contained in § 61.1(b) references ''cross-country time'' whereas the regulations often use the nomenclature ''cross-country flight time.'' The FAA is proposing to remove ''cross-country flight time'' throughout part 61 and replace the term with the words ''cross-country time.'' This proposed change would ensure consistent usage of the defined term throughout the regulations. The following sections would be amended to reflect this nomenclature change: §§ 61.65(d), (e), (f), (g) introductory text, (g)(1) and (2); 61.67(b)(3); 61.68(b)(3); 61.129(g)(2)(i); 61.159(a)(1), (a)(5)(i); 61.160(e), (f); 61.161(a)(1); 61.163(a)(1), (a)(3)(i); and 61.411(a)(1)(iii) and (iv), (c)(1)(iii) and (iv), (d)(1)(iii) and (iv), (f)(1)(iii) and (iv), (g)(1)(iii) and (iv).

5. Alternate Experience and Logging Summaries

i. Summary Tables for Obtaining a Commercial Pilot Certificate With Powered-Lift Rating

As noted, the proposed rule language to facilitate airmen certification for a commercial pilot certificate with a powered-lift rating involves several alternate experience and logging requirements. To facilitate readability of the alternate requirements that would apply to persons seeking powered-lift ratings, the FAA has compartmentalized the rule language into individual sections depending on the powered-lift ratings sought. Tables 2, 3, and 4 contain the proposed alternate provisions for a commercial pilot certificate with a powered-lift rating.

TABLE 2—ALTERNATE PROVISIONS FOR A COMMERCIAL PILOT CERTIFICATE WITH A POWERED-LIFT CATEGORY RATING: TEST PILOTS AND INSTRUCTOR PILOTS

Current flight time requirements (§ 61.129(e))	Alternate provisions for test pilots *	Alternate provisions for instructor pilots *
Powered-Aircraft Time		
100 hours in powered-aircraft, of which 50 hours must be in a powered-lift.	*No alternative.*	*No alternative.*

[170] Currently, § 61.109(e)(5) permits an applicant to obtain 10 hours of solo flight time in either an airplane or a powered-lift. For the reasons discussed in section I.H of this preamble, the FAA is proposing to amend § 61.109(e)(5) to require the solo flight time to be obtained in a powered-lift.

[171] This merely reduces the distance requirements listed in § 61.109(e)(2)(i) and (e)(5)(ii) to mirror those required in § 61.109(c)(2)(i) and (c)(5)(ii) for helicopters. Private pilot applicants for a powered-lift rating must meet all other aeronautical experience requirements provided in § 61.109(e).

TABLE 2—ALTERNATE PROVISIONS FOR A COMMERCIAL PILOT CERTIFICATE WITH A POWERED-LIFT CATEGORY RATING: TEST PILOTS AND INSTRUCTOR PILOTS—Continued

Current flight time requirements (§ 61.129(e))	Alternate provisions for test pilots *	Alternate provisions for instructor pilots *
PIC Flight Time		
100 hours of PIC flight time, which includes at least— (1) 50 hours in a powered-lift, and (2) 50 hours in cross-country flight of which 10 must be in powered-lift.	A test pilot who is not rated in the powered-lift may log PIC flight time in the experimental powered-lift if (1) the test pilot is the sole manipulator of the controls, (2) the test pilot is acting as PIC, and (3) the flight is conducted for the purpose of R&D or showing compliance. See proposed § 194.217(c).	An instructor pilot who is not rated in the powered-lift may log PIC flight time in the experimental powered-lift if (1) acting as PIC, and (2) the flight is conducted for the purpose of crew training. See proposed § 194.219(c).
Training on the Areas of Operation listed in § 61.127(b)(5)		
20 hours of training on the areas of operation listed in § 61.127(b)(5) that includes at least—	Test pilot may receive this training from an instructor pilot (rather than an authorized instructor) if (1) training is conducted in accordance with the manufacturer's training curriculum, and (2) test pilot receives endorsement from instructor pilot certifying satisfactory completion of the curriculum. See proposed § 194.217(b)(1).	In lieu of receiving this training, an instructor pilot may provide the manufacturer's training curriculum to a test pilot, which includes 20 hours of training on the areas of operation listed in § 61.127(b)(5). Instructor pilot must receive endorsement from management official certifying that instructor pilot provided the training. See proposed § 194.219(b)(1).
(1) 10 hours of instrument training using a view-limiting device including attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. 5 hours of the 10 hours required on instrument training must be in a powered-lift.	Test pilot may receive this instrument training from instructor pilot in an experimental powered-lift in accordance with the manufacturer's proposed training curriculum. See proposed § 194.217(b)(1).	Instructor pilot may satisfy this requirement by providing instrument training to test pilot in accordance with the manufacturer's proposed training curriculum. See proposed § 194.219(b)(1).
(2) The following cross-country flights— • One 2-hour cross country flight in a powered-lift in daytime conditions that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure; and • One 2-hour cross country flight in a powered-lift in nighttime conditions that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure; and	Test pilot may complete all of the following cross-country flights— One 2-hour cross country flight in a powered-lift in daytime conditions that consists of a total straight-line distance of more than 50 nautical miles from the original point of departure; One 2-hour cross country flight in a powered-lift in nighttime conditions that consists of a total straight-line distance of more than 50 nautical miles from the original point of departure; and An additional cross-country flight with landings at a minimum of three points, with one segment consisting of a straight-line distance of at least 50 nautical miles from the original point of departure. The additional cross-country flight must include landings at different points than the first two cross-country flights. See proposed § 194.233(a).	Instructor pilot may complete all of the same alternate cross-country flights as test pilot. See proposed § 194.233(a).
(3) 3 hours in a powered-lift with an authorized instructor in preparation for the practical test within the preceding 2 calendar months from the month of the test.	Test pilot may accomplish the practical test preparation with an instructor pilot (rather than an authorized instructor). See proposed § 194.217(b)(2).	Instructor pilot may accomplish the practical test preparation with another instructor pilot (rather than an authorized instructor). See proposed § 194.219(b)(2).
Solo Flight Time or Flight Time Performing the Duties of PIC		
Ten hours of solo flight time in a powered-lift or 10 hours of flight time performing the duties of PIC in a powered-lift with an authorized instructor on board (either of which may be credited towards the flight time requirement under § 61.129(e)(2), on the areas of operation listed in § 61.127(b)(5)) that includes—	Test pilot may complete 10 hours of solo flight time under an endorsement from an instructor pilot or 10 hours of flight time performing the duties of PIC in a powered-lift with either a test pilot or an instructor pilot onboard. See proposed § 194.217(b)(3).	The alternate provision for test pilots also applies to instructor pilots. See proposed § 194.219(b)(3).

TABLE 2—ALTERNATE PROVISIONS FOR A COMMERCIAL PILOT CERTIFICATE WITH A POWERED-LIFT CATEGORY RATING: TEST PILOTS AND INSTRUCTOR PILOTS—Continued

Current flight time requirements (§ 61.129(e))	Alternate provisions for test pilots *	Alternate provisions for instructor pilots *
(1) One cross-country flight of not less than 300 nautical miles total distance with landings at a minimum of three points, one of which is a straight-line distance of at least 250 nautical miles from the original departure point. However, if this requirement is being met in Hawaii the longest segment need only have a straight-line distance of at least 150 nautical miles; and	Test pilot may complete two cross-country flights with landings at a minimum of three points, with one segment consisting of a straight-line distance of at least 50 nautical miles from the original point of departure. The second cross-country flight must include landings at different points than the first cross country flight. See proposed § 194.233(b).	Instructor pilot may complete the same alternate cross-country flights as test pilot. See proposed § 194.233(b).
(2) 5 hours in night VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.	*No alternative.*	*No alternative.*

* To use the alternate provisions below, the flights must be conducted in an experimental powered-lift at the manufacturer and the test pilots and instructor pilots must be authorized by the Administrator to act as PIC of the experimental powered-lift. See proposed §§ 194.217(a) and 194.219(a).

TABLE 3—ALTERNATE PROVISIONS FOR A COMMERCIAL PILOT CERTIFICATE WITH A POWERED-LIFT CATEGORY RATING: INITIAL CADRE OF CHECK PILOTS, CHIEF INSTRUCTORS, ASSISTANT CHIEF INSTRUCTORS, AND TRAINING CENTER EVALUATORS

Current flight time requirements (§ 61.129(e))	Alternate provisions for initial cadre of check pilots, chief instructors, assistant chief instructors, and TCEs * (herein referred to as applicants)
Powered-Aircraft Time	
100 hours in powered-aircraft, of which 50 hours must be in a powered-lift.	No alternative.
PIC Flight Time	
100 hours of PIC flight time, which includes at least— (1) 50 hours in a powered-lift, and (2) 50 hours in cross-country flight of which 10 must be in powered-lift.	An applicant who is not rated in the powered-lift may log up to 40 hours of PIC flight time in a powered-lift for flights that are conducted in accordance with a manufacturer's training curriculum if the applicant is (1) the sole manipulator of the controls, (2) manipulating the controls of the powered-lift with an instructor pilot onboard, and (3) performing the duties of PIC. See proposed § 194.221(c).
Training on the Areas of Operation listed in § 61.127(b)(5)	
20 hours of training on the areas of operation listed in § 61.127(b)(5) that includes at least—	An applicant may receive this training from an instructor pilot (rather than an authorized instructor) if (1) training is conducted in accordance with the manufacturer's training curriculum, and (2) applicant receives endorsement from instructor pilot certifying satisfactory completion of the curriculum. See proposed § 194.221(b)(1).
(1) 10 hours of instrument training using a view-limiting device including attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. 5 hours of the 10 hours required on instrument training must be in a powered-lift.	An applicant may receive this instrument training from instructor pilot in a type certificated powered-lift in accordance with the manufacturer's training curriculum. See proposed § 194.221(b)(1).

TABLE 3—ALTERNATE PROVISIONS FOR A COMMERCIAL PILOT CERTIFICATE WITH A POWERED-LIFT CATEGORY RATING: INITIAL CADRE OF CHECK PILOTS, CHIEF INSTRUCTORS, ASSISTANT CHIEF—Continued INSTRUCTORS, AND TRAINING CENTER EVALUATORS

Current flight time requirements (§ 61.129(e))	Alternate provisions for initial cadre of check pilots, chief instructors, assistant chief instructors, and TCEs * (herein referred to as applicants)
(2) The following cross-country flights— • One 2-hour cross country flight in a powered-lift in daytime conditions that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure; and • One 2-hour cross country flight in a powered-lift in nighttime conditions that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure; and	An applicant may complete all of the following cross-country flights— One 2-hour cross country flight in a powered-lift in daytime conditions that consists of a total straight-line distance of more than 50 nautical miles from the original point of departure; One 2-hour cross country flight in a powered-lift in nighttime conditions that consists of a total straight-line distance of more than 50 nautical miles from the original point of departure; and An additional cross-country flight with landings at a minimum of three points, with one segment consisting of a straight-line distance of at least 50 nautical miles from the original point of departure. The additional cross-country flight must include landings at different points than the first two cross-country flights. See proposed § 194.233(a).
(3) 3 hours in a powered-lift with an authorized instructor in preparation for the practical test within the preceding 2 calendar months from the month of the test.	An applicant may accomplish the practical test preparation from an instructor pilot (rather than an authorized instructor). See proposed § 194.221(b)(2).
Solo Flight Time or Flight Time Performing the Duties of PIC	
Ten hours of solo flight time in a powered-lift or 10 hours of flight time performing the duties of PIC in a powered-lift with an authorized instructor on board (either of which may be credited towards the flight time requirement under § 61.129(e)(2), on the areas of operation listed in § 61.127(b)(5)) that includes—	An applicant may complete 10 hours of solo flight time under an endorsement from an instructor pilot or 10 hours of flight time performing the duties of PIC in a powered-lift with an instructor pilot onboard (rather than an authorized instructor). See proposed § 194.221(b)(3).
(1) One cross-country flight of not less than 300 nautical miles total distance with landings at a minimum of three points, one of which is a straight-line distance of at least 250 nautical miles from the original departure point. However, if this requirement is being met in Hawaii the longest segment need only have a straight-line distance of at least 150 nautical miles; and	An applicant may complete two cross-country flights with landings at a minimum of three points, with one segment consisting of a straight-line distance of at least 50 nautical miles from the original point of departure. The second cross-country flight must include landings at different points than the first cross country flight. See proposed § 194.233(b).
(2) 5 hours in night VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.	No alternative.

* To use the alternate provisions below, the flights must be conducted in a type-certificated powered-lift at the manufacturer and the applicant must be authorized by the Administrator to serve as an initial check pilot, chief instructor, assistant chief instructor, or training center evaluator for the purpose of initiating training in a powered-lift under an approved training program under part 135, 141, or 142, as appropriate. See proposed § 194.221(a).

TABLE 4—ALTERNATE PROVISIONS FOR A COMMERCIAL PILOT CERTIFICATE WITH A POWERED-LIFT CATEGORY RATING: PERSONS RECEIVING TRAINING UNDER A PART 135, 141, OR 142 APPROVED TRAINING PROGRAM

Current flight time requirements (§ 61.129(e))	Alternate provisions for persons receiving training under a part 135, 141, or 142 approved training program * (herein referred to as applicants)
Powered-Aircraft Time	
100 hours in powered-aircraft, of which 50 hours must be in a powered-lift.	No alternative.
PIC Flight Time	
100 hours of PIC flight time, which includes at least— .(1) 50 hours in a powered-lift, and (2) 50 hours in cross-country flight of which 10 must be in powered-lift	An applicant who is not rated in the powered-lift may log up to 40 hours of PIC flight time in a powered-lift for flights that are conducted in accordance with an approved training program under part 135, 141 or 142 if the applicant is (1) the sole manipulator of the controls, (2) manipulating the controls of the powered-lift with an authorized instructor onboard, and (3) performing the duties of PIC. See proposed § 194.223(c). • An applicant may credit up to 15 hours obtained in a level C or higher FFS toward the requirement to obtain 50 hours of PIC flight time in a powered-lift if (1) the FFS represents the powered-lift category, (2) the applicant was performing the duties of PIC, and (3) the flights are conducted in accordance with an approved training program under part 135, 141 or 142. See proposed § 194.233(d).

TABLE 4—ALTERNATE PROVISIONS FOR A COMMERCIAL PILOT CERTIFICATE WITH A POWERED-LIFT CATEGORY RATING: PERSONS RECEIVING TRAINING UNDER A PART 135, 141, OR 142 APPROVED TRAINING PROGRAM—Continued

Current flight time requirements (§ 61.129(e))	Alternate provisions for persons receiving training under a part 135, 141, or 142 approved training program * (herein referred to as applicants)
Training on the Areas of Operation listed in § 61.127(b)(5)	
20 hours of training on the areas of operation listed in § 61.127(b)(5) that includes at least—	No alternative.
(1) 10 hours of instrument training using a view-limiting device including attitude instrument flying, partial panel skills, recovery from unusual flight attitudes, and intercepting and tracking navigational systems. 5 hours of the 10 hours required on instrument training must be in a powered-lift.	No alternative.
(2) The following cross-country flights—	An applicant may complete all of the following cross-country flights—
• One 2-hour cross country flight in a powered-lift in daytime conditions that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure; and	• One 2-hour cross country flight in a powered-lift in daytime conditions that consists of a total straight-line distance of more than 50 nautical miles from the original point of departure;
• One 2-hour cross country flight in a powered-lift in nighttime conditions that consists of a total straight-line distance of more than 100 nautical miles from the original point of departure; and	• One 2-hour cross country flight in a powered-lift in nighttime conditions that consists of a total straight-line distance of more than 50 nautical miles from the original point of departure; and • An additional cross-country flight with landings at a minimum of three points, with one segment consisting of a straight-line distance of at least 50 nautical miles from the original point of departure. The additional cross-country flight must include landings at different points than the first two cross-country flights. (See proposed § 194.211(b)) See proposed § 194.233(a).
(3) 3 hours in a powered-lift with an authorized instructor in preparation for the practical test within the preceding 2 calendar months from the month of the test.	No alternative.
Solo Flight Time or Flight Time Performing the Duties of PIC	
Ten hours of solo flight time in a powered-lift or 10 hours of flight time performing the duties of PIC in a powered-lift with an authorized instructor on board (either of which may be credited towards the flight time requirement under § 61.129(e)(2), on the areas of operation listed in § 61.127(b)(5)) that includes—	No alternative.
(1) One cross-country flight of not less than 300 nautical miles total distance with landings at a minimum of three points, one of which is a straight-line distance of at least 250 nautical miles from the original departure point. However, if this requirement is being met in Hawaii the longest segment need only have a straight-line distance of at least 150 nautical miles; and	An applicant may complete two cross-country flights with landings at a minimum of three points, with one segment consisting of a straight-line distance of at least 50 nautical miles from the original point of departure. The second cross-country flight must include landings at different points than the first cross country flight. See proposed § 194.233(b).
(2) 5 hours in night VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.	No alternative.

* To use the alternate provisions below, the applicant must receive training at an approved training program under part 135, 141, or 142 for the purpose of obtaining a powered-lift category rating.

ii. Summary Tables for Obtaining an Instrument-Powered-Lift Rating

As noted, the proposed rule language to facilitate airmen certification for an instrument-powered-lift rating involves several alternate experience and logging requirements. To facilitate readability of the alternate requirements that would apply to persons seeking powered-lift ratings, the FAA has compartmentalized the rule language into individual sections depending on the powered-lift ratings sought. Tables 5, 6, and 7 summarize the proposed alternate provisions for an instrument-powered-lift rating.

TABLE 5—ALTERNATE PROVISIONS FOR AN INSTRUMENT-POWERED-LIFT RATING: TEST PILOTS AND INSTRUCTOR PILOTS

Current flight time requirements (§ 61.65(f))	Alternate provisions for test pilots *	Alternate provisions for instructor pilots *
Cross-Country Time as PIC		
50 hours of cross-country time as PIC, of which 10 hours must have been in a powered-lift.	A test pilot who is not rated in the powered-lift may log PIC flight time in the experimental powered-lift toward the 10-hour cross-country time requirement if (1) the test pilot is the sole manipulator of the controls, (2) the test pilot acting as PIC of the powered-lift, and (3) the flight is conducted for the purpose of R&D or showing compliance. See proposed § 194.225(c).	An instructor pilot who is not rated in the powered-lift may log PIC flight time in the experimental powered-lift towards the 10-hour cross-country time requirement if (1) acting as PIC of the powered lift, and (2) the flight is conducted for the purpose of crew training. See proposed § 194.227(c).
Instrument Time on the Areas of Operation listed in § 61.65(c)		
40 hours of actual or simulated instrument time in the areas of operation listed in § 61.65(c), of which 15 hours must have been received from an authorized instructor who holds an instrument-powered-lift rating, and the instrument time includes:	Test pilot may receive 15 hours of instrument training on the areas of operation listed in § 61.65(c) from an instructor pilot (rather than an authorized instructor) if the training is conducted in accordance with the manufacturer's proposed training curriculum, and test pilot receives endorsement from instructor pilot certifying satisfactory completion of the curriculum. See proposed § 194.225(b)(1).	In lieu of receiving the 15 hours of instrument training on the areas of operation listed in § 61.65(c), an instructor pilot may provide this instrument training to the test pilot in accordance with the manufacturer's proposed training curriculum. Instructor pilot must receive endorsement from management official certifying that instructor pilot provided the training. See proposed § 194.227(b)(1).
(1) 3 hours of instrument flight training from an authorized instructor in a powered-lift that is appropriate to the instrument-powered-lift rating within 2 calendar months before the date of the practical test; and.	Test pilot may accomplish the practical test preparation with an instructor pilot (rather than an authorized instructor). See proposed § 194.225(b)(2).	Instructor pilot may accomplish the practical test preparation with another instructor pilot (rather than an authorized instructor). See proposed § 194.227(b)(2).
(2) Instrument flight training on cross-country flight procedures, including one cross-country flight in a powered-lift with an authorized instructor that is performed under IFR, when a flight plan has been filed with an ATC control facility, that involves— • A flight of 250 nautical miles along airways or by directed routing from an ATC facility;. • An instrument approach at each airport; and • Three different kinds of approaches with the use of navigation systems.	• Test pilot may complete the cross-country flight with an instructor pilot (rather than an authorized instructor). • Instead of completing one cross-country flight of 250 nautical miles, a test pilot may complete two cross-country flights, each of which must involve a flight of 100 nautical miles along airways or by directed routing from an ATC facility.[1] See proposed §§ 194.225(b)(4) and 194.235(a).	• Instructor pilot may complete the cross-country flight with another instructor pilot (rather than an authorized instructor). • Instructor pilot may complete the same alternate cross-country flights as test pilot. See proposed §§ 194.227(b)(4) and 194.235(a).

* To use the alternate provisions below, the flights must be conducted in an experimental powered-lift at the manufacturer and the test pilots and instructor pilots must be authorized by the Administrator to act as PIC of the experimental powered-lift. See proposed §§ 194.225(a) and 194.227(a).

[1] The other requirements in § 61.65(f)(2)(ii) would continue to apply for persons not utilizing the relief under proposed § 194.235(b). Thus, each cross-country flight with the reduced 100-nautical mile distance must be performed under IFR when a flight plan has been filed with an ATC facility and must involve (1) an instrument approach at each airport and (2) three different kinds of approaches with the use of navigation systems.

TABLE 6—ALTERNATE PROVISIONS FOR AN INSTRUMENT-POWERED-LIFT RATING: INITIAL CADRE OF CHECK PILOTS, CHIEF INSTRUCTORS, ASSISTANT CHIEF INSTRUCTORS, AND TRAINING CENTER EVALUATORS

Current flight time requirements (§ 61.65(f))	Alternate provisions for initial cadre of check pilots, chief instructors, assistant chief instructors, and TCEs * (herein referred to as applicants)
Cross-Country Time as PIC	
50 hours of cross-country time as PIC, of which 10 hours must have been in a powered-lift.	An applicant who is not rated in the powered-lift may log PIC flight time in the powered-lift towards the 10-hour cross-country time requirement for flights that are conducted in accordance with a manufacturer's training curriculum if the applicant is (1) the sole manipulator of the controls, (2) manipulating the controls of the powered-lift with an instructor pilot onboard, and (3) performing the duties of PIC. See proposed § 194.229(c).

TABLE 6—ALTERNATE PROVISIONS FOR AN INSTRUMENT-POWERED-LIFT RATING: INITIAL CADRE OF CHECK PILOTS, CHIEF INSTRUCTORS, ASSISTANT CHIEF INSTRUCTORS, AND TRAINING CENTER EVALUATORS—Continued

Current flight time requirements (§ 61.65(f))	Alternate provisions for initial cadre of check pilots, chief instructors, assistant chief instructors, and TCEs * (herein referred to as applicants)
Instrument Time on the Areas of Operation listed in § 61.65(c)	
40 hours of actual or simulated instrument time in the areas of operation listed in § 61.65(c), of which 15 hours must have been received from an authorized instructor who holds an instrument-powered-lift rating, and the instrument time includes: at least—	An applicant may receive 15 hours of instrument training on the areas of operation listed in § 61.65(c) from an instructor pilot (rather than an authorized instructor) if the training is conducted in accordance with the manufacturer's training curriculum, and the applicant receives endorsement from instructor pilot certifying satisfactory completion of the curriculum. See proposed § 194.229(b)(1).
(1) 3 hours of instrument flight training from an authorized instructor in a powered-lift that is appropriate to the instrument-powered-lift rating within 2 calendar months before the date of the practical test; and.	An applicant may accomplish the practical test preparation from an instructor pilot (rather than an authorized instructor). See proposed § 194.229(b)(2).
(2) Instrument flight training on cross-country flight procedures, including one cross-country flight in a powered-lift with an authorized instructor that is performed under IFR, when a flight plan has been filed with an ATC control facility, that involves— • A flight of 250 nautical miles along airways or by directed routing from an ATC facility;. • An instrument approach at each airport; and ..... • Three different kinds of approaches with the use of navigation systems.	• Applicant may complete the cross-country flight with an instructor pilot (rather than an authorized instructor). • Instead of completing one cross-country flight of 250 nautical miles, an applicant may complete two cross-country flights, each of which must involve a flight of 100 nautical miles along airways or by directed routing from an ATC facility.[1] See proposed §§ 194.229(b)(4) and 194.235(a).

* To use the alternate provisions below, the flights must be conducted in a type-certificated powered-lift at the manufacturer and the applicant must be authorized by the Administrator to serve as an initial check pilot, chief instructor, assistant chief instructor, or training center evaluator for the purpose of initiating training in a powered-lift under an approved training program under part 135, 141, or 142, as appropriate. See proposed § 194.229(a).

[1] The other requirements in § 61.65(f)(2)(ii) would continue to apply for persons not utilizing the relief under proposed § 194.235(b). Thus, each cross-country flight with the reduced 100-nautical mile distance must be performed under IFR when a flight plan has been filed with an ATC facility and must involve (1) an instrument approach at each airport and (2) three different kinds of approaches with the use of navigation systems.

TABLE 7—ALTERNATE PROVISIONS FOR AN INSTRUMENT-POWERED-LIFT RATING: PERSONS RECEIVING TRAINING UNDER A PART 135, 141 OR 142 APPROVED TRAINING PROGRAM

Current flight time requirements (§ 61.65(f))	Alternate provisions for persons receiving training under a part 135, 41 or 142 approved training program * (herein referred to as applicants)
Cross-Country Time as PIC	
50 hours of cross-country time as PIC, of which 10 hours must have been in a powered-lift.	An applicant may credit up to 4 hours obtained in a level C or higher FFS toward the requirement to obtain 10 hours of cross-country time as PIC in a powered-lift if (1) the FFS represents the powered-lift category, (2) the applicant was performing the duties of PIC, (3) the flight simulates a cross-country flight and includes the performance of instrument procedures under simulated instrument conditions and (3) the flights are conducted in accordance with an approved training program under part 135, 141 or 142. See proposed § 194.231(c).
Instrument Time on the Areas of Operation listed in § 61.65(c)	
40 hours of actual or simulated instrument time in the areas of operation listed in § 61.65(c), of which 15 hours must have been received from an authorized instructor who holds an instrument-powered-lift rating, and the instrument time includes: at least—	*No alternative.*
(1) 3 hours of instrument flight training from an authorized instructor in a powered-lift that is appropriate to the instrument-powered-lift rating within 2 calendar months before the date of the practical test; and	*No alternative.*

TABLE 7—ALTERNATE PROVISIONS FOR AN INSTRUMENT-POWERED-LIFT RATING: PERSONS RECEIVING TRAINING UNDER A PART 135, 141 OR 142 APPROVED TRAINING PROGRAM—Continued

Current flight time requirements (§ 61.65(f))	Alternate provisions for persons receiving training under a part 135, 41 or 142 approved training program * (herein referred to as applicants)
(2) Instrument flight training on cross-country flight procedures, including one cross-country flight in a powered-lift with an authorized instructor that is performed under IFR, when a flight plan has been filed with an ATC control facility, that involves— • A flight of 250 nautical miles along airways or by directed routing from an ATC facility; • An instrument approach at each airport; and ..... • Three different kinds of approaches with the use of navigation systems.	Instead of completing one cross-country flight of 250 nautical miles, an applicant may complete two cross-country flights, each of which must involve a flight of 100 nautical miles along airways or by directed routing from an ATC facility.[1] See proposed §§ 194.231(b) and 194.235(a).

* To use the alternate provisions below, the applicant must receive training at an approved training program under part 135, 141, or 142 for the purpose of obtaining a powered-lift category rating.

[1] The other requirements in § 61.65(f)(2)(ii) would continue to apply for persons not utilizing the relief under proposed § 194.235(b). Thus, each cross-country flight with the reduced 100-nautical mile distance must be performed under IFR when a flight plan has been filed with an ATC facility and must involve (1) an instrument approach at each airport and (2) three different kinds of approaches with the use of navigation systems.

6. Alternate Endorsement Requirements for Certain Persons Seeking Powered-Lift Ratings

Part 61 requires an applicant for a certificate or rating to receive certain endorsements from an authorized instructor. For example, an applicant must receive an endorsement from an authorized instructor certifying that the person has received training on the areas of operation applicable to the certificate or rating sought. An applicant is also required to receive a solo flight endorsement from an authorized instructor pursuant to § 61.31(d)(2). Additionally, to be eligible to take a practical test for a certificate or rating, an applicant must have an endorsement from an authorized instructor certifying that the applicant has received and logged training time within 2 calendar months preceding the month of the practical test and is prepared to take the required practical test.

Under § 61.51(h), a person may log training time when that person receives training from an authorized instructor in an aircraft, full flight simulator, flight training device, or aviation training device. The training time must be endorsed in a legible manner by the authorized instructor and include a description of the training given, the length of the training lesson, and the authorized instructor's signature, certificate number, and certificate expiration date. Section 61.1(b) defines ''authorized instructor,'' in pertinent part, as a person who holds a flight instructor certificate issued under part 61 and is in compliance with § 61.197, when conducting ground training or flight training in accordance with the privileges and limitations of his or her flight instructor certificate. Section 61.195(b), which prescribes flight instructor limitations, restricts a flight instructor from conducting training in an aircraft unless the flight instructor holds the appropriate ratings on their flight instructor certificate.

As previously discussed, the SFAR would permit test pilots and the initial cadre of instructors who will provide training under the approved training program to receive training from an instructor pilot at the manufacturer for the purpose of adding powered-lift ratings to a commercial pilot certificate even though the instructor pilot does not meet the current definition of ''authorized instructor'' in FAA regulations. Because the initial cadre of instructors would also add powered-lift rating to their flight instructor certificate, these persons would also be required to receive the training and endorsements required under subpart H of part 61 from the instructor pilot. In addition to the training and endorsements for test pilots and the initial cadre of instructors by instructor pilots, the SFAR would permit the instructor pilots to credit the training they provide under the manufacturer's curriculum toward the training requirements for the instructor pilots' own powered-lift ratings.

An instructor pilot at a powered-lift manufacturer may not hold a flight instructor certificate with powered-lift ratings when providing training under the alternate requirements in part 194. Thus, without relief in the SFAR, certain instructor pilots would be prohibited under part 61 from providing logbook or training record endorsements certifying that they have provided the required training in accordance with the manufacturer's training curriculum and the pilot is prepared for the practical test. The FAA is, therefore, proposing in § 194.213 to permit instructor pilots to provide the required logbook or training record endorsements contained in part 61 for a commercial pilot certificate with a powered-lift category rating, an instrument-powered-lift rating, a powered-lift type rating, or a flight instructor certificate with powered-lift ratings. This privilege to provide endorsements, however, extends only to applicants who are (1) test pilots or instructor pilots, or (2) persons authorized by the Administrator to serve as an initial check pilot, chief instructor, assistant chief instructor, or TCE for the purpose of initiating training in a powered-lift under an approved training program under part 135, 141, or 142.

With respect to applicants for a practical test who are instructor pilots, the FAA is proposing an alternate experience requirement that would require an instructor pilot to receive training in preparation for the practical test from another instructor pilot at the manufacturer. Therefore, when an instructor pilot provides an endorsement to another instructor pilot, that endorsement would certify that the applicant is prepared for the practical test. Consistent with the current prohibition in § 61.195(i), which prohibits a flight instructor from making any self-endorsements for a certificate, rating or practical test, the FAA finds it would be inappropriate to permit the instructor pilot to make a self-endorsement. Therefore, the FAA is proposing to require the instructor pilot to receive an endorsement from a management official within the manufacturer's organization certifying that the instructor pilot has provided the manufacturer's training curriculum to a test pilot in accordance with the proposed alternate experience requirements in the SFAR. To certify that the instructor pilot has provided the training, the management official

must hold a position within the organization that enables the management official to have knowledge of the training content provided.

F. Training in an Approved Program Under Parts 135, 141, and 142

In section E of this preamble, the FAA proposes alternate logging requirements for a person to obtain a powered-lift category rating and an instrument-powered-lift rating on their commercial certificate. To be eligible for the some of the alternate requirements, the proposal requires that a pilot must satisfactorily complete the applicable curricula for those ratings in an approved training program under part 135, 141, or 142. After completion of the approved curricula, a person must satisfactorily complete the applicable practical test to obtain powered-lift ratings.[172]

As discussed in more detail later in this section, part 141 pilot schools and part 142 training centers are structured to provide alternate methods to obtain training and testing for part 61 certification. These parts contain specific requirements governing curriculum approval, facilities, and personnel. The part 61 training and certification activity at a part 141 pilot school or a part 142 training center is not limited to a particular certificate level, meaning they are able to conduct training and administer practical tests that result in the issuance of a commercial pilot certificate with category and class ratings, instrument ratings, and type ratings if they have approved courses for the certificate and ratings, the appropriate facilities, and instructors who meet the qualification requirements of the respective parts. Further, existing provisions in parts 141 and 142 also permit certain employees of the part 141 pilot school or part 142 training center to be designated to conduct practical tests on behalf of the FAA. This training and certification activity at part 141 pilot schools and part 142 training centers is appropriate as these air agencies were established as an alternate means to conduct part 61 training and testing.

By contrast, there is currently no provision to allow a part 135 operator to conduct training and testing for a commercial pilot certificate or to add category and class ratings or instrument ratings to a commercial pilot certificate. This limitation on training and testing for part 61 certification is appropriate because part 135 training and checking requirements are not structured to achieve airman certification but rather are structured to qualify pilots to serve in a particular aircraft in the operational environment of part 135.[173] Historically, airplane and helicopter pilots would have no need to receive commercial pilot certification training at a part 135 operator because these pilots hold the appropriate certificates and ratings before employment at the operator, since these certificates and ratings are the minimum regulatory requirements to serve as a pilot at a part 135 operator. As such, these pilots would have obtained these minimum certificates and ratings through the traditional building block approach to airman certification discussed earlier.

While a part 135 operator may not conduct part 61 training and testing, the FAA has acknowledged in regulation that certain training, testing, and checking activity in part 135 may be accepted in lieu of meeting part 61 requirements. For example, § 61.157(c) permits an employee of a part 135 operator to forgo the part 61 training and endorsements required under part 61 for an aircraft type rating to be added to an ATP certificate or an aircraft type rating to be obtained concurrently with an ATP certificate provided the applicant presents a training record that shows completion of that certificate holder's approved training program for the aircraft type rating. The part 135 operator is not obligated to change any aspect of its part 135 training program to align with the part 61 requirements. Rather, part 61 accepts the part 135 training activity in lieu of meeting the part 61 training requirement for a type rating. In addition to accepting part 135 training for part 61 purposes, § 61.157(f) allows the completion of part 135 competency and instrument proficiency checks to meet the flight proficiency requirements of a practical test but only for the issuance of an ATP certificate with appropriate aircraft ratings. To result in certification, the checks must be conducted by an FAA Aviation Safety Inspector (ASI), an Aircrew Program Designee (APD), or a TCE.

Even at the commercial pilot certificate level, § 61.63(d)(6)(ii) allows an employee of a part 135 operator to credit training in the operator's approved training program toward training and endorsements required by part 61 to obtain a type rating on a commercial pilot certificate. Unlike the ATP certificate, however, § 61.63(d)(6) does not allow the part 135 competency and instrument proficiency checks to count for the type rating practical test. Rather, the applicant must complete the practical test with a designated pilot examiner (DPE) or ASI under part 61, and the test must be consistent with the applicable type rating testing standard.[174]

The following sections discuss the FAA's proposals for training pilots for powered-lift ratings under approved programs at parts 135, 141, and 142 and how a part 135 operator may opt to conduct this training to ensure that its pilots obtain the proper powered-lift ratings on their commercial pilot certificates to serve in part 135 powered-lift operations.

1. Part 135

As noted, part 135 training and checking is designed to qualify a pilot to serve in a particular aircraft in the specific operation the part 135 operator is authorized to conduct. For airplanes and helicopters, a part 135 pilot generally holds the minimum certificate and ratings for the type of operations being conducted by the operator when they are hired. The minimum certificates and ratings ensure the pilot has the foundational aeronautical knowledge and skills required of a pilot serving in commercial operations, and the part 135 training and checking, which is specific to the aircraft and the authorized operations, ensures that the pilot is qualified for the operational environment of part 135. The part 135 training and checking includes the operational policies and procedures specific to the operator, such as crew resource management, flight planning procedures, authorized approach procedures, and operations in weather conditions like icing conditions.

i. Airman Certification Training Curricula

The FAA is proposing a temporary provision in § 194.243(a)(1) to allow a part 135 operator who obtains authorization to conduct powered-lift operations to seek approval to establish and implement a training curriculum to satisfy the following: (1) ground training, flight training, and aeronautical experience requirements in § 61.65 for the addition of an instrument-powered-lift rating to a commercial pilot certificate; [175] (2)

[172] As discussed later in this section, the FAA is proposing to allow pilots to complete part 135 testing and checking activity in lieu of the practical test for powered-lift ratings at the commercial pilot certificate level.

[173] Since 2014, part 135 operators have had the option to obtain approval to provide the Airline Transport Pilot Certification Training Program (ATP CTP), which is a prerequisite for the ATP knowledge test. 14 CFR 135.336.

[174] For example, for an airplane type rating, the practical test must be consistent with the Airline Transport and Type Rating for Airplane ACS or the Airline Transport Pilot and Aircraft Type Rating PTS for Helicopter.

[175] Some part 135 operators will conduct only VFR operations. As described in section V.J of this

ground training, flight training, and aeronautical experience requirements in § 61.63(b) for the addition of an aircraft category rating to a commercial pilot certificate; and (3) ground and flight training requirements in § 61.63(d) to add a type rating to a commercial pilot certificate.

The FAA understands that, unlike airplanes and helicopters, a part 135 operator conducting powered-lift operations may not be able to hire pilots who hold the necessary powered-lift category ratings on their commercial pilot certificates. Therefore, the FAA proposes to allow a part 135 operator to provide ground and flight training to meet the requirements of §§ 61.125(b), 61.127(b)(5), and 61.129(e) for a powered-lift category rating;[176] § 61.65(b), (c), and (f) for an instrument-powered-lift rating; and § 61.63(d) for an aircraft type rating. A part 135 operator would not be required to offer this part 61 training. Nevertheless, this proposal allows part 135 operators the flexibility to determine whether providing such training is necessary to develop a sufficient number of qualified pilots for its operations. The FAA envisions that the pilots would complete the certification training before transitioning to the operator's part 135 training; however, the FAA would approve one curriculum if it meets all of the part 61 aeronautical experience requirements and the part 135 training requirements.

A part 135 operator who wants to provide this type of training to its pilots would submit their curricula to the responsible Flight Standards Office for approval in accordance with § 135.325. The FAA has determined that additional and updated inspector guidance will be needed for Flight Standards Offices to ensure consistency with all powered-lift operators' certification curricula.

ii. Curriculum Content

As previously discussed, an applicant for powered-lift ratings at the commercial pilot level would be required to meet the part 61 requirements or the alternate requirements proposed in new part 194. These requirements involve foundational ground and flight training and aeronautical experience that normally would not be included in a part 135 training curriculum. For example, a part 135 operator would not require its pilots to obtain solo flight time or cross-country flight time as is required for powered-lift commercial pilot certification. Moreover, the operator's training curriculum may not involve certain tasks and maneuvers in the ACS for a category rating or instrument rating. For example, the Commercial Pilot—Airplane ACS requires pilots to complete chandelles and lazy eights to add an airplane category with a single-engine land or single-engine sea class rating to a commercial pilot certificate. The purpose of testing these performance maneuvers is to conduct a basic evaluation of a pilot's proficiency in flight control application, maneuver planning, situational awareness, and division of attention.[177] However, these performance maneuvers serve no operational purpose in part 135 operations and would not be conducted during routine part 135 operations. Therefore, a part 135 operator would not generally include these maneuvers in their part 135 training curriculum.

Nevertheless, under proposed § 194.243(a), an operator would be able to seek approval to offer this type of training in conjunction with its part 135 operator training to qualify its pilots for part 135 operations. The airman certification curriculum would be required to satisfy the aeronautical experience requirements (including the 20 hours of training) in § 61.129(e) (as required by § 61.63(b)) or the applicable alternate requirements set forth by proposed part 194, the requirements for an instrument rating in § 61.65(f) or the applicable alternate requirements set forth by proposed part 194, and the requirements for adding a type rating in § 61.63(d).[178] As discussed later in this section, the FAA is proposing that the operator may use the competency check and instrument proficiency check required by part 135 to satisfy the practical test requirements with some modifications.

In addition, the FAA notes that, under the special rules in § 135.324, a certificate holder may contract with, or otherwise arrange to use the services of, a training center certificated under part 142 to conduct training, testing, and checking required by part 135 provided the part 142 training center meets the requirements in § 135.324(b).[179] This rule would extend to the part 135 operator's approved certification curricula under the SFAR. As such, an operator could partner with a part 142 training center, which would deliver the part 135 operator's approved certification curriculum. Likewise, the operator could simply send its pilots to a part 141 pilot school or part 142 training center to obtain the necessary powered-lift ratings before returning to the part 135 operator to complete the required part 135 training and checking.

iii. Pilot Eligibility

The FAA is also proposing eligibility standards for the pilots who may be trained under a part 135 airman certification training curriculum, which would be set forth by proposed § 194.243(a)(3). As proposed, a certificate holder may train a pilot for powered-lift ratings only if the pilot is employed by the part 119 certificate holder. This limitation is consistent with other part 61 provisions that recognize training activity by part 135 operators and with the rationale for expanding part 135 training, namely, to grant flexibility to operators trying to qualify sufficient pilots for their operations. The pilots would also be required to meet the certificate and rating requirements of proposed § 194.215(a), which would require at least a commercial pilot certificate with either an airplane category rating with single or multiengine class rating and an instrument-airplane rating, or a rotorcraft category rating with a helicopter class rating and an instrument-helicopter rating. This proposal is consistent with the alternate experience requirements in proposed part 194, and the FAA proposes to impose it on the part 135 operator for

preamble, the FAA is proposing that powered-lift pilots conducting VFR operations must nevertheless hold an instrument-powered-lift rating similar to the instrument-airplane rating that is required for pilots conducting part 135 VFR airplane operations. Because powered-lift pilots will be required to hold an instrument rating even when performing under VFR, the FAA is proposing to allow part 135 operators to provide training for instrument ratings under an approved airman certification curriculum.

[176] Other than the relief proposed in the SFAR, there is no regulatory relief to obtaining an additional category rating on an existing pilot certificate. Section 61.63(b) requires a person applying for a new category rating to complete all of the training and have the applicable aeronautical experience for the certificate and ratings. As such, § 61.63(b) requires an applicant to meet the requirements in §§ 61.125, 61.127, and 61.129 to add a powered-lift category rating to an existing commercial pilot certificate. By contrast, a person adding a class rating must only obtain a logbook or training record endorsement from an authorized instructor attesting that the person was found competent in the appropriate aeronautical knowledge areas and proficient in the appropriate areas of operation, without meeting the applicable aeronautical experience requirements for the class rating.

[177] Airplane Flying Handbook (FAA–H–8083–3), Chapter 10.

[178] Operators that need to provide type ratings to powered-lift pilots who already hold powered-lift category ratings and instrument-powered-lift ratings would follow existing regulations in the same manner as operators using airplanes and rotorcraft that require the pilot to hold a type rating.

[179] Section 135.324 also allows a part 135 operator to use another part 135 operator to provide its training program under contract or other arrangement. That flexibility would also be available to operators for the proposed certification curriculum.

the same reasons identified in the discussion of that proposal.

iv. Part 135 Instructors

Currently, the instructors in part 135 are not required to hold a part 61 flight instructor certificate. Rather, a part 135 instructor must meet only the specific part 135 instructor qualification and training requirements in §§ 135.338 and 135.340, respectively. Among these requirements, the instructor must be PIC qualified for the aircraft and the operation,[180] satisfactorily complete the approved part 135 instructor ground and flight training, and may undergo continued observation by their POI, if necessary, or the operator's check pilots to ensure the quality and effectiveness of the instruction after initial instructor acceptance. Part 135 instructors focus on training pilots in a particular aircraft in the specific operation rather than on basic airman certification requirements. This training includes the operator's specific policies and procedures detailed in its manuals, such as crew resource management, flight planning procedures, authorized approach procedures, and operations in weather conditions like icing conditions.

By contrast, to provide flight training to another person to meet the requirements for a certificate, rating, or privilege, part 61 generally requires a person to hold a flight instructor certificate issued under that part with the appropriate ratings on that certificate. Specifically, pursuant to § 61.3(d)(2), a person must hold a flight instructor certificate issued under part 61 to give training required to qualify a person for solo flight and solo cross-country flight and to give certain endorsements. These endorsements include endorsing an applicant for a pilot certificate and ratings, flight instructor certificate and ratings, and ground instructor certificate and ratings issued under part 61, endorsing a pilot logbook to show training given, or endorsing a logbook for solo operating privileges.[181]

There are certain instances, however, when a flight instructor certificate issued under part 61 is unnecessary. For example, under § 61.3(d)(3)(ii), a flight instructor certificate is not necessary to provide the training and endorsements if the training is given by the holder of an ATP certificate with a rating appropriate to the aircraft in which the training is given, provided the training is given in accordance with the privileges of the ATP certificate[182] and conducted in accordance with an approved air carrier training program under part 121 or 135. The FAA notes that this exception from holding a flight instructor certificate is narrow. It does not permit the holder of an ATP certificate to offer flight training for meeting part 61 requirements outside of a part 121 or 135 training program. Rather, the ATP must be independently qualified under the instructor requirements in part 121 or 135 and may, in the course of providing the part 135 or 121 training, give endorsements for part 61 purposes if the part 121 or 135 training aligns with a particular requirement in part 61. For example, an operator's training program may include flight training in a pressurized aircraft capable of operating at high altitudes. In such instances, a part 135 instructor who also holds an ATP certificate would be able to provide the endorsement required by § 61.31(g).

In addition, although a part 135 operator does not conduct part 61 training, the FAA has acknowledged that certain training, testing, and checking activity in part 135 may be accepted in lieu of meeting part 61 requirements. For example, as discussed, a part 135 commercial pilot may forego the specific training required under part 61 for a type rating training if the pilot receives a flight training record endorsement from a part 135 certificate holder attesting that the person completed the certificate holder's approved ground and flight training program for the aircraft type.[183]

When a commercial pilot receives training at a part 135 operator in an aircraft that requires a type rating, the pilot already holds the appropriate category and class ratings on at least their commercial pilot certificate. Therefore, while the holder of an ATP certificate with the appropriate ratings may instruct other pilots in air transportation service, they are currently limited to instructing other pilots who have already passed the commercial pilot practical test in the category and class of aircraft for which the type rating is sought. As a result, these pilots will have already satisfied the aeronautical experience requirements for at least a commercial pilot certificate in the appropriate category and class of aircraft (*e.g.,* at least 50 hours of PIC time in the category or class of aircraft for which the type rating is sought).[184] Additionally, these pilots will have already demonstrated proficiency and competency within the approved standards for a commercial pilot certificate in the appropriate category and class of aircraft.[185]

Currently, approved training programs under part 135 do not include training and testing required to add category and instrument ratings to a commercial pilot certificate nor does part 61 accept part 135 training and checking activity in lieu of part 61 requirements for a commercial pilot certificate. Therefore, the exception in § 61.3(d)(3)(ii) does not enable the holder of an ATP certificate to provide training for part 61 certification (other than the existing allowances for type ratings or an ATP certificate).[186] Furthermore, the instruction privileges afforded to an ATP certificate holder are limited to those privileges specified in § 61.167(a).[187] To provide flight training and issue endorsements for a commercial pilot certificate or an instrument rating, a person is currently required to hold a flight instructor certificate issued under part 61.[188]

The FAA's proposal to allow part 135 operators to implement a training curriculum that satisfies the training and aeronautical experience requirements for a commercial pilot certificate with a powered-lift category rating and an instrument-powered-lift rating would expand the narrow exception in § 61.3(d)(3)(ii). Specifically, it would enable part 135 instructors who hold ATP certificates with powered-lift ratings to provide training in a powered-lift to pilots

[180] This includes holding the airman certificates and ratings required to serve as a PIC in the certificate holder's operations, satisfactorily completing the training phases for the aircraft, including recurrent training, that are required to serve as a PIC in the certificate holder's part 135 operations, satisfactorily completing the instrument proficiency and competency checks that are required to serve as a PIC in the certificate holder's part 135 operations, and if instructing in an aircraft inflight, meeting the PIC recency of experience requirements.

[181] 14 CFR 61.3(d)(2)(ii) through (iv).

[182] Under § 61.167(a)(2)(i), an ATP may instruct other pilots in air transportation service in aircraft of the category, class, and type, as applicable, for which the ATP is rated and endorse the logbook or other training record of the person to whom training has been given.

[183] 14 CFR 61.63(d)(6).

[184] Pursuant to § 61.129(a) and (b), an applicant for a commercial pilot certificate with an airplane rating must have at least 50 hours of PIC time in the airplane category. Similarly, pursuant to § 61.129(c), an applicant for a commercial pilot certificate with a helicopter rating must have at least 50 hours of PIC time in a helicopter.

[185] 14 CFR 61.43(a)

[186] 14 CFR 61.63(d)(6), 61.157(c).

[187] Section 61.167(a)(2)(i) states, in pertinent part, that the holder of an ATP certificate may instruct other pilots in air transportation service in aircraft of the category, class, and type, as applicable, for which the ATP is rated. Section 61.167(a)(2)(iii) states that ATP certificate holders may only instruct as provided in § 61.167, except that an ATP who also holds a flight instructor certificate can exercise the instructor privileges under subpart H of part 61 in an aircraft for which he or she is rated.

[188] 14 CFR 61.193(a)

seeking to add a powered-lift category rating and an instrument-powered-lift rating to their commercial pilot certificate through the part 135's airman certification curriculum. This ATP certificate requirement would initially present an obstacle for powered-lift because there would be a limited number of persons who would be able to meet the aeronautical experience requirements for an ATP certificate with a powered-lift category rating. However, even with enough ATP certificate holders with the appropriate powered-lift ratings, the FAA has determined that a person must hold a flight instructor certificate issued under part 61 with the appropriate ratings to provide training for the purpose of adding a powered-lift category rating or an instrument rating to a commercial pilot certificate. This determination is based on (1) the lack of powered-lift experience held by pilots completing the part 135 training program, and (2) the curriculum content required for the issuance of a commercial pilot certificate with a powered-lift category rating and an instrument-powered-lift rating.

Unlike the current part 135 training environment, most powered-lift pilots would come to the part 135 operator with no experience operating a powered-lift. As a result, these pilots would receive their initial training in a powered-lift at the part 135 operator, which presents a unique challenge with respect to instructor qualifications considering the airman certification curriculum content that the part 135 instructor would be responsible for delivering.

As previously discussed, the curriculum content required to add a powered-lift category rating and an instrument-powered-lift rating to a commercial pilot certificate must include foundational ground and flight training and aeronautical experience that would normally not be included in a part 135 training curriculum. For the issuance of a powered-lift category rating on a commercial pilot certificate, the training must cover the knowledge areas specified in § 61.125(b) and the areas of operation contained in § 61.127(b)(5). For the issuance of an instrument-powered-lift rating, the training must cover the knowledge areas specified in § 61.65(b) and the areas of operation contained in § 61.65(c). For example, an applicant for a commercial pilot certificate with a powered-lift category rating must be trained and tested on cross-country flight planning, navigation (*e.g.,* pilotage, dead reckoning, lost procedures, and diversion), slow flight, accelerated stalls, rapid deceleration and quick stop, and dynamic rollover.[189]

The holder of a flight instructor certificate with a powered-lift category rating, however, would be qualified to provide training on these tasks and maneuvers because each of these tasks and maneuvers are included on the powered-lift flight instructor practical test.[190] Thus, a person seeking a flight instructor certificate with a powered-lift category rating would be trained and tested on their understanding of these tasks and maneuvers, their application of that knowledge to manage associated risks, and their ability to demonstrate the appropriate skills and provide effective instruction for each of these tasks and maneuvers. However, these tasks and maneuvers would normally not be included in a part 135 approved training program for a powered-lift type rating. Additionally, unlike the person who holds the flight instructor certificate with a powered-lift category rating, the holder of an ATP certificate with a powered-lift type rating would not have been trained or tested on their ability to provide effective instruction on these tasks and maneuvers.

Upon evaluating the curriculum content, the FAA has determined that any risk to safety that would result from permitting pilots to receive foundational certification training at a part 135 operator would be minimized by requiring the instructor to hold a flight instructor certificate with appropriate powered-lift ratings, as proposed in § 194.243(a)(2). By requiring a person to hold a flight instructor certificate with the appropriate powered-lift ratings, the FAA would ensure that the person providing training on the required knowledge areas and areas of operation can provide effective instruction on the foundational tasks and maneuvers, demonstrate the skills required to perform those tasks and maneuvers within the approved standards, and analyze and correct common errors that occur during training of those tasks and maneuvers.[191]

The FAA recognizes that part 135 operators would be permitted to provide training for pilots to add powered-lift category and instrument ratings only for the duration of the SFAR. The FAA is therefore proposing a temporary provision in § 194.203(b) to ensure that the narrow exception in § 61.3(d)(3)(ii) is not expanded in light of the FAA's proposal, which would significantly broaden the type of part 61 training that may be provided under an approved training program under part 135. Additionally, to ensure the ATP privileges contained in § 61.167(a) are not expanded as a result of the SFAR, the FAA is proposing a temporary limitation in § 194.205 that would prohibit a person who holds an ATP certificate with powered-lift ratings from instructing other pilots in accordance with an approved training program under part 135 for the purpose of obtaining a commercial pilot certificate with a powered-lift category rating or an instrument-powered-lift rating. Together, these two provisions would ensure that a part 135 instructor holds a flight instructor certificate with the appropriate powered-lift ratings when providing the foundational part 61 certification training in a powered-lift.

As previously discussed, the only entities that would be permitted to offer an approved training program for powered-lift ratings would be a part 135 operator, a part 141 pilot school, or a part 142 training center. To provide instruction under part 141 or 142, the person must hold a flight instructor certificate issued under part 61. The FAA recognizes that part 135 instructors are not required to hold a flight instructor certificate when providing instruction in the footprint of an approved part 135 training program that exists today. However, because the SFAR would permit part 135 operators to provide the same part 61 certification training as the part 141 pilot schools and the part 142 training centers, the FAA finds that the part 135 operators are similarly situated to the pilot schools and training centers in this instance. The FAA's proposal to require part 135 instructors to hold a flight instructor certificate with the appropriate powered-lift ratings would ensure that instructors seeking to provide training in accordance with the approved airman certification training program permitted under the SFAR are held to the same qualification standards.

The proposed rule language has been carefully scoped to ensure that the current part 135 training environment is not altered by the FAA's proposal.[192] Once an initial cadre of powered-lift pilots is certificated, the FAA anticipates that a number of powered-lift pilots will obtain flight instructor certificates with powered-lift ratings,

[189] Commercial Pilot for Powered-Lift Category ACS (Draft), Docket No. FAA–2022–1463.

[190] Flight Instructor for Powered-Lift Category ACS (Draft), Docket No. FAA–2022–1463.

[191] Flight Instructor for Powered-Lift Category ACS (Draft), Docket No. FAA–2022–1463.

[192] The FAA notes that a part 135 instructor who holds an ATP certificate with powered-lift ratings may utilize the allowance in § 61.3(d)(3)(ii) to the same extent as currently exercised by part 135 instructors who hold ATP certificates with other category ratings.

which would enable training in powered-lift under part 61. This would result in pilots obtaining the appropriate powered-lift ratings on their commercial pilot certificates prior to part 135 employment consistent with the certification pathway followed by airplane and helicopter pilots.

The FAA understands that permitting a part 135 operator to elect to provide part 61 training for basic certification is a novel approach that may conflict with the historical precedent for part 135 training, which focuses on training a pilot to serve in a particular operational environment. Nevertheless, the introduction of powered-lift as a new category presents unique challenges for airman certification. The FAA encourages comment from part 135 operators on whether they would provide an approved airman certification training program that results in commercial pilot certification in a powered-lift and the obstacles that may prevent part 135 operators from utilizing the proposed alternate pathway set forth in the SFAR.

v. Checking and Testing

Part 135 initial training culminates in evaluations of the pilot's proficiency through the completion of a competency check under § 135.293(b) and, if conducting operations under IFR, a PIC instrument proficiency check under § 135.297. The FAA is proposing in § 194.243(b)(1) that, at the completion of the certification curriculum and the part 135 operator training, a pilot may apply to add a powered-lift category rating concurrently with an instrument-powered-lift rating and an initial powered-lift type rating to their commercial pilot certificate if the person successfully completes the written or oral testing under § 135.293(a)(2) and (3), a competency check under proposed § 135.293(b), and an instrument proficiency check under proposed § 135.297 provided certain conditions are met.[193]

First, the competency check would be required to include the maneuvers and procedures required for the issuance of a commercial pilot certificate with a powered-lift category rating and a powered-lift type rating.[194] Since a pilot completing the part 135 competency check under this proposal would not have previously demonstrated competence for the powered-lift category, it is crucial that the pilot complete all maneuvers and procedures required for the issuance of the powered-lift category rating and powered-lift type rating at the commercial pilot level.

Second, the instrument proficiency check would be required to meet the requirements of § 135.297 as applicable to a PIC holding a commercial pilot certificate, which includes the maneuvers and procedures required for the issuance of an instrument-powered-lift rating.[195] As described in §§ 135.293(e) and 135.297(c), competent performance of each maneuver and procedure on the competency check and instrument proficiency check requires that the pilot be the obvious master of the aircraft, with the successful outcome of the maneuver never in doubt. Finally, as proposed in § 194.243(c), the testing, competency check, and instrument proficiency check would be administered by an ASI, APD who is authorized to perform competency checks and instrument proficiency checks for the certificate holder, or a TCE with appropriate certification authority who is also authorized to perform competency checks and instrument proficiency checks for the certificate holder.

Furthermore, the FAA proposes to exclude the use of certain part 135 regulations that apply to the competency check and instrument proficiency checks previously discussed in proposed § 194.243(b)(1)(iii). Specifically, under proposed § 194.243(b)(2), the allowance in § 135.301(b) would not be applicable to the competency check and instrument proficiency check. Section 135.301(b) allows that, if a pilot fails a maneuver on a check, the person giving the check may provide the pilot with additional training during the check and then the pilot must repeat the failed maneuver. Because the competency check and instrument proficiency check are meeting the flight proficiency portion of the practical test and the pilot is demonstrating competence in the powered-lift category for the first time, the FAA asserts that it is essential that the pilot be held to the same standard as required by § 61.43(c) for other pilots completing a powered-lift practical test. Section 61.43(c) specifies that, if a pilot fails any area of operation, that pilot fails the practical test. As such, the FAA proposes that, if a pilot fails a maneuver on the competency check or instrument proficiency check, the person giving the check would not be permitted to provide the pilot with additional training during the check, and the pilot would fail the practical test. Lastly, the FAA proposes that the allowance in § 135.293(d) is not applicable to the competency check for the powered-lift category rating. Section 135.293(d) allows the substitution of a § 135.297 instrument proficiency check for a competency check. The FAA has determined that the substitution allowance is not appropriate since the proposal requires both the competency check and instrument proficiency check to be completed for the reasons previously explained.

2. Part 141 Pilot Schools

As noted, part 141 pilot schools provide an alternate, structured way to obtain part 61 certificates and ratings. The holder of a pilot school certificate must have approved training courses and sufficient personnel and facilities for the training offered. Under § 141.33(a)(3), a person conducting flight training at a part 141 pilot school must hold a part 61 flight instructor certificate with ratings for the approved course of training and any aircraft used in that course.[196] The FAA is not proposing any relief from this requirement.[197] As such, an instructor at

[193] As noted earlier, PICs serving in VFR only operations under part 135 would not be required to complete an instrument proficiency check under § 135.297. SICs serving in VFR or IFR part 135 operations also are not required to complete an instrument proficiency check under § 135.297. Nevertheless, an operator may opt to provide a § 135.297 instrument proficiency check to its pilots to issue an instrument-powered-lift rating to meet the requirements of proposed § 135.243(b) and existing § 135.245(a).

[194] See 14 CFR 61.127(b)(5) and 61.157(e)(3) and the applicable ACS.

[195] The FAA notes that since the instrument proficiency check is being used to meet the practical test requirements for an instrument-powered-lift rating, the check must include all approaches required by the Instrument Rating—Powered-Lift ACS, even if the pilot will not be authorized to conduct one or more of those approaches during part 135 operations. For example, an operator may not be authorized to conduct circling approaches during part 135 operations. However, a pilot completing an instrument proficiency check for the purposes of adding an instrument-powered-lift rating, must still satisfactorily complete a circling approach during the check.

[196] Part 141 also contains requirements for other personnel including chief instructors, assistant chief instructors, and check instructors. Sections 141.35(a)(1), 141.36(a)(1), and 141.37(a)(2)(ii) require that the person hold a commercial pilot certificate or ATP certificate and a current flight instructor certificate in addition to other requirements.

[197] As discussed in section V.E. of this preamble, the FAA is proposing an alternate pathway for persons who are selected and authorized to serve as the initial chief instructors and assistant chief instructors at part 141 pilot schools for the purpose of initiating training in a powered-lift. These persons would be permitted to receive the required training from the powered-lift manufacturers to obtain the powered-lift ratings that are necessary to develop sufficient instructors at part 141 pilot schools. The FAA anticipates that these chief instructors and assistant chief instructors will conduct the initial powered-lift training for other instructor personnel at the part 141 pilot school.

a part 141 pilot school will be required to hold a powered-lift category rating and an instrument-powered-lift rating on their commercial pilot certificate and a flight instructor certificate with a powered-lift rating or instrument-powered-lift rating.[198] The instructor will also be required to hold a type rating on their pilot certificate that corresponds to the aircraft in which the training will be provided.

Initially, part 141 pilot schools would likely have to obtain the necessary training for powered-lift ratings from the manufacturers through the alternate pathways discussed in section V.E of the preamble. As civil powered-lift operations expand, more pilots will begin to hold the powered-lift ratings on their commercial pilot certificates and flight instructor certificates. Part 141 pilot schools may also begin to draw their initial instructors from the pool of military instructors [199] or develop agreements with powered-lift manufacturers who are looking to promote and expand the use of their aircraft. The FAA notes also that other manufacturers have obtained part 142 training center certificates and, in some instances, part 141 pilot school certificates, to facilitate initial training and certification in their aircraft. The FAA anticipates that the proposed relief provided to the persons who serve as test pilots and instructor pilots for powered-lift manufacturers would enable the manufacturers to support training and qualification of other training providers' personnel. Pilot schools will be able to deliver courses of training in accordance with this SFAR that include the alternate experience requirements pending appropriate approvals by the FAA.

3. Part 142

The FAA enabled the expanded use of FFSs and FTDs in 1996 through the creation of part 142,[200] warranted by the enormous advancement in flight simulation technology. At that time, the FAA recognized that the increased complexity and operating costs of the modern turbine-powered aircraft and the current operational environment resulted in an increasing need for the use of FSTDs. The FAA reasoned that FSTDs could provide more in-depth training than can be accomplished in aircraft, while correspondingly reducing air-traffic congestion, noise and air pollution, and training costs.[201]

As noted, a part 142 training center provides an alternate means to accomplish part 61 training and certification.[202] Part 142 contains its own requirements for flight instructor eligibility in § 142.47. Section 142.47(a)(3) requires an instructor who is instructing in an aircraft in flight to be qualified under the flight instructor requirements in subpart H of part 61. To the extent that a part 142 training center will obtain approval for a curriculum that includes a portion of flight training in a powered-lift in flight, the training center will be required, like the part 141 pilot school, to identify instructors who hold the appropriate powered-lift ratings on their pilot and flight instructor certificates. As with part 141 pilot schools, the FAA anticipates that the training center would establish its initial cadre of flight instructors using the alternate requirements for TCEs as discussed in section V.E of this preamble. Once these TCEs obtain the necessary training for powered-lift certification from a manufacturer's instructor pilots, the part 142 training center would establish powered-lift training curricula and utilize the TCEs to provide that training to other instructor personnel at the training center.

For flight training conducted in an FSTD, a part 142 instructor is not required to hold a part 61 flight instructor certificate. Rather, if instructing in an FSTD, § 142.47(a)(5) requires that an instructor satisfy one of three alternatives to provide instruction: (1) meet the commercial aeronautical experience requirements of § 61.129(a), (b), (c), or (e), as applicable, excluding the required hours of instruction in preparation for the commercial pilot practical test; (2) meet the ATP aeronautical experience requirements of §§ 61.159, 61.161, or 61.163 if instructing in an FSTD that represents an ''airplane requiring a type rating'' or instructing in a curriculum leading to the issuance of an ATP certificate or added rating to an ATP certificate in any category of aircraft; [203] or (3) be employed as an FSTD instructor for a training center providing instruction and testing to meet the requirements of part 61 on August 1, 1996. As such, these part 142 instructors do not need to hold the pilot certificates and ratings but rather must only meet the aeronautical experience requirements for those certificates and ratings.

In developing this proposed rule, the FAA identified a discrepancy between the manner in which the regulation addresses instructor requirements for training in an FSTD representing an airplane requiring a type rating and training in an FSTD representing a rotorcraft or powered-lift requiring a type rating. Under § 142.47(a)(5)(ii), all part 142 instructors who provide training in a curriculum that results in an ATP certificate or an added rating (including an added type rating) to an ATP certificate must meet the aeronautical experience requirements for the ATP certificate appropriate to the rating sought. However, under the current regulatory framework of § 142.47(a)(5)(ii), an instructor is not required to meet the ATP aeronautical experience requirements when providing training for a type rating in an FSTD that represents a powered-lift or rotorcraft if the type rating is being added at a certificate level other than the ATP certificate. The requirement in § 142.47(a)(5)(ii) to meet the ATP experience requirements when providing training to add a type rating to a certificate other than an ATP certificate is only applicable to FSTDs that represent airplanes requiring a type rating. Powered-lift and rotorcraft instructors in this context are required to meet only the aeronautical experience requirements for a commercial pilot in § 61.129 [204] as applicable to the type rating for which the training is provided.[205]

The FAA proposes to permanently amend the language in § 142.47(a)(5)(ii) to replace the word ''airplane'' with ''aircraft,'' thereby encompassing, first, powered-lift, which would all require a type rating pursuant to this proposal,[206] and, second, any rotorcraft that requires a type rating. The FAA's proposal would align FSTD instructor experience requirements for powered-lift and rotorcraft requiring a type rating with

[198] Under § 61.183, a person must hold either a commercial pilot certificate or ATP certificate with (1) aircraft ratings appropriate to the flight instructor rating sought, and (2) an instrument rating, or privileges on that person's pilot certificate that are appropriate to the flight instructor rating sought.

[199] As discussed, military instructors who have obtained flight instructor certificates with powered-lift ratings through military competency will be required to obtain powered-lift type ratings on their pilot certificates or conduct flight training in a particular type of powered-lift. See 14 CFR 61.195(d).

[200] Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers, 61 FR 34508 (Jul. 2, 1996).

[201] Id.

[202] 14 CFR 142.1(a).

[203] Section 142.47(a)(5)(ii) requires an instructor to meet the aeronautical experience requirements for an ATP certificate if providing instruction in three distinct scenarios: (1) in an FSTD that represents an ''airplane'' requiring a type rating at any certificate level; (2) in a curriculum leading to the issuance of an ATP certificate (for any category/class/type rating); or (3) in a curriculum adding a rating to an ATP certificate (for any category/class/type rating).

[204] 14 CFR 142.47(a)(5)(i).

[205] Id.

[206] See section V.A of this preamble.

those currently imposed for training in FSTDs representing airplanes that require a type rating. This proposed amendment is consistent with the advancements in complexity of rotorcraft and the operational dissimilarities between powered-lift expected to enter the market, which is subsequently discussed.

For airplanes requiring a type rating, the FAA found that it was appropriate for a part 142 FSTD instructor to meet the aeronautical experience requirements for an ATP certificate to provide flight training in an FSTD representing these airplanes. By doing so, the FAA requires a person who will instruct wholly in an FSTD to have significant and relevant operational time in the NAS. Under the ATP aeronautical experience requirements in § 61.159, a person will have accomplished at least 1,500 hours of flight time, including 250 hours of PIC time or SIC time performing the duties of PIC under supervision in actual operations in the NAS. This flight time far exceeds the aeronautical experience required for a commercial pilot certificate and means that the instructor has extensive experience interacting with air traffic control, operating in an airport environment, navigating the operational challenges of flying the aircraft in weather, utilizing crew resource management, and resolving maintenance discrepancies, all while complying with FAA regulations, procedures, manuals, and authorizations.

In reviewing the part 142 instructor requirements for this rulemaking, the FAA has determined that the instructor experience requirements for type-rated airplanes codified in § 142.47(a)(5)(ii) are similarly applicable to powered-lift and rotorcraft. The aeronautical experience requirements for an ATP certificate in a powered-lift or rotorcraft far exceed the experience required for a commercial pilot certificate in those same categories of aircraft and ensure that part 142 instructors who instruct solely in an FSTD for a type rating have extensive operational experience.

This proposed amendment is further supported by the 1992 NPRM that proposed the creation of part 142. In § 142.51(b) and (d), the FAA proposed that an instructor must meet the aeronautical experience requirements for an ATP certificate with an airplane or rotorcraft category, respectively, if providing training in an FSTD representing an airplane or rotorcraft requiring a type rating.[207] The 1996 final rule preamble explained that the FAA simplified and consolidated instructor eligibility requirements into § 142.47 and therefore § 142.51 was no longer needed. The final rule preamble did not indicate the FAA intended to eliminate the requirement for rotorcraft instructors proposed in § 142.51(d).[208] However, when the FAA consolidated the instructor eligibility requirements into § 142.47(a)(5)(ii), the regulation specified ''airplane'' instead of ''aircraft'' and, thus, rotorcraft instructors were excluded from the eligibility requirements.

Furthermore, the final rule preamble explained that since publication of the NPRM,[209] the FAA granted exemptions to allow individuals to qualify as simulator-only instructors in certain helicopter FSTDs without holding a flight instructor certificate if certain alternative requirements were satisfied.[210] The exemptions allowed individuals instructing in an FSTD that represented a helicopter requiring a type rating or instructing in a course of training leading to the issuance of an ATP certificate or an added rating to an ATP certificate, to hold an ATP certificate with a helicopter category, class, and type rating (on the type of helicopter the simulator represented).[211] The FAA determined that, in light of the exemptions, it was appropriate to codify such alternate qualifications in the 1996 final rule to facilitate training center employment of persons who are former military pilots, former or current airline pilots, and other persons who may not hold an instructor certificate.[212] As a result, the FAA determined that instructors providing instruction in an FSTD that represented a rotorcraft that required a type rating needed to likewise satisfy the ATP rotorcraft requirements. However, while the exemptions that the FAA considered were to facilitate instruction in helicopter simulators, the regulation specified ''airplane'' instead of ''aircraft'' in § 142.47(a)(5)(ii).

In surveying FAA inspectors with oversight of part 142 training centers, the FAA expects that very few rotorcraft instructors do not meet the FAA's proposed enhanced requirements in § 142.47(a)(5)(ii).[213] Notably, since the 1996 rule was published, very few training centers have integrated a type-rated rotorcraft curriculum. These training centers often also have an ATP curriculum for the type-rated rotorcraft. Often, the training center uses the same instructors in the ATP and non-ATP curriculum for the type-rated rotorcraft. As a result, these instructors may already meet the ATP experience requirements or hold an ATP certificate. The FAA proffers that this permanent amendment would merely align industry practice with the regulatory framework and eliminate any possible confusion on the appropriate application of this section.

The FAA maintains that this amendment is consistent with the technological advancements in rotorcraft over the last two decades since promulgation of the 1996 final rule. For example, since the final rule's publication, rotorcraft have entered the market with ten or more seats. These larger aircraft, carrying significantly more passengers than was contemplated in the 1996 final rule, include complex operational characteristics necessitating a correspondingly higher experience threshold for instruction. Not only have technology and engineering advancements aided in the development of increasingly complex helicopters, but industry has also recognized a substantial increase in helicopter operations. These developments have subsequently required the development and implementation of helicopter simulators for use in part 142 training centers to meet part 135 training program requirements.

For each of these reasons, the FAA proposes to permanently amend § 142.47(a)(5)(ii) to reference ''aircraft'' rather than ''airplane.'' In this regard, the FAA proposes to impose identical standards for powered-lift and rotorcraft training center instructors as those required for airplanes. As noted, most existing rotorcraft training center instructors already meet the aeronautical experience requirements of § 142.47(a)(5)(ii) for rotorcraft that require type ratings. However, to facilitate integration of this regulatory change while not disrupting current practice for those instructors who may

[207] Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers, 57 FR 35905, 35932 (Aug. 11, 1992).

[208] Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers, Final Rule, 61 FR 34532 (Jul. 2, 1996).

[209] Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers, Final Rule, 61 FR 34508 (Jul. 2, 1996).

[210] Exemption Nos. 5317D and 5324A.

[211] Id.

[212] Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers, Final Rule, 61 FR 34508, 34540 (Jul. 2, 1996).

[213] In support of this proposal, the FAA also conducted a search of the NTSB database to ascertain whether accidents or incidents resulted from this lower safety standard. At present, there are no accidents or incidents reported. The FAA finds that this conclusion may be the result of rotorcraft instructors already satisfying the ATP aeronautical experience requirements.

not currently satisfy this standard, the FAA proposes to except instructors that are currently instructing in an FSTD that represent a rotorcraft requiring a type rating from this proposed requirement.

In addition to excepting current instructors from the ATP aeronautical experience requirements for FSTDs that represent a rotorcraft requiring a type rating, the FAA also notes the availability of deviation authority in § 142.9 for both powered-lift and rotorcraft instructors. Initially, the FAA does not anticipate that powered-lift pilots will be able to satisfy the aeronautical experience requirements for an ATP certificate. For this initial cadre of powered-lift pilots, § 142.9 may provide an avenue for relief from the ATP experience requirements of § 142.47(a)(5)(ii) if the FAA determines that it would not adversely affect the quality of instruction or evaluation.

In particular, a request for deviation requires a detailed description of the proposed alternative plan that enables the certificate holder to achieve the same level of safety as that mandated by the regulation.[214] After the certificate holder submits its request for deviation authority, the FAA may consider the level of safety purportedly achieved by the request, the proposed revisions to the training center's operating procedures and Quality Management Systems, and any accompanying justification, procedures, or policies that the training center proffers in support of its request for relief. After conducting this review, the FAA may grant the certificate holder deviation from compliance with the proposed requirements in § 142.47(a)(5)(ii). As powered-lift pilots acquire additional aeronautical experience, the FAA anticipates that fewer certificate holders will need to utilize the deviation authority available under this section to request relief from § 142.47(a)(5)(ii).

G. Practical Tests

1. Practical Test Equipment and Waiver Authority

Section 61.43 provides the general procedures for a practical test[215] for an applicant to receive a certificate or rating. Specifically, § 61.43(a)(1) currently requires that the completion of a practical test for a certificate or rating include the performance of the tasks specified in the areas of operation for the airman certificate or rating sought. These tasks are set forth in either a Practical Test Standard (PTS) or ACS for the appropriate certificate or rating that the applicant is seeking. The FAA currently has an ongoing rulemaking project that proposes to amend § 61.43(a)(1) to incorporate by reference (IBR) the PTSs and ACSs.[216] The NPRM for the ACS/PTS rulemaking was published on December 12, 2022,[217] and proposed to revise § 61.43(a)(1) to delineate successful completion of the practical test as performing the tasks specified in the areas of operation contained in the applicable ACS or PTS. In light of the transition from PTS to ACS,[218] as discussed in that NPRM, the FAA has drafted ACSs for powered-lift practical tests. Specifically, the FAA proposed to IBR six newly drafted powered-lift ACSs into part 61: (1) ATP and Type Rating for Powered-Lift Category, (2) Commercial Pilot for Powered-Lift Category, (3) Private Pilot for Powered-Lift Category, (4) Instrument Rating—Powered-Lift,[219] (5) Flight Instructor for Powered-Lift Category, and (6) Flight Instructor Instrument for Powered-Lift Category.[220] The six powered-lift ACSs specify the tasks within the given areas of operation that must be accomplished for purposes of receiving a powered-lift category rating, type rating, and/or instrument rating.

While § 61.43 sets forth the general procedures for the practical test, including directing compliance with the powered-lift ACSs in administering testing, the requirements for the aircraft and equipment utilized by an applicant during the flight increment of the practical test for a certificate and/or rating are found in § 61.45. Specifically, § 61.45(b) stipulates the equipment, other than controls, required of an aircraft used on the practical test and allows the use of an aircraft with operating characteristics that preclude the applicant from performing all the tasks for the practical test.[221] However, when an applicant for a certificate or rating is unable to perform a required task due to aircraft capabilities, an appropriate limitation is placed on the applicant's certificate or rating. This limitation ensures the pilot cannot act as PIC of an aircraft that has capabilities that are inconsistent with the limitation on the pilot's certificate until the pilot satisfactorily demonstrates the task they have not performed.

For example, this situation arises when an applicant is taking a practical test in the Cessna 336 or 337 (C–336/337) series airplanes to add an airplane multiengine land rating onto a commercial pilot certificate for which an applicant holds an airplane single engine land rating. The C–336/337 series do not have a published minimum control speed with the critical engine inoperative (V_{MC}). Thus, an applicant would not be able to perform the V_{MC} demonstration task required by an airplane ACS[222] if a C–336/337 series airplane was used to take the practical test. Therefore, an applicant who successfully completed the practical test in a C–336/337 series airplane would receive a certificate with an appropriate limitation (*i.e.,* Limited to Center Thrust limitation). A pilot may remove this limitation by completing a practical test in an aircraft that is capable of performing the task(s). For example, in the above scenario, a pilot who completes a commercial pilot practical test in a multiengine airplane with a published V_{MC} (*i.e.,* performs the tasks that were not formerly performed) would have the limitation removed.

As discussed in section V.A of this preamble, the FAA is proposing to require that all pilots seeking to act as PIC of a powered-lift hold a type rating on their pilot certificate for the type of powered-lift they intend to operate. This proposal would require the successful

[214] FAA Order 8900.1, Vol. 3, Ch. 54, Sec. 4.

[215] A practical test means a test on the areas of operation for an airman certificate, rating, or authorization that is conducted by having the applicant respond to questions and demonstrate maneuvers in flight, in a flight simulator, or in an FTD. 14 CFR 61.1.

[216] IBR allows Federal agencies to comply with the requirement to publish rules in the **Federal Register** and the Code of Federal Regulations (CFR) by referring to material already published elsewhere. IBR Handbook, Office of the Federal Register, July 2018.

[217] Airman Certification Standards and Practical Test Standards for Airmen; Incorporation by Reference, NPRM, 87 FR 75955 (Dec. 12, 2022).

[218] The FAA began to establish the ACSs in 2011 to enhance the testing standard for the knowledge and practical tests in collaboration with the aviation industry. The goal in creating the ACS was to drive a systematic approach to the airman certification process, including knowledge test question development and the conduct of the practical test. In cooperation with the ACS Working Group, established through the Aviation Rulemaking Advisory Committee (ARAC), the FAA integrated ''aeronautical knowledge'' and ''risk management'' elements into the existing areas of operations and tasks set forth in the PTS. Therefore, the ACS is a comprehensive presentation integrating the standards for what an applicant must know, consider, and do to demonstrate proficiency to pass the tests required for issuance of the applicable airman certificate or rating.

[219] Currently, the FAA has one powered-lift PTS, Instrument Rating Practical Test Standards for Airplane, Helicopter, and Powered-Lift, available on the FAA website at *https://www.faa.gov/training_testing/testing/test_standards*. The powered-lift portion of the PTS was utilized in drafting the Instrument Rating—Powered-Lift ACS.

[220] The six draft ACSs may be found in the docket for the ACS IBR NPRM: FAA–2022–1463., which is docket FAA–2022–1463.

[221] 14 CFR 61.45(b)(2).

[222] For example, V_{MC} demonstration is Task B in Area of Operation X, Multiengine Operations, in the Private Pilot for Airplane Category ACS.

completion of a practical test for the type rating sought. Through the aircraft type certification and evaluation processes, the FAA recognizes that because there may be differing powered-lift aircraft produced, it is possible certain powered-lift might be precluded from accomplishing certain tasks due to the powered-lift's design (*e.g.,* stalls) that are required by the appropriate ACS. Traditionally, as discussed, this would result in the appropriate limitation on a pilot's certificate.[223] However, due to the proposed type rating requirement, any limitation issued pursuant to § 61.45(b) to a pilot operating a powered-lift as PIC would be unnecessary because the pilot would not be able to perform the maneuver for which the limitation would apply in the aircraft for which they hold the type rating. Further, a person could not act as PIC of a different powered-lift type that may exhibit the limited characteristic without testing in that type of powered-lift first, which would thereby require the pilot to be tested on the specific task or maneuver that was omitted during the prior practical test if the powered-lift for the additional type rating is able to perform that task or maneuver.

For example, if type A powered-lift could not perform a stall, but type B powered-lift could, then a pilot seeking a type rating in type A would not be tested on stalls but would not receive a limitation on the type rating for type A. The absence of a limitation would not present a safety concern if the pilot wished to act as PIC of type B powered-lift because the pilot would need to take a practical test for a type rating in type B powered-lift, which would include the previously omitted evaluation on stalls. By proposing to require a type rating for each type of powered-lift, the type rating itself contains the limitation contemplated in § 61.45(b)(2) for an aircraft not able to perform all tasks in the ACS. Therefore, proposed § 194.207(a) would permit an applicant to use a powered-lift that is precluded from performing all of the tasks required for the practical test without receiving a limitation on the applicant's certificate or rating.[224]

Because there are currently no type-certificated powered-lift, the FAA does not have the requisite information at this time to determine which tasks might be deemed prohibited or unsafe by the aircraft certification and evaluation processes to delineate such tasks in this proposed SFAR or the draft powered-lift ACSs. In fact, there may be no such tasks that emerge. The FAA will identify this information through the type certification process, as well as FSBs. FSBs are established when the responsible FAA Aircraft Certification office issues a Type Certificate for large aircraft, turbojet-powered airplanes, and other aircraft specified by the Administrator through the aircraft certification process. Powered-lift types will be evaluated under the existing FSB process, which will determine the requirements for a pilot type rating, develop training objectives for the type rating, and conduct initial training for the manufacturer's pilots and FAA inspectors.

The FSB is composed of pilot candidates who have varied backgrounds conducting airman testing, evaluating training programs, and reviewing operator manuals. FAA pilots (*e.g.,* FAA flight test pilots, Aircraft Evaluation operations inspectors, FSDO operations inspectors) attend the manufacturer's proposed training program as test subjects and, upon completion, are administered the type rating test, in accordance with the applicable part 61 regulations. The FAA determines the appropriate type rating designation, the adequacy of proposed training and checking requirements, and determination of airman competency. Additionally, the manufacturer, Aircraft Certification Office, and FAA test pilots validate those tasks applicable to each powered-lift and provide their analysis to the members of the FSB. An assigned FSB member collates the findings into a Flight Standardization Board Report (FSBR). Based off of these determinations, in conjunction with the FAA's determinations of the adequacy of training, the FSBR will identify those tasks that are applicable to the specific type of powered-lift to inform examiners[225] conducting a practical test.[226] A multitude of industry stakeholders use these reports to inform their training programs and POI use the FSBR as a reference when approving operator training, checking, and currency programs.

As discussed, during the type certification and evaluation process, operational limitations of the powered-lift would be identified. The FSBR would subsequently ascertain what tasks in the ACS are inapplicable to the specific type of powered-lift. To account for the potential need to deviate from ACS tasks that cannot be performed, the FAA proposes in § 194.207(b) to temporarily delegate waiver authority to the pilot examiner conducting the practical test. This waiver authority would not be unfettered or at the examiner's discretion; rather, the waived tasks would be set forth on a designee's Certificate and Letter of Authority (CLOA)[227] specific to each type of powered-lift in which the designee is authorized to conduct practical tests. Specifically, the CLOA will identify the type of powered-lift in which the examiner is authorized to conduct a practical test and the specific

[223] 14 CFR 61.45(b)(2).

[224] If an applicant for a flight instructor certificate with a powered-lift category rating brings a powered-lift to the practical test that is incapable of performing a task required for the practical test, an examiner may waive the task in accordance with waiver authority provided by the FAA. Upon passing the practical test, the flight instructor would be qualified to provide instruction in a powered-lift that is capable of performing the task that was waived on the test. The FAA considered restricting a flight instructor from providing instruction in a powered-lift that is capable of performing a task for which the flight instructor has not demonstrated instructional ability. However, to provide training in a powered-lift, the flight instructor would be required to hold a type rating for the powered-lift on their pilot certificate. 14 CFR 61.195(e). The FAA has determined that the flight instructor would be qualified to provide training in the powered-lift based on their demonstration of instructional ability on the flight instructor practical test and their demonstration of pilot skills in the powered-lift on the type rating practical test. However, as the FAA gains more knowledge about tasks that certain powered-lift may be incapable of performing, the FAA may reconsider whether a limitation on the flight instructor certificate is necessary.

[225] ASIs and authorized designees administer practical tests for applicants seeking airman certificates and ratings, including conducting evaluations, testing, certification, and the issuance of ratings in accordance with part 61. While ASIs are employees of the FAA, designees are non-employees to whom the Administrator may delegate a matter related to the examination, testing, and inspection necessary to issue a certificate. *See* 49 U.S.C. 44702(d). Designee authority is established under 14 CFR part 183, and the general qualifications for each authorization are set forth in FAA Order 8000.95, as amended. Pilot designees include DPEs under part 61, TCEs under part 142, and APDs under parts 121 and 135.

[226] While the FAA has drafted powered-lift ACSs with input and expertise from industry and working groups, the FAA is uncertain if discrete additional tasks will be required for certain powered-lift type ratings based on the powered-lift's unique characteristics. Should the FSBR and type certification process reveal any additional tasks that are not accounted for the in the ACS but are essential to the operation of the specific type of powered-lift, the FAA may set forth these tasks in a type-specific appendix to the ACS, which would be incorporated by reference in accordance with the Administrative Procedure Act.

[227] As new powered-lift are integrated into the market, the FAA anticipates the need for designees and ASIs to administer practical tests to pilot applicants. To serve as a designee for airman testing and certification, an individual must be appropriately qualified and rated in the aircraft type and be authorized through a CLOA. The CLOA provides a description of the designee's authorities, limitations, and associated expiration. See FAA Order 8000.95B, vol. 3, chapt. 5, para. (2)(d). The FAA will continue to identify and designate persons who are qualified consistent with the current policy for other categories of aircraft. As employees of the FAA, an ASI's discretion to waive tasks during a practical test is established in FAA Orders.

tasks that the examiner is authorized to waive for the practical test, which will be set forth in the limitations section of the CLOA.

In addition to the requirement to be tested on the tasks specified in the areas of operation for the airman certificate and rating sought,[228] the FAA's regulations require an applicant for a certificate or rating to receive and log flight training on the applicable areas of operation that apply to the aircraft category and class rating sought.[229] If the FAA authorizes an examiner to waive a specific task during the practical test because the powered-lift is incapable of performing the task, the FAA finds that the applicant should also be relieved from the requirement to receive flight training on that task. Therefore, in proposed § 194.207(c), the FAA proposes to relieve an applicant for a private pilot certificate or commercial pilot certificate with a powered-lift category rating concurrently with a powered-lift type rating from the requirement to receive flight training on a task specified in an area of operation if the powered-lift is not capable of performing the task, provided the FAA has issued waiver authority for the task in accordance with the SFAR. The same reasons that support waiving the task on the practical test, which were previously discussed, also apply to relieving the applicant from the requirement to receive flight training on the task. For those reasons, the FAA finds that this proposed provision would not adversely affect safety.

Because the areas of operation listed for issuance of a commercial pilot certificate with a powered-lift category rating in accordance with part 61 mirror those required as certain appendixes that set forth minimum curriculum content, the FAA proposes to extend this same flexibility to part 141 pilot schools seeking approval of a powered-lift course. Therefore, the FAA proposes in § 194.239(a) to allow a part 141 pilot school seeking approval of a course in a powered-lift resulting in a private or commercial pilot certificate to waive training on a task specified in an area of operation if the powered-lift to be used in the course is not capable of performing the task and the FAA has issued waiver authority for that task in accordance with § 194.207(b).

While the FAA determined that there is no need to issue a limitation pursuant to § 61.45(b) due to the type rating requirement proposed in the SFAR, as discussed above, the FAA recognizes that the ability for an examiner to waive a task on a practical test for a powered-lift category rating creates a unique situation for persons who may seek to act as SIC in accordance with § 61.55. As discussed in section V.C of this preamble, a person seeking to act as SIC of a powered-lift type-certificated for more than one required pilot flightcrew member or in operations requiring an SIC pilot flightcrew member would not be required to hold a type rating. Rather, pursuant to § 61.55(a), the person would be required to hold at least a private pilot certificate with the appropriate category and class rating.

In the case of powered-lift, the initial pool of pilots obtaining powered-lift ratings would obtain a commercial pilot certificate with a powered-lift category rating and a type rating. The FAA expects certain persons from this initial pool of commercial pilots to obtain powered-lift category ratings on their flight instructor certificates, thereby enabling these persons to eventually provide flight training to students seeking private pilot certificates with powered-lift category ratings. If a pilot passes the practical test for a private or commercial pilot certificate with a powered-lift category rating in a powered-lift that was precluded from conducting certain tasks that are required by the applicable powered-lift category ACS, the examiner would waive those tasks on the practical test as previously discussed.

For the reasons explained previously, this would not cause a safety concern because the pilot would have to test for the new powered-lift type rating before acting as PIC. However, because the powered-lift category rating on the private or commercial pilot certificate enables the person to serve as SIC of another powered-lift type in accordance with § 61.55, there could be safety implications should the person seek to serve as SIC of a powered-lift that is capable of performing tasks for which the person was never trained and tested. As explained in section V.C of this preamble, the FAA finds that the current SIC qualification requirements set forth in § 61.55 are sufficient for pilots seeking to act as SIC of a powered-lift, provided those pilots satisfactorily complete a practical test on each task required by § 61.43(a)(1) (*i.e.,* the tasks specified in the areas of operation contained in the applicable Powered-Lift Category ACS).

To the extent a pilot completes a practical test in a powered-lift that was precluded from performing each task required by § 61.43(a)(1), the FAA is proposing in § 194.209(a) to prohibit that pilot from serving as SIC of a powered-lift that is capable of performing the tasks that were waived on the person's practical test until certain requirements are met. Specifically, the FAA is proposing to require the person to receive and log ground and flight training from an authorized instructor on the specific tasks that were waived. Additionally, the FAA is proposing to require the person to receive a logbook or training record endorsement from the authorized instructor certifying that the person has satisfactorily demonstrated proficiency in those tasks.

These requirements would ensure the person has received training on the specific tasks for which the person was not previously trained or tested. Additionally, these proposed requirements would ensure the person has demonstrated the ability to successfully perform the tasks to an authorized instructor prior to serving as SIC of the powered-lift. In determining whether a pilot has demonstrated proficiency of a task, the FAA recommends the authorized instructor use the appropriate ACS, which specifies the approved standards for the specific task. For the same reasons discussed in section V.C of this preamble concerning the role of a PIC, the FAA finds that these additional requirements combined with the SIC qualification requirements prescribed in § 61.55 would ensure the person seeking to serve as SIC of a powered-lift is qualified to do so.

The FAA recognizes that a person employed by a fractional ownership program as set forth in subpart K of part 91 or a person employed by a certificate holder authorized to conduct operations under part 135 may receive training and a competency check in a powered-lift that includes the tasks that were waived on the person's practical test for a commercial pilot certificate with a powered-lift category rating. In accordance with § 135.323, a part 135 air carrier or operator is required to establish and implement an approved training program that ensures each pilot is adequately trained to perform their assigned duties. Therefore, to act as SIC of a powered-lift under part 135, a person would be required to receive ground and flight training in the type of powered-lift to ensure the person is adequately trained to perform the duties

[228] 14 CFR 61.43(a)(1).

[229] 14 CFR 61.107(a), 61.127(a). Section 61.157(b) requires that a person who applies for an aircraft type rating added to an ATP certificate or applies for a type rating to be concurrently completed with an ATP certificate requires flight training from an authorized instructor on the areas of operation that apply to the aircraft type rating; the FAA does not find that additional relief is needed from § 61.157(b) since the tasks would be not be applicable to the given aircraft type by existing regulation.

of SIC. Additionally, all part 135 pilots are required to complete a § 135.293 competency check every 12 calendar months. Similarly, under part 91 subpart K, § 91.1073 requires each program manager to establish and implement an approved training program that ensures each crewmember is adequately trained to perform their assigned duties, and § 91.1065 requires each pilot to pass a competency check every 12 calendar months. A situation could arise where a person receives training on the task that was previously waived on the person's practical test and a competency check that includes the task.

For persons that receive such training and checking under part 135 or subpart K of part 91, it would be redundant to require the person to also receive training and an endorsement under part 61. The FAA is therefore proposing in § 194.209(b)(2) an exception to the training and endorsement requirements for those pilots who have received ground and flight training under an approved training program and have satisfactorily completed a competency check under § 135.293 or § 91.1065 in a powered-lift, provided the approved training program and competency check include each task that was previously waived on the person's practical test.[230]

Furthermore, the FAA recognizes that certain powered-lift pilots may seek to obtain additional type ratings on their pilot certificate. Under proposed § 194.209(b)(1), a person seeking an additional type rating may forgo the training and endorsement requirements described above if that person subsequently passes a practical test for a type rating in a powered-lift that is capable of performing all the tasks specified in the ATP and Type Rating for Powered-Lift Category ACS. The type rating practical test would be required to include each task required by § 61.43(a)(1) (*i.e.,* the tasks specified in the areas of operation contained in the ATP and Type Rating for Powered-Lift Category ACS [231]).

The FAA proposes to adopt these requirements in the SFAR because they are temporary in nature and are intended to enable the FAA to ensure an appropriate level of safety while acquiring additional information concerning powered-lift, including any unique operating characteristics that may preclude certain powered-lift from performing each task specified in the applicable Powered-Lift Category ACS. The FAA is, however, proposing to permanently amend § 61.55(a) to cross-reference the additional training and endorsement requirements proposed in § 194.209(a) by adding new § 61.55(a)(4). This amendment is intended only to ensure that all persons seeking to act as SIC of a powered-lift pursuant to § 61.55 are aware of the new temporary requirements and the situation under which they would apply.[232]

2. Permit Applicants To Take a Powered-Lift Type Rating Practical Test Without Concurrently Obtaining an Instrument-Powered-Lift Rating (§ 61.63(d))

Section 61.63(d) contains the eligibility requirements for a person seeking an aircraft type rating. Currently, § 61.63(d)(1) requires an applicant for an aircraft type rating or an aircraft type rating to be completed concurrently with an aircraft category rating to hold or concurrently obtain an appropriate instrument rating, except as provided in § 61.63(e). Additionally, § 61.63(d)(4) requires the applicant to perform the type rating practical test in actual or simulated instrument conditions, except as provided in § 61.63(e). Under § 61.63(e), an applicant who provides an aircraft that is not capable of the instrument maneuvers and procedures required on the practical test may apply for the type rating or a type rating in addition to the category rating, but the type rating will be limited to ''VFR only.''

For an applicant seeking a type rating in a powered-lift capable of instrument maneuvers and procedures, the FAA has determined that there are two circumstances under which the applicant should not be required to hold or concurrently obtain an appropriate instrument rating.[233] These two circumstances are discussed in detail in the following subsections.

i. Applicants for an Initial Powered-Lift Type Rating To Be Obtained Concurrently With a Powered-Lift Category Rating

Because the FAA is proposing that all powered-lift would require type ratings, the FAA's current regulations would require an applicant for a powered-lift type rating to take three practical tests concurrently: the practical tests for (1) a powered-lift type rating, (2) powered-lift category rating, and (3) an instrument-powered-lift rating.[234] To serve as PIC of a powered-lift, a person would be required to hold both a powered-lift category rating and a powered-lift type rating pursuant to § 61.31(d).[235] If a person does not yet hold a powered-lift category rating on their pilot certificate through military competency, they would be required to apply for a powered-lift type rating concurrently with a powered-lift category rating pursuant to § 61.63(d).[236] Additionally, § 61.63(d)(1) requires an applicant for a type rating to either hold or concurrently obtain an appropriate instrument rating. The only pilots who hold commercial pilot certificates with powered-lift category ratings and instrument-powered-lift ratings are military pilots who qualified for the ratings pursuant to § 61.73 based on their military pilot qualifications. All other pilots would be required to apply for a powered-lift type rating concurrently with a powered-lift category rating and instrument-powered-lift rating. Therefore, to obtain all three ratings, the applicant would be required to satisfactorily complete three practical tests concurrently.[237]

[230] This proposed exception is consistent with that in § 61.31(e)(2)(ii) and (f)(2)(ii) for complex and high-performance airplanes.

[231] Airman Certification Standards and Practical Test Standards for Airmen; Incorporation by Reference NPRM, 87 FR 75955 (Dec. 12, 2022).

[232] The FAA notes that the proposed addition of § 61.55(a)(4) would be temporary in nature because it would be obsolete upon the expiration date set forth in proposed § 194.107. When the SFAR expires, the FAA would remove the proposed provision in § 61.55(a)(4) concurrently with the temporary provisions of part 194.

[233] Proposed § 194.211(b) and (c) address the two circumstances discussed in this preamble section. To avoid confusion with the current ''VFR only'' provisions codified in § 61.63(e), which apply only to aircraft not capable of instrument maneuvers and procedures, the FAA is proposing an applicability provision in § 194.211(a) to make clear that the temporary provisions in paragraphs (b) and (c) apply only to persons seeking a type rating in a powered-lift that is capable of performing instrument maneuvers and procedures.

[234] As discussed in more detail, if an applicant seeks a type rating in a powered-lift that is not capable of performing instrument maneuvers and procedures, that applicant would not be required to take three practical tests concurrently because the exception to § 61.63(d)(1) and (4), which is contained in § 61.63(e), would apply.

[235] Section 61.31(d) prescribes that, to serve as PIC of an aircraft, a person must hold the appropriate category, class, and type rating (if a class or type rating is required) for the aircraft to be flown.

[236] As discussed in more detail later in this section, the FAA is proposing to revise §§ 61.45 and 61.64 to clarify its position that a person may not take a practical test in an aircraft that requires a type rating without obtaining a type rating.

[237] Ratings are placed on a pilot certificate (other than student pilot) when an applicant satisfactorily accomplishes the training and certification requirements for the rating sought. 14 CFR 61.5. To obtain an aircraft type rating, an applicant must pass the practical test for the type rating at the ATP certification level. 14 CFR 61.63(d)(3). To obtain a powered-lift category rating on a commercial pilot certificate, the applicant must pass the practical test on the areas of operation listed in § 61.127(b) that apply to the powered-lift category rating sought. 14 CFR 61.63(b); 61.123(g). To obtain an instrument-powered-lift rating, the applicant must pass a practical test on the areas of operation in § 61.65(c).

Under FAA regulations, a person seeking an airplane or helicopter type rating has the flexibility to take the type rating practical test independent of the other practical tests. For example, an applicant for an airplane or helicopter type rating may obtain an instrument-airplane or instrument-helicopter rating in an airplane or helicopter for which a type rating is not required prior to applying for a type rating in an airplane or helicopter. As a result, an applicant for an airplane or helicopter type rating is not required to take a type rating practical test concurrently with an instrument rating practical test. Similarly, because there are airplanes and helicopters for which a type rating is not required, an applicant for an airplane or helicopter type rating may obtain the appropriate category and class ratings on their pilot certificate prior to taking the type rating practical test.[238] Thus, an applicant for an airplane or helicopter type rating is not required to take the type rating practical test concurrently with the practical test for an aircraft category or class rating.

If the FAA requires the PIC to hold a type rating for each type of powered-lift, as proposed, there would be no powered-lift for which a type rating is not required. As a result, the current regulations would preclude a pilot from obtaining a powered-lift category rating or an instrument-powered-lift rating prior to applying for their initial powered-lift type rating practical test. Requiring applicants for an initial powered-lift type rating to take three practical tests concurrently would be both burdensome and inconsistent with the flexibility that the regulations currently provide to applicants for airplane and helicopter type ratings. Pursuant to § 61.31(d), a person may not act as PIC of a powered-lift unless that person obtains both a powered-lift type rating and a powered-lift category rating on their pilot certificate. The FAA therefore is not proposing any change that would allow an applicant to apply for their initial powered-lift type rating without concurrently obtaining a powered-lift category rating. The FAA is proposing in § 194.211(b)(1) to enable an applicant to take the instrument-powered-lift rating independent from the practical tests for the powered-lift category and type ratings. The FAA has concluded that this temporary allowance as proposed would not adversely affect safety.

Currently, § 61.63(e) contains an exception to the requirement, in § 61.63(d)(1), for a type-rating applicant to hold or concurrently obtain an appropriate instrument rating. Under § 61.63(e), an applicant for a type rating who provides an aircraft that is not capable of the instrument maneuvers and procedures required on the practical test may receive a type rating upon completion of the practical test with a ''VFR only'' limitation. The applicant may have the ''VFR only'' limitation removed for that aircraft type by: (1) passing a practical test in that type of aircraft in actual or simulated instrument conditions; (2) passing a practical test in that type of aircraft on the appropriate instrument maneuvers and procedures in § 61.157; or (3) becoming qualified under § 61.73(d) for that type of aircraft. Additionally, § 61.63(e)(2) states that when an instrument rating is issued to a person who holds one or more type ratings, the amended pilot certificate must bear the ''VFR only'' limitation for each aircraft type rating that the person did not demonstrate instrument competency.

The FAA is not proposing to amend § 61.63(e). Therefore, if a powered-lift is not capable of performing instrument maneuvers and procedures, an applicant for a type rating in that powered-lift may obtain a ''VFR only'' limitation in accordance with § 61.63(e). The FAA finds, however, that powered-lift that are capable of instrument maneuvers and procedures would present a situation that differs from other categories of aircraft because the FAA has not previously required a type rating for each type of aircraft that falls within a broad category of aircraft. To provide flexibility consistent with that provided to applicants for an airplane or helicopter type rating, the FAA is proposing § 194.211(b), which would allow an applicant for a powered-lift type rating to take the type rating practical test independent of the practical test for the instrument-powered-lift rating. Regarding the type rating practical test, proposed § 194.211(b)(2) would also relieve an applicant from being tested on the areas of operation listed in § 61.157(e) that consist of performing instrument maneuvers and procedures in actual or simulated instrument conditions. The FAA is proposing to leverage the regulatory framework that exists in § 61.63(e), including the ''VFR only'' limitation, to implement the desired flexibility.

Under proposed § 194.211(b), an applicant for a powered-lift type rating in addition to a powered-lift category rating may apply for the type rating without holding or concurrently obtaining the appropriate instrument rating. Consistent with current § 61.63(d)(4) and (e), the applicant would not be required to perform the type rating practical test in actual or simulated instrument conditions. As stated in the draft ATP and Type Rating for the Powered-Lift Category ACS, the applicant seeking a ''VFR only'' type rating would conduct tasks that are normally performed by reference to the instruments using visual references.[239] Upon successfully completing the practical test for the type rating, the applicant would receive the powered-lift type rating with a ''VFR only'' limitation on their pilot certificate.

The aeronautical experience requirements for an instrument-powered-lift rating require the applicant to receive 3 hours of instrument flight training from an authorized instructor in a powered-lift that is appropriate to the instrument-powered-lift rating within 2 calendar months before the date of the instrument rating practical test.[240] The purpose of issuing the ''VFR only'' type rating to an applicant who is applying for a powered-lift type rating concurrently with a powered-lift category rating is to enable the applicant to take the instrument rating practical test at a later date. Because the applicant will be eligible to apply for the instrument rating practical test at the time that they apply for the type rating and category rating practical tests, the applicant will have already obtained 3 hours of flight training in preparation for the instrument rating practical test within the 2 calendar months preceding the month of the practical tests for the type rating and category rating. The FAA therefore finds it reasonable to propose a requirement, as set forth in proposed § 194.211(b)(3), that would require the applicant to obtain the instrument-powered-lift rating and remove the ''VFR only'' limitation for the type rating within 2 calendar months from the month in which the applicant passes the type rating practical test. The FAA believes permitting persons to exercise the privileges of a ''VFR only'' powered-lift type rating for 2 calendar months would not adversely affect safety. While the powered-lift would be capable of performing instrument procedures and maneuvers, the ''VFR only'' limitation would restrict the pilot from operating the powered-lift under IFR. As a result, the pilot would be permitted to operate

[238] To act as PIC of an airplane that requires a type rating, the pilot must hold an airplane category rating with the appropriate class rating on their pilot certificate. Similarly, to act as PIC of a helicopter that requires a type rating, the pilot must hold a rotorcraft category and helicopter class rating on their pilot certificate. 14 CFR 61.31(d).

[239] FAA–S–ACS–17, Appendix 1.

[240] 14 CFR 61.65(f)(2)(i).

the powered-lift only under the conditions for which the pilot demonstrated mastery of the powered-lift on the practical test.[241] Furthermore, current § 61.133(b)(1) serves as a sufficient safeguard to prevent any reduction in safety with respect to powered-lift operations that would carry passengers for hire. Specifically, under § 61.133(b)(1), a person who applies for a commercial pilot certificate with a powered-lift category rating would receive a limitation if that person does not hold an instrument-powered-lift rating. The limitation would prohibit the commercial pilot from carrying passengers for hire in powered-lift on cross-country flights in excess of 50 nautical miles or at night.

To remove the ''VFR only'' limitation, pursuant to proposed § 194.211(b)(4), the pilot would be required to: (1) pass an instrument rating practical test in a powered-lift in actual or simulated conditions, and (2) pass a practical test in the powered-lift for which the ''VFR only'' limitation applies on the appropriate areas of operation listed in § 61.157(e) that consist of performing instrument maneuvers and procedures in actual or simulated instrument conditions. The FAA recognizes that the conditions for removing a ''VFR only'' limitation from a powered-lift type rating would differ from the conditions that currently exist in § 61.63(e)(1)(ii), which apply to the removal of a ''VFR only'' limitation from a type rating for an aircraft that was not capable of performing instrument maneuvers and procedures at the time of the type rating practical test.

Because the intent of the proposal is to permit the applicant to complete the instrument rating practical test at a later date, the FAA is proposing to require the satisfactory completion of the instrument rating practical test as a condition of removing the ''VFR only'' limitation from the type rating. Additionally, because the applicant was not required to perform the appropriate instrument maneuvers and procedures for a type rating when they passed the practical test for a ''VFR only'' type rating, the FAA is also proposing to require the satisfactory completion of the instrument portion of the type rating practical test as a condition of removing the ''VFR only'' limitation. After the FAA has had sufficient time to analyze the removal of a ''VFR only'' limitation pursuant to § 61.63(e)(1)(ii), the FAA may contemplate future rulemaking to update the conditions specified therein.

As previously stated, to remove the ''VFR only'' limitation for a powered-lift type rating, a person would be required to take two practical tests in actual or simulated instrument conditions: (1) the instrument rating practical test, and (2) the portion of the type rating practical test that includes performing instrument maneuvers and procedures in actual or simulated conditions. The draft Instrument Rating—Powered-Lift ACS specifies which tasks an applicant must satisfactorily perform for the issuance of an instrument rating in the powered-lift category. Similarly, the draft ATP and Type Rating Powered-Lift Category ACS specifies which areas of operation and tasks an applicant must satisfactorily perform on the type rating practical test to remove the ''VFR only'' limitation for a powered-lift type. Upon reviewing the proposed tasks required for each practical test, the FAA has determined that a person would encounter several overlapping tasks when taking the practical tests concurrently. The FAA has evaluated the standards for each of the overlapping tasks and has determined that it is unnecessary to require a person to perform the same task more than once, provided the task is performed to the highest standard set forth in the respective ACSs.

For example, a person would be required to perform a circling approach procedure on both the instrument rating practical test and the type rating practical test. The draft Instrument Rating—Powered-Lift ACS requires the applicant to perform the procedures while maintaining airspeed +/− 10 knots and desired heading/track +/− 10 degrees. The draft ATP or Type Rating Powered-Lift Category ACS also requires the applicant to perform the circling approach procedure, but to more exacting standards (*i.e.,* maintain airspeed +/− 5 knots and desired heading/track +/− 5 degrees). If a pilot demonstrates their ability to perform the circling approach procedure to the more exacting standards specified in the draft ATP or Type Rating Powered-Lift Category ACS, the FAA finds it unnecessary to require that pilot to perform the same task a second time to the less stringent standards specified in the draft Instrument Rating—Powered-Lift ACS. Accordingly, when a task required for the instrument rating practical test overlaps with a task required for the type rating practical test, proposed § 194.211(d) would permit a person to perform the task a single time provided the person performs the task to the highest standard required for the task.

The proposed language in § 194.211(b)(4) concerning the completion of the type rating practical test differs slightly from the language in § 61.63(e)(1)(ii)(B). The FAA's proposed language is intended to clarify that the cross-reference to § 61.157 refers to the areas of operation of which the practical test for a type rating is comprised. The areas of operation for a person seeking a powered-lift type rating are contained in § 61.157(e).[242] A person who holds a type rating with a ''VFR only'' limitation is required to pass the portion of the type rating practical test that includes the instrument maneuvers and procedures (*e.g.,* the portion of the practical test that was not previously completed). Therefore, only certain areas of operation listed in § 61.157(e) are appropriate. The draft ATP and Type Rating for Powered-Lift Category ACS specifies which areas of operation and which tasks must be completed for the removal of a ''VFR only'' limitation. Furthermore, the FAA notes that, pursuant to § 61.63(d)(4), the type rating practical test must be performed in actual or simulated instrument conditions. For consistency with current § 61.63(d)(4), proposed § 194.211(b)(4)(ii) would make clear that the practical test required to remove the ''VFR Only'' limitation for a powered-lift type, which is a component of the powered-lift type rating practical test, must be completed in actual or simulated instrument conditions.[243]

Pursuant to proposed § 194.211(b)(5), if a person who obtains a powered-lift type rating with a ''VFR only'' limitation pursuant to § 194.211(b)(1) does not remove the limitation within 2 calendar months from the month in which the person completed the type rating practical test, then the powered-lift type rating for which the ''VFR only'' limitation applies will become invalid for use until the person removes the limitation in accordance with § 194.211(b)(4). Upon becoming ''invalid,'' a person may no longer exercise the privileges associated with the type rating and the ''VFR only'' limitation. For powered-lift that are not large aircraft or turbojet-powered, the FAA considered allowing a pilot after the two months had elapsed to continue to exercise private pilot privileges until the limitation could be removed and seeks comment on whether such relief would be appropriate.

[241] 14 CFR 61.43(a)(2).

[242] Section 61.63(d)(3) requires a person who applies for an aircraft type rating or an aircraft type rating to be completed concurrently with an aircraft category or class rating to pass the practical test at the ATP certification level. Section 61.157(a)(1) states that the practical test for an ATP certificate is given for an aircraft type rating. The ATP practical test consists of the areas of operation listed in § 61.157(e) that apply to the aircraft category and class rating sought. 14 CFR 61.153(h).

[243] See also 14 CFR 61.157(b)(3).

The FAA recognizes that, for aircraft that were not capable of instrument maneuvers and procedures at the time of the type rating practical test, § 61.63(e)(1)(ii)(C) permits a person to remove the ''VFR only'' limitation for the aircraft type by becoming qualified under § 61.73(d) for that type of aircraft. Section 61.73(d) permits a person to obtain an instrument-powered-lift rating based on military pilot qualifications. A military powered-lift pilot seeking a powered-lift type rating may obtain their powered-lift category rating and instrument-powered-lift rating pursuant to the military competency provisions of § 61.73 prior to applying for a powered-lift type rating practical test. As a result, these pilots would not encounter the obstacle of taking all three practical tests simultaneously. Because these pilots do not need the flexibility provided by the proposal, which would permit the instrument rating practical test to be completed at a later date, there are no circumstances under which these pilots would be issued a ''VFR only'' limitation under the SFAR.[244] The FAA therefore finds it unnecessary to enable persons to remove the ''VFR only'' limitation for a type of powered-lift by obtaining an instrument-powered-lift rating pursuant to § 61.73(d).

The FAA emphasizes that the proposed rule would not amend § 61.63(d)(1). It would only add an option in the SFAR (*i.e.,* part 194) for applicants to take the instrument rating practical test separate from the practical tests for a powered-lift type rating and a powered-lift category rating. Thus, applicants for a powered-lift type rating would still have the option to take all three practical tests concurrently pursuant to § 61.63(d)(1).

ii. Obtaining Powered-Lift Type Ratings With ''VFR only'' Limitations on a Private Pilot Certificate

Under current § 61.63(d)(1), a private pilot who applies for an airplane or helicopter type rating is required to hold or concurrently obtain an appropriate instrument rating. An airplane or helicopter, however, only requires a type rating if the aircraft is large or turbojet-powered. Thus, under the current regulations, a private pilot may obtain the appropriate category and class ratings to operate airplanes and helicopters that do not require a type rating under § 61.31(a) without ever obtaining an appropriate instrument rating.[245]

As discussed previously, the FAA's proposal would require a type rating for each type of powered-lift. As a result, the current requirement in § 61.63(d)(1) to hold or concurrently obtain an instrument rating would apply to every person seeking to operate a powered-lift, including private pilots.

Due to the FAA's inability to establish classes of powered-lift at this time, the underlying reasons for requiring a type rating for a powered-lift differ, in part, from the reasons for requiring a type rating for large aircraft and turbojet-powered airplanes. For example, as explained further in section V.A of this preamble, there is a lack of commonality between powered-lift, which makes it infeasible for the FAA to establish classes of powered-lift at this time. By requiring a type rating for each type of powered-lift, the FAA would ensure that persons are trained and tested on the unique design and operating characteristics of each powered-lift. If the FAA were able to establish classes of powered-lift, private pilots would be permitted to obtain powered-lift category and class ratings without concurrently obtaining an instrument rating, similar to what is currently permitted for airplanes and helicopters under part 61. These private pilots would be required to obtain an appropriate instrument rating only if the powered-lift required a type rating pursuant to the current requirements in § 61.31(a) (*e.g.,* large aircraft or turbojet-powered).[246]

The FAA recognizes that there may be private pilots who seek to operate a powered-lift under VFR without ever obtaining an instrument-powered-lift rating. In light of the current regulatory framework for private pilots with airplane and helicopter ratings, the limited privileges associated with the private pilot certificate, and the underlying reasons for requiring type ratings for all powered-lift, the FAA is proposing in § 194.211(b)(6) to except certain private pilots from the requirement to remove the ''VFR only'' limitation set forth in proposed § 194.211(b)(3). Specifically, a private pilot who obtains a ''VFR only'' type rating for a powered-lift that is less than (or equal to) 12,500 pounds,[247] maximum certificated takeoff weight, and not turbojet-powered would not be required to remove the ''VFR only'' limitation within a certain timeframe.

The FAA finds that this proposal would not adversely affect safety. The proposed exception for the aforementioned private pilots would result in an outcome consistent with airplane and helicopter pilots under current § 61.63(d)(1), as a private pilot seeking a powered-lift type rating would be required to hold or concurrently obtain an instrument-powered-lift rating only if the aircraft is large or turbojet-powered. This would enable private pilots seeking to operate a powered-lift under VFR only to obtain the required category and type ratings for the powered-lift without also obtaining the appropriate instrument rating. Additionally, a private pilot has limited privileges compared to a commercial pilot. Current § 61.113(a), which sets forth private pilot privileges and limitations, serves as a sufficient safeguard to ensure an appropriate level of safety. Specifically, a person who holds a private pilot certificate is generally prohibited from acting as PIC of an aircraft that is operating for compensation or hire, or that is carrying passengers or property for compensation or hire.[248] Therefore, a private pilot with a ''VFR only'' type rating would not be permitted to operate the powered-lift for compensation or hire or carry persons or property for compensation or hire.[249]

Furthermore, recognizing the reasons for requiring a type rating for each type of powered-lift, the FAA concludes that a private pilot who passes a ''VFR only'' type rating practical test would still be required to be trained and tested on the unique design and operating characteristics of each powered-lift. While the private pilot would not be required to perform the instrument maneuvers and procedures required for

[244] These pilots could potentially receive a ''VFR only'' limitation for a powered-lift that is not capable of performing instrument maneuvers and procedures pursuant to current § 61.63(e).

[245] There are circumstances under which a private pilot would be required to hold an instrument rating. To act as PIC of a civil aircraft under IFR or in weather conditions less than the minimums prescribed for VFR flight, a person must hold the appropriate instrument rating on that person's pilot certificate. 14 CFR 61.3(e)(1). Additionally, to act as SIC of an aircraft type certificated for more than one required pilot flightcrew member or in operations requiring a SIC pilot flightcrew member, a person must hold an instrument rating or privilege that applies to the aircraft being flown if the flight is conducted under IFR. 14 CFR 61.55(a)(2).

[246] Currently, § 61.31(a)(2) applies to turbojet-powered airplanes. However, in the future, if the FAA proposes an amendment to establish classes for powered-lift, it would also propose a corresponding amendment to § 61.31(a)(2) to include turbojet-powered powered-lift.

[247] This aligns with the definition of large aircraft, provided in § 1.1 as aircraft more than 12,500 pounds, maximum certificated takeoff weight.

[248] 14 CFR 61.113(a).

[249] Section 61.113(a) prohibits private pilots from acting as PIC for compensation or hire or from acting as PIC carrying persons or property for compensation or hire. Section 61.113(b) through (h) contain limited exceptions to these general prohibitions (*e.g.,* expense-sharing with passengers).

a type rating on the practical test, the pilot would still be required to demonstrate mastery of the powered-lift on the type rating practical test while performing the required tasks using visual references. Additionally, because the private pilot would hold a ''VFR only'' limitation for the powered-lift type, the pilot would be authorized to operate the powered-lift only under the conditions for which the pilot demonstrated proficiency of the aircraft, meaning the pilot could not act as PIC under IFR or weather conditions less than the minimums for VFR.

In addition to proposing an exception in proposed § 194.211(b)(6) that would enable private pilots of certain powered-lift to retain the ''VFR only'' type rating indefinitely, the FAA is proposing § 194.211(c)(1), which would allow for these private pilots to obtain additional ''VFR only'' type ratings on their private pilot certificates, provided the powered-lift are not large or turbojet-powered. Consistent with current § 61.63(d)(4) and (e) and proposed § 194.211(b)(2), the applicant would not be required to perform the VFR only type rating practical test in actual or simulated instrument conditions.

While the FAA is not proposing to require private pilots to remove ''VFR only'' limitations when those limitations apply to powered-lift that are not large aircraft and not turbojet-powered, the FAA is proposing rule language that would provide these private pilots with the option to do so. A private pilot would remove the ''VFR only'' limitation in the same manner as discussed in this section (*i.e.,* through proposed § 194.211(b)(4)).

iii. Clarification of Requirements for a Practical Test in an Aircraft That Requires a Type Rating

As previously discussed, the FAA is proposing relief to prevent a pilot seeking powered-lift ratings from having to complete three practical tests simultaneously. The proposed relief is consistent with the FAA's longstanding view that a person who uses an aircraft that requires a type rating for the practical test cannot complete the practical test if it does not include the tasks and maneuvers for the type rating (which are the same tasks and maneuvers required for an ATP certificate with category and class ratings). In essence, it is not possible to demonstrate mastery of the aircraft as required by § 61.43(a) in an aircraft that requires a type rating by performing the tasks and maneuvers for a category and class rating alone. As such, when an applicant furnishes an aircraft that requires a type rating (or an FSTD that represents an aircraft requiring a type rating) for a practical test, the applicant must meet the requirements for the type rating under § 61.63(d) for a private pilot or commercial pilot certificate or § 61.157(b) for an airline transport pilot certificate.[250] The FAA notes that the Fifth Circuit recently concluded that FAA's regulations do not currently require an applicant furnishing an aircraft that requires a type rating to also satisfy all of the requirements for the type rating.[251] Therefore, the FAA is proposing to add language to make completely clear that a person may not furnish an aircraft that requires a type rating (or an FSTD representing an aircraft requiring a type rating) for the practical test without being eligible for a type rating and applying for a type rating, unless the person already has the type rating.

Given the relevancy of the issue to this rulemaking, the FAA proposes three amendments in part 61. First, the FAA proposes to clarify certain prerequisites for practical tests by revising § 61.39(a)(3). Specifically, paragraph (a)(3) requires an applicant for a practical test for a certificate or rating issued under part 61 to accomplish the required training and obtain certain aeronautical experience. The FAA proposes to revise paragraph (a)(3), which requires a person applying for a practical test to meet the training and aeronautical experience for the certificate or rating sought. The FAA proposes to create paragraphs (a)(3)(i) and (ii). Paragraph (a)(3)(i) would retain the currently situated requirement that if an applicant applies for a practical test with flight time accomplished under § 61.159(c), the applicant must present certain records required by part 135. The FAA proposes to add new paragraph (a)(3)(ii), which would require an applicant seeking an initial category and class rating, if a class rating is required, on a private, commercial, or ATP certificate in an aircraft that requires a type rating (or a FSTD that represents an aircraft that requires a type rating) to either meet the eligibility requirements for a type rating in that aircraft or already hold that type rating on the person's pilot certificate. In other words, regardless of whether an applicant tests in an aircraft or tests in an FSTD, if the applicant furnishes an aircraft (or aircraft represented) that requires a type rating for the practical test, then the applicant must be eligible for the type rating practical test[252] unless the applicant already holds the type rating.

The general procedures for practical tests are set forth in § 61.43. The FAA finds this is the most appropriate place to clarify the relationship between an ATP practical test and a type rating practical test. Therefore, the FAA proposes new paragraph (g) to clarify that a practical test for an ATP certificate with category and class ratings (if a class rating is required) in an aircraft that requires a type rating, or in an FSTD that represents an aircraft that requires a type rating, includes the same tasks and maneuvers as a practical test for a type rating. This proposed change would foreclose the concept that a lesser test can be administered for category and class ratings at the ATP certificate level.

Finally, the FAA proposes a conforming amendment applicable to those examiners who are authorized by the Administrator to conduct practical tests.[253] Specifically, the proposed new § 61.47(d) would restrict an examiner from conducting a practical test for the issuance of an initial category and class rating (if a class rating is required) in an aircraft that requires a type rating (or corresponding FSTD) to an applicant who does not already have the type rating unless, first, the applicant meets the eligibility requirements for a type rating and, second, the practical test contains the tasks for a type rating specified for the areas of operation at the airline transport pilot certificate level. The FAA also proposes to revise the heading of § 61.47 to more accurately describe the regulations set forth in the section. The FAA notes that an examiner may never conduct a practical test if an applicant does not meet the eligibility requirements for the

[250] To be eligible for a type rating practical test, a pilot must receive training on the areas of operation listed in § 61.157(e) that apply to the aircraft type rating. 14 CFR 61.63(d)(2) and 61.157(b). The detailed tasks associated with each area of operation are provided in the ATP and Type Rating ACS. How a task is performed may vary depending on the systems and capabilities of the aircraft type. Therefore, to satisfactorily complete a type rating practical test, a pilot should be trained on how to perform the tasks specified for each area of operation in the aircraft for which a type rating sought. The flight training should prepare the pilot to demonstrate mastery of the aircraft by performing each task successfully. 14 CFR 61.43(a).

[251] *See Flight Training Int'l, Inc.* v. *Fed. Aviation Admin.* 58 F.4th 234 (5th Cir. 2023).

[252] The FAA notes that the practical test for an ATP certificate with category and class ratings is the same test for a type rating. The FAA speaks in its regulations to ''concurrent'' tests because it is not possible to have successfully completed the testing requirements for category and class ratings at the ATP certificate level in an aircraft requiring a type rating without also completing the requirements for a type rating.

[253] *See* 49 U.S.C. 44702(d), which gives the Administrator the authority to delegate a matter related to the examination, testing, and inspection necessary to issue a certificate under part 61.

certificate or rating sought.[254] However, the FAA wishes to clarify that an applicant cannot avoid the training requirements for a type rating by ''seeking'' only a category and class rating at the ATP certificate level. The proposed change would make clear that an examiner may not conduct a practical test in an aircraft that requires a type rating unless the applicant is eligible for the type rating.

The FAA finds that the three regulations, in tandem, will sufficiently ensure that a scenario is avoided where someone seeks a category or class rating in an aircraft that requires a type rating without fully demonstrating mastery of the aircraft furnished for the practical test. The FAA notes that in the case of an airplane or rotorcraft, an applicant retains the option of furnishing an aircraft that does not require a type rating if the applicant seeks only category and class ratings. For powered-lift, which as proposed would all require type ratings, an applicant would be foreclosed from seeking a powered-lift category rating without concurrently obtaining a type rating.

H. Miscellaneous Amendments

1. Aeronautical Experience for Private Pilot Applicants (§ 61.109(e)(5))

Section 61.109 sets forth the aeronautical experience requirements that an applicant must meet to be eligible for a private pilot certificate. Section 61.109 contains several paragraphs that prescribe specific aeronautical experience requirements for the respective rating sought. Specifically, for airplane single-engine and helicopter ratings, § 61.109(a) and (c) require 10 hours of solo flight time in the category and class of aircraft for which the rating is sought. Similarly, for an airplane multiengine rating, § 61.109(c) requires 10 hours of solo flight time in any airplane. However, for a powered-lift category rating, § 61.109(e)(5) currently allows an applicant to obtain 10 hours of solo flight time in either an airplane or a powered-lift.[255]

As discussed, the FAA added the aeronautical experience requirements for powered-lift in the 1997 final rule.[256] In the preamble to that final rule, the FAA explained that it was permitting an applicant for a powered-lift rating to accomplish solo flight time in an airplane or powered-lift in response to concerns raised by commenters regarding the ability for a pilot to rent or be insured to fly solo in a multiengine aircraft without holding a multiengine rating.[257] At the time of the 1997 final rule, the FAA could not anticipate the manner in which the powered-lift category would emerge.

As noted earlier in the preamble, the FAA anticipates that the initial powered-lift that will obtain type certification are intended for commercial purposes. However, a number of manufacturers are also engaged in developing powered-lift that would be for personal use. As explained in section V.A of this preamble, the FAA proposes to require a type rating for each powered-lift because it is not feasible to establish classes of powered-lift due to their significantly different flight characteristics. Because there are no powered-lift classes, and the FAA declines at this time to differentiate between multiengine and single engine powered-lift classes,[258] the FAA finds that the lack of a multiengine powered-lift class rating would not preclude a pilot from renting a powered-lift. Additionally, to the extent a pilot may obtain a multiengine airplane rating, the FAA finds that holding such a rating would not provide any assurance that the pilot has the skills necessary to operate a powered-lift. The FAA, therefore, finds that the concerns noted in the 1997 preamble are no longer valid. Furthermore, permitting a private pilot applicant to obtain 10 hours of solo flight time in an airplane for the purpose of obtaining a powered-lift category rating presents a significant safety issue because airplane and powered-lift are two very different categories of aircraft.

As discussed in section V.A of this preamble, not only do different powered-lift vary widely within the respective category, they are essentially a hybrid between an airplane and a helicopter. When flying an airplane, the applicant will never encounter the vertical take-off and landing characteristics fundamental to a powered-lift. The most critical phases of flight for airplanes and helicopters, and where most accidents occur, are during the takeoff and landing phases of flight.[259] For example, improper application of an airplane's flight controls at slow airspeeds could result in a stall and spin event, oftentimes resulting in accidents. Similarly, improper application of flight control inputs during the takeoff and landing in a helicopter can result in loss of control. For example, during takeoff, a helicopter encounters aerodynamics events such as effective translational lift and transverse flow effect that are specific to a rotor system transitioning from hovering to forward flight.[260] These anomalies require specific inputs to assure that a safe transition to forward flight can occur during takeoff and transition to en route flight. The FAA anticipates that the most critical phases of flight for powered-lift will also be during the takeoff and landing phases of flight. It is important for a private pilot applicant to gain experience with the operating characteristics of a powered-lift as the sole occupant onboard during the takeoff and landing phases of flight.

In light of the different operating capabilities of airplanes compared to powered-lift, the FAA concludes that the skills acquired during solo flight time in an airplane are not interchangeable with the skills acquired during solo flight time in a powered-lift.[261] An applicant for a private pilot certificate seeking a powered-lift rating must obtain experience operating the powered-lift on solo flights to ensure the applicant has a sufficient amount of aeronautical experience manipulating the controls of the powered-lift as the sole occupant. This flight time is critical to the development of a skilled, safe pilot as it fosters the applicant's decision-making skills, enables the applicant to reinforce the skills acquired during training as the sole manipulator

[254] For example, if an examiner is presented with an applicant for a commercial pilot certificate who has only 100 hours total flight time, no test may be administered due to the applicant's ineligibility for the practical test.

[255] Specifically, § 61.109(e)(5) requires 10 hours of solo flight time in an airplane or powered-lift consisting of at least: (1) five hours of cross-country time; (2) one solo cross-country flight of 150 nautical miles total distance with three full-stop landings at three points and one segment of the flight consistent of a straight-line distance of more than 50 nautical miles between takeoff and landing locations; and (3) three takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport that has an operating control tower.

[256] Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules, Final Rule, 62 FR 16220 (Apr. 4, 1997).

[257] Id. at 16264–65.

[258] See section VII.A of this preamble for additional discussion.

[259] Phase of Flight for General Aviation Accidents, 2018 Aviation: Data & Stats (ntsb.gov).

[260] Helicopter Flying Handbook, Helicopter Flying Handbook (FAA–H–8083–21B) Chapter 2, pages 2–22 and 2–23.

[261] The FAA acknowledges that a recent final rule permits military powered-lift pilots to credit time in horizontal flight in a powered-lift toward the airplane requirements for an ATP certificate. This final rule was based on the operational similarities between military powered-lift in horizontal flight and airplanes. Allowing an experienced military powered-lift pilot to credit a portion of flight time in powered-lift toward a subset of the time required for an airplane rating at the ATP certificate level is wholly distinguishable from allowing training time in an airplane to be used to satisfy time in a powered-lift at the start of a person's flying experience. Recognition of Pilot in Command Experience in the Military and Air Carrier Operations, Final Rule, 87 FR 57578 (Sep. 21, 2022).

of the controls, and ensures the applicant develops the skills necessary to operate the powered-lift during the critical phases of flight.

For the reasons stated previously, the FAA is proposing to amend § 61.109(e)(5) to require an applicant for a private pilot certificate with a powered-lift category rating to obtain 10 hours of solo flight time in a powered-lift. In addition to providing an adequate level of safety, requiring the applicant to obtain solo flight time in the category of aircraft for which the rating is sought would ensure consistency with the aeronautical experience requirements in § 61.109 that apply to persons seeking airplane and helicopter ratings.

2. Removal of §§ 61.63(h) and 61.165(g)

Before 2004, § 61.31 allowed a pilot to operate an experimental aircraft carrying passengers without a category and class rating when permitted by the aircraft's operating limitations. In 2004, the FAA amended § 61.31 to require persons to hold the appropriate category and class rating when carrying a passenger regardless of the aircraft's airworthiness certificate. The amendment also established a method to credit previous experience gained in an experimental aircraft to ensure pilots complied with the revised provisions.[262] Specifically, to ensure that pilots operating under regulations before the final rule change requiring appropriate category and class ratings complied with the revised provisions, the FAA added §§ 61.63(k) and 61.165(f), which is currently situated as §§ 61.63(h) and 61.165(g). These provisions permit certificated pilots who hold a recreational pilot certificate or higher but do not have a category and class rating to operate the experimental aircraft to apply for a category and class rating with the limitation ''experimental aircraft only'' and a designation for the make and model aircraft authorized to be operated. Pilots seeking this privilege are required to have logged at least 5 hours of PIC time in the same category, class, make, and model of aircraft issued an experimental certificate. The applicant is required to receive a logbook endorsement from an authorized flight instructor who has determined that they are proficient to act as PIC of the same category and class of aircraft.

Additionally, the FAA required the 5 hours of flight time to have been logged between September 1, 2004, and August 31, 2005. The FAA reasoned that the 5 hours of PIC time received within the 12-month window, as well as the endorsement from a flight instructor, ensures recent experience and necessary skills in the category and class of experimental aircraft that the applicant intends to operate. Upon satisfaction of these requirements, the FAA will issue the applicant a new pilot certificate with the additional category and class rating and the limitation ''experimental aircraft only'' without any further testing.

After more than 15 years since initial codification, the FAA anticipates that individuals that were operating under the pre-2004 requirements have already utilized §§ 61.63(h) and 61.165(g) to obtain a limited category and class rating. As a result, the FAA proposes to remove §§ 61.63(h) and 61.165(g). The FAA notes that these subsections would be removed upon the effective date of the final rule. Therefore, any certificate holders that have not yet obtained a limited category and class rating under §§ 61.63(h) and 61.165(g), but wish to do so, would have until that date to utilize the provisions.

3. ATP Privileges and Limitations (§ 61.167)

Section 61.167 prescribes the privileges and limitations for an ATP certificate holder. Currently, under § 61.167(a)(2), a person who holds an ATP certificate and has met the aeronautical experience requirements of § 61.159 or § 61.161 and the age requirements of § 61.153(a)(1) may instruct other pilots in air transportation service in accordance with the requirements set forth in § 61.167(a)(2)(i) through (iv). Section 61.159 contains the aeronautical experience requirements for an applicant seeking an ATP certificate with an airplane category and class rating, and § 61.161 contains the aeronautical experience requirements for an applicant seeking an ATP certificate with a rotorcraft category and helicopter class rating. Currently, because § 61.167(a)(2) references only §§ 61.159 and 61.161, the privileges for ATPs set forth in § 61.167(a)(2) do not extend to an ATP certificate holder who has met the aeronautical experience requirements for powered-lift in § 61.163.[263] As such, powered-lift ATPs may not instruct in accordance with § 61.167(a)(2)(i) through (iv).

As explained in section V.F of this preamble, § 61.3(d)(3)(ii) permits a person to instruct in accordance with an approved training program under part 135 without holding a flight instructor certificate, provided that person holds an ATP certificate with the ratings appropriate to the aircraft in which training is given. The FAA is therefore proposing to amend § 61.167(a)(2) to include a reference to the aeronautical experience requirements in § 61.163. This proposed amendment would ensure that persons who obtain an ATP certificate with the appropriate powered-lift ratings may instruct other pilots in air transportation service in powered-lift, consistent with what is permitted for persons who hold an ATP certificate with either airplane or helicopter ratings. The FAA notes that, under proposed § 194.205, the proposed change to § 61.167(a)(2) would not permit an ATP with powered-lift ratings to conduct training in the part 135 operator's airman certification curriculum proposed in § 194.243(a).

4. Second-in-Command Time in Part 135 Operations

In 2018, the FAA issued a final rule that amended § 135.99 to allow a certificate holder to receive approval of an SIC professional development program (SIC PDP).[264] An SIC PDP allows the certificate holder's pilots to log SIC time in certain operations [265] conducted under part 135 in an airplane or operation that does not otherwise require an SIC.[266] As described in that final rule, a comprehensive SIC PDP provides opportunities for beneficial flight experience that may not otherwise exist. Recognizing the benefits of that flight time, the FAA also amended §§ 61.159 and 61.161 to allow a pilot to credit SIC time logged under an SIC PDP towards certain flight time requirements for an ATP certificate with an airplane category or a rotorcraft category and helicopter class rating.[267] In the NPRM that preceded the 2018 final rule,[268] the

[262] Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft, Final Rule, 69 FR 44772, 44829 (Jul. 27, 2004). This amendment was adopted as § 61.31(k)(2)(iii)(B), but is currently codified as § 61.31(l)(2)(iii)(B). 74 FR 42499, 42548.

[263] Section 61.163 contains the aeronautical experience requirements for an applicant seeking an ATP certificate with a powered-lift category rating.

[264] Regulatory Relief: Aviation Training Devices; Pilot Certification, Training, and Pilot Schools; and Other Provisions final rule, 83 FR 30240 (Jun. 27, 2018).

[265] Under an SIC PDP, the aircraft must be either a multiengine airplane or a single-engine turbine-powered airplane. See 14 CFR 135.99(c)(2).

[266] Prior to the 2018 final rule, a person serving as SIC in a part 135 operation could log SIC time only if more than one pilot was required under the type certification of the aircraft or the regulations under which the flight was being conducted. 14 CFR 61.51(f)(2).

[267] Regulatory Relief: Aviation Training Devices; Pilot Certification, Training, and Pilot Schools; and Other Provisions: Final Rule, 83 FR 30240 (Jun. 27, 2018).

[268] Regulatory Relief: Aviation Training Devices; Pilot Certification, Training, and Pilot Schools; and

FAA acknowledged the value of pilot experience gained by airmen who have been properly trained to serve as SIC in the air carrier environment. In Public Law 111–216, Congress directed the FAA to ensure that applicants for an ATP certificate have received flight training, academic training, or operational experience that will prepare the pilot to, among other things, function effectively in a multipilot environment, adhere to the highest professional standards, and function effectively in an air carrier operational environment. The FAA determined that permitting pilots to credit SIC time logged under an SIC PDP, which provides an appropriate training and mentoring environment, towards the flight time requirements for ATP certification would support the congressional directive and provide an effective method to acquire experience for ATP certification. Additionally, the experience acquired under an SIC PDP would provide a strong foundational experience for the development of a professional pilot.

For the same reasons, the FAA concludes that a pilot should be able to credit SIC time logged under an SIC PDP towards an ATP certificate with a powered-lift category rating as is allowed for pilots applying for an ATP certificate with an airplane category or a rotorcraft category and helicopter class rating. Specifically, the FAA proposes to amend § 61.163 to add paragraph (c) to allow SIC time logged under an SIC PDP to be counted towards the total time as a pilot required by § 61.163(a) and the specific flight time requirements for ATP certification set forth in § 61.163(a)(1), (2), and (4) (*e.g.,* cross-country time, night flight time, and instrument flight time). A person may not credit the SIC time logged under an SIC PDP towards the powered-lift-specific flight time requirements of § 61.163(a)(3) because the aircraft operated under an approved SIC PDP must be a multiengine airplane or a single-engine turbine-powered airplane. The proposed amendment to § 61.163 would ensure that a commercial pilot can log SIC flight time acquired under a SIC PDP towards an ATP certificate with a powered-lift category rating in the same manner as currently allowed for an ATP certificate with an airplane category rating or a rotorcraft category and helicopter class rating.[269]

The FAA notes that the International Civil Aviation Organization (ICAO) currently has a standard for logging flight time to meet the standards for certificates and ratings that does not recognize the crediting of flight time when a pilot is not required by the aircraft certification or the operation under which the flight is being conducted. However, ICAO currently has only recommended practices, as opposed to standards, for minimum flight time requirements for powered-lift ratings. If these ICAO recommended practices become standards prior to the FAA's publication of a final rule, the pilots who rely on flight time logged under an SIC PDP to meet the requirements for an ATP certificate with a powered-lift category rating must have a limitation on their ATP certificates indicating that they do not meet the PIC aeronautical experience requirements of ICAO. This limitation may be removed when the pilot presents satisfactory evidence that they have met the new ICAO standards.[270] The FAA proposes to add paragraphs (d) and (e) to § 61.163 to include the requirement for the ICAO limitation and the requirements for removing the limitation, under the assumption that the ICAO recommendations for powered-lift will become the ICAO standards for powered-lift in the future. The FAA will reevaluate the status of ICAO's powered-lift experience provisions prior to issuing a final rule to determine whether the proposed rule language in § 61.163(d) and (e) are necessary.

5. References to Category and Class

The FAA has identified several regulations in part 61 that contain references to the category and class of aircraft. As previously explained, the FAA is not establishing classes of powered-lift. As a result, the requirements that must be met for the appropriate class of aircraft would present a problem for powered-lift pilots. For example, because a powered-lift pilot would hold a category rating but not a class rating, that pilot would not be able to satisfy requirements, such as § 61.3(e), that require the person to hold the appropriate category and class rating. Additionally, because there would be no classes of powered-lift, persons would be unable to satisfy the requirements for an aircraft, flight simulator, or FTD to represent the category and class of powered-lift. The FAA is therefore proposing to update the regulatory references to category and class throughout part 61 to make clear that the reference to class is only appropriate if the regulations require classes for the category of aircraft.[271] The following sections would be amended to reflect this change: §§ 61.3(e)(1) and (2), (f)(2)(i) and (ii), and (g)(2)(i) and (ii); 61.45(a)(1)(i) and (a)(2)(ii); 61.51(f)(2); 61.57(a)(1)(ii), (b)(1)(ii), and (g)(1) and (4); and 61.64(a)(1) and (g)(1).

The FAA has also identified numerous provisions in part 141 and its appendices that reference category and class of aircraft. The qualification requirements for chief flight instructor, assistant flight instructor, and check instructor contained in §§ 141.35(a)(1), 141.36(a)(1), and 141.37(a)(2)(ii) require that the person hold a commercial pilot certificate or ATP certificate and a current flight instructor certificate. For flight training, these certificates must contain the appropriate aircraft category, class, and instrument ratings (if required) for the category and class of aircraft used in the course. For checks and tests related to ground training, to be eligible to be designated as a check instructor, § 141.37(a)(3)(ii) requires the person to hold a current flight instructor certificate or ground instructor certificate with the ratings appropriate to the category and class of the aircraft used in the course.[272] Additionally, the course content contained in the appendices also references class of aircraft, which is inapplicable when a powered-lift is used in a course of training. The references to class of aircraft in these provisions pose the same issues as the references to class in part 61 for powered-lift pilots (*i.e.,* powered-lift pilots would be able to satisfy requirements for category ratings, but not class ratings).

However, the FAA has determined that a different approach would best address the references to class throughout part 141. The only regulatory requirements that reference

Other Provisions NPRM, 81 FR 29728 (May 12, 2016).

[269] This proposal would not enable a part 135 operator to seek approval of an SIC PDP in powered-lift. The FAA is not proposing changes to the aircraft requirements for an SIC PDP set forth in § 135.99(c).

[270] See Regulatory Relief: Aviation Training Devices; Pilot Certification, Training, and Pilot Schools; and Other Provisions NPRM, 81 FR 29728 (May 12, 2016).

[271] See 14 CFR 61.5(b) (prescribing the various ratings that are placed on a pilot certificate, other than student pilot, when an applicant satisfactorily accomplishes the training and certification requirements for the rating sought).

[272] The FAA recognizes that category and class ratings are not placed on a ground instructor certificate. Rather, pursuant to § 61.5(d), the FAA places basic, advanced and instrument ratings on a ground instructor certificate. Therefore, the requirement to hold the appropriate category and class ratings on an instructor certificate in § 141.37(a)(3)(ii) applies to persons who hold a flight instructor certificate. The FAA is not proposing any permanent amendments to part 141 in this rulemaking. Thus, the FAA is not proposing to update § 141.37(a)(3)(ii) at this time. However, the FAA may contemplate a clarifying amendment to § 141.37(a)(3)(ii) in a future rulemaking.

class are those qualification requirements discussed previously. The FAA proposes § 194.241, which would remove the qualification requirement to hold a class rating in §§ 141.35(a)(1), 141.36(a)(1), and 141.37(a)(2)(ii) and (a)(3)(ii) when a powered-lift is used in the course. Additionally, proposed § 194.241(a) and (b) would delineate the certificates and aircraft ratings a person must hold to be designated as a chief instructor, an assistant chief instructor, or a check instructor (for checks and tests that relate to flight training and ground training) when a powered-lift is used in the course. As discussed in section V.A of this preamble, due to the significant operational differences between each powered-lift, the FAA is not establishing classes of powered-lift but is instead requiring the PIC of a powered-lift to hold a type rating for the aircraft. Therefore, in delineating the ratings that must be held on the pilot certificate for persons seeking designation as a chief instructor, an assistant chief instructor, or a check instructor (for checks and tests that relate to flight training), the FAA proposes to add the requirement that a person must hold a powered-lift type rating.[273]

Other than the qualification requirements in §§ 141.35(a)(1), 141.36(a)(1), and 141.37(a)(2)(ii), the references to class in part 141 exist in the appendices. Each appendix contains content pertaining to a course of training for a certificate or rating. For the same reasons previously discussed, the FAA proposes § 194.249(b) that would make the references to class contained in course content in the appendices to part 141 inapplicable when a powered-lift is used for a course of training. This SFAR provision would accurately and comprehensively resolve each problematic reference to class in the appendices to part 141. Additionally, it would provide the FAA time to assess which permanent changes will be needed in the appendices to part 141 to accommodate the use of powered-lift in the certification and rating courses long-term.

In addition to the class references identified in parts 61 and 141, there are several class references throughout subpart K of part 91 and parts 135 and 142 that pose challenges for powered-lift pilots, program managers, training centers, and other affected persons and entities. Under subpart K of part 91, § 91.1055(b)(2) references class of aircraft. Section 91.1055(b)(2) allows deviation from flight-time hour requirements for PICs and SICs operating program flights if an existing program manager adds a new category and class of aircraft to its fleet not used before in its operation. In the absence of classes for powered-lift, fractional ownership program managers could not utilize this deviation authority. To remedy the discrepancy posed by the reference to the aircraft class requirement in this section, the FAA proposes § 194.245(b) to clarify that this reference to class is inapplicable when a powered-lift is used for the operation under subpart K of part 91.

Under part 135, §§ 135.4(b)(2), 135.247(a)(1) and (2), and 135.603 also reference class of aircraft. Specifically, § 135.4(b)(2) closely aligns with the text of § 91.1055(b)(2)—allowing deviation from certain crewmember experience requirements if the certificate holder adds to its fleet a new category and class of aircraft not used before in its operation. Section 135.247(a)(1) and (2) require a PIC in an aircraft carrying passengers to make three takeoffs and landings, and three additional takeoffs and landings for operations after sunset and before sunrise, as the sole manipulator of the flight controls in an aircraft of the same category, class, and type, if a type rating is required, in which that person is to serve. Finally, § 135.603 requires the PIC of a helicopter air ambulance operation to meet the requirements of § 135.243 and to hold either a helicopter instrument rating or an ATP certificate with a category and class rating for that aircraft, not limited to VFR.[274]

These class references would similarly pose challenges for part 135 certificate holders. Therefore, for the same reasons as described above, the FAA proposes § 194.249(a) to clarify that these references to class are inapplicable when a powered-lift is used for the operation under part 135.

Lastly, under part 142, §§ 142.11(d)(2)(ii), 142.49(c)(3)(iii), 142.53(b)(1), and 142.65(b)(1) reference class of aircraft. As a result, training center certificate holders and instructors would be unable to apply for issuance or amendment of training specifications, comply with instructor and certificate holder privileges and limitations, or satisfy the instructor training and testing requirements. As a result, the FAA proposes § 194.249(c) to clarify that references to class of aircraft in these sections do not apply when operating powered-lift or flight simulation devices representing powered-lift under part 142.

I. Part 135 Pilot Qualifications

1. Statement of the Issue & Introduction

On December 7, 2022, the FAA proposed revisions to 14 CFR parts 110 and 119 to enable powered-lift operations in part 135.[275] The potential introduction of powered-lift in part 135 operations requires the FAA to propose updates to current crewmember training and qualification requirements in that part.[276] The current regulatory framework in subparts A, E, G, and H of part 135 was initially codified without contemplation of powered-lift operations. Unlike part 61, the 1997 final rule that first introduced powered-lift in 14 CFR did not include updates to part 135.[277] Such changes were unnecessary due to the fact that powered-lift could not operate in part 135. Consequently, the FAA's current proposal to amend part 135 includes introducing powered-lift into the regulatory training and qualification paradigm, rather than simply updating or modifying existing powered-lift requirements.

To integrate the operation of these unique aircraft into the existing part 135 crewmember training and qualification structure, the FAA proposes a two-fold amendatory framework, proposing both permanent regulatory amendments and temporary SFAR requirements. The FAA's proposed SFAR requirements are intended to facilitate the training and qualification of the initial groups of part 135 pilots, flight instructors, and check pilots. In many instances, the training and qualification requirements applicable to airplane pilots in part 135 would also be applied to powered-lift

[273] This proposed requirement provides additional clarity regarding the need for these instructors to hold a powered-lift type rating to receive these designations. Under the part 141 regulations discussed in this section and the proposed SFAR provision of § 194.241, to be designated a chief instructor, assistant chief instructor, or a check instructor (for checks and tests that relate to flight training), a current flight instructor certificate must be held. A person who holds a flight instructor certificate is subject to the limitations contained in § 61.195. Specifically, § 61.195(e) prohibits a flight instructor from giving training in an aircraft that requires the PIC to hold a type rating unless the flight instructor holds a type rating for the aircraft on their pilot certificate for that aircraft. Because a PIC of a powered-lift would be required to hold a type rating, to provide flight training in a powered-lift, the flight instructor would be required to hold a type rating for the powered-lift as well.

[274] The FAA proposes that § 135.603 apply to powered-lift conducting operations in accordance with subpart L of part 135 under proposed § 194.308(n). *See* VI.D.1.vi (explaining rationale for applying § 135.603 to powered-lift operations).

[275] Update to Air Carrier Definitions NPRM, 87 FR 74995.

[276] Section VI of this NPRM sets forth the proposed changes to the operational rules for powered-lift in parts 91 and 135.

[277] Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules, 62 FR 16220 (Apr. 4, 1997).

pilots.[278] Due to the energy or fuel consumption while operating vertically in a powered-lift, the FAA anticipates that powered-lift will quickly transition to horizontal flight utilizing the wings like an airplane to afford powered-lift a much larger operational range and faster speeds to optimize operational capabilities. Resultantly, powered-lift pilots must possess many of the same skills and experience as their airplane pilot counterparts.[279]

At the same time, some of the FAA's proposals recognize the operational differences in the capability of powered-lift and the associated challenges of integrating a new category of aircraft into the NAS for civilian use. Given these known operational distinctions, there are instances where existing airplane or helicopter training and qualification pilot rules do not readily apply. For example, some powered-lift flight control designs differ from both conventional airplane and helicopter controls, necessitating specific training and qualification requirements to ensure proper pilot handling and safety during flight. In those cases where neither airplane nor helicopter training and qualification rules fit the operational capabilities of powered-lift, the FAA proposes new temporary or permanent requirements designed to facilitate the readiness of powered-lift pilots to safely integrate into the NAS. The FAA's SFAR proposals and permanent amendments seek to balance the demand for safety in part 135 operations while recognizing the operational uniqueness of powered-lift and encouraging the integration of these new aircraft operations under this part.

2. Relevant History & Background

Part 135 prescribes operating requirements for commuter and on-demand operations. Specifically, subpart A prescribes the operations and personnel that are affected by the part, and subpart E details flight crewmember qualification requirements. Subparts G and H set forth the testing and training requirements for crewmembers.

On October 10, 1978, the FAA substantially amended the part 135 regulations that governed commuter air carriers and on-demand air taxi operators.[280] These regulations were enacted to update the requirements of part 135 in response to anticipated growth in operations stemming from legislative efforts to deregulate the airline industry.[281] In particular, the FAA anticipated the passage of the Airline Deregulation Act of 1978 and sought to update its regulations prior to the Act's codification.[282] In that Act, Congress mandated that the FAA modify its regulatory framework to ensure commuter air carriers afford passengers the same level of safety as that granted to passengers travelling on other certificated carriers.[283] As a result of the FAA's prior rulemaking in anticipation of this legislation, no further amendments were necessary after the Act's promulgation.[284]

In 1980, the FAA updated the part 135 operating experience requirements again, explaining that fatal accidents continued to occur even after the FAA's 1978 amendments.[285] Pilot training and testing requirements were further refined in 1995 to ensure the training, testing, and currency requirements met the expectations of safety for commercial operations.[286] To effectuate this goal, the FAA's 1995 rulemaking amended the training and checking requirements under part 135 to align with the more rigorous and comprehensive part 121 standards.[287]

The FAA's prior amendments to part 135, and its continued efforts to enhance the level of safety required to operate under that part, inform its present proposals. In proposing the SFAR requirements and permanent amendments to accommodate the entry of powered-lift into operations under part 135, the FAA maintains its longstanding commitment to ensuring safety and mitigating the risk of commuter and on-demand accidents and incidents. In this regard, the FAA's SFAR and permanent proposals for crewmember training and qualification programs under part 135 are intended to provide an equivalent level of training, checking, and testing for powered-lift operations as those imposed for airplanes and helicopters.

3. Section 135.3—Rules Applicable to Operations Subject to This Part

Section 135.3 prescribes the rules that apply to persons conducting operations under part 135. Specifically, § 135.3(b) is specific to commuter operations[288] under part 135 and requires certificate holders conducting such operations with airplanes for which two pilots are required by the aircraft type certification to comply with the training and qualification requirements in subparts N and O of part 121 instead of the training and qualification requirements for part 135. When § 135.3(b) was proposed in 1994, the FAA sought to reduce accidents and incidents related to human performance in commuter operations.[289] To facilitate more comprehensive training requirements and alleviate the prevalence of human error, the FAA's 1995 final rule imposed the subpart N and O training requirements that are reflected in the current regulation.[290]

[278] For example, the proposed permanent amendments to § 135.243(a)(3) and (b)(5) are similar to the PIC qualifications for airplane pilots in § 135.243(a)(1) and (b)(3).

[279] The FAA recently published a final rule permitting military pilots and former military pilots to credit flight time in horizontal flight in powered-lift toward the flight time requirements for an ATP certificate with an airplane category rating. Commenters to that rule estimated that military pilots operate powered-lift in horizontal flight between 80–99% of the time. Recognition of Pilot in Command Experience in the Military and Air Carrier Operations, 87 FR 57580 (Sep. 21, 2022).

[280] Regulatory Review Program; Air Taxi Operators and Commercial Operators, 43 FR 46742, 46783 (Oct. 10, 1978).

[281] See Air Taxi Operators and Commercial Operators; Commuter Pilot in Command Operating Experience Requirements, 45 FR 7540 (Feb. 4, 1980) (explaining 1978 update to part 135 regulations).

[282] *Id.*

[283] Airline Deregulation Act of 1978, Public Law 95–504, 49 U.S.C. 1301 (October 24, 1978).

[284] Air Taxi Operators and Commercial Operators; Commuter Pilot in Command Operating Experience Requirements, 45 FR 7540 (Feb. 4, 1980).

[285] *Id.* (citing 13 fatal accidents in commuter air carrier operations during 1979).

[286] Commuter Operations and General Certification and Operations Requirements, 60 FR 65940, 65941 (Dec. 20, 1995).

[287] *Id.*

[288] Under part 110, ''commuter operation'' is defined as any scheduled operation conducted by any person operating one of the following types of aircraft with a frequency of operations of at least five round trips per week on at least one route between two or more points according to the published flight schedules: airplanes, other than turbojet-powered airplanes, having a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or rotorcraft. The FAA has proposed in a related rulemaking to revise this definition to include powered-lift, other than turbojet-powered powered-lift, that have a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less. 87 FR 74995 (Dec. 7, 2022). The FAA's current proposal corresponds to the regulations proposed in the Update to Air Carrier Definitions NPRM enabling powered-lift operations in part 135. Consistent with the Administrative Procedure Act, the FAA will consider all significant comments received in response to the Update to Air Carrier Definitions NPRM and adjust both proposals as necessary based on public comment.

[289] Air Carrier and Commercial Operator Training Programs, 59 FR 64272 (Dec. 13, 1994).

[290] On December 20, 1995, the FAA published two final rules both addressing operations under parts 121 and 135. One rule established new part 119 and required certain commuter operations that had been conducted under part 135 (*i.e.,* scheduled passenger-carrying operations in airplanes that have passenger-seating configurations of 10 to 30 seats) to be conducted under part 121. See 60 FR 65832 (Dec. 20, 1995). The second rule required operators that conduct commuter operations with airplanes for which two pilots are required by aircraft type certification rules to train and qualify their pilots using the requirements in subparts N and O of part 121 rather than the training and qualification requirements in part 135. See 60 FR 65940 (Dec. 20, 1995).

In comparing the two training regimes, the FAA noted that, compared to part 121 training regulations, part 135 training rules do not provide a balanced mix of training and checking because part 135 allows the repeated substitution of flight checks in lieu of training. The FAA further stated that part 121 training and qualification regulations require both recurrent training and flight checks. Subsequently, the FAA explained that the more comprehensive training and checking paradigm imposed under part 121 for these part 135 commuter operations, instead of the requirements maintained in subparts E, G, and H of part 135, was necessary to enhance public and passenger safety.[291]

The FAA finds that the same safety standard imposed in § 135.3(b) for commuter operations involving airplanes for which two pilots are required by type certification should apply to powered-lift requiring two pilots by type certification. Notably, however, subparts N and O of part 121 are multiengine airplane specific, and, at this time, the FAA is not amending part 121 to accommodate powered-lift operations. In the absence of amending subparts N and O to accommodate powered-lift-specific training and checking, appendices E (Flight Training Requirements) and F (Proficiency Check Requirements) to part 121 would mandate that a powered-lift flightcrew perform some airplane-specific tasks that are incongruent with powered-lift operational capabilities.[292]

For example, under appendix E to part 121, powered-lift PICs would be required to complete flight training on zero-flap landings. However, some powered-lift coming to market may not be designed with flaps and, therefore, PICs operating these powered-lift could not complete the training required under subpart N. Moreover, powered-lift may be capable of performing additional tasks, such as running or roll-on landings, not contemplated in appendices E and F to part 121. Thus, if subparts N and O were applied to powered-lift as written, PICs could be insufficiently trained and checked on some maneuvers that powered-lift possess the operational capability to conduct.

For each of these reasons, instead of applying training and qualification rules focused on multiengine airplanes to powered-lift, the FAA is proposing § 194.247(b) to create an alternative means of compliance with § 135.3(b) for certificate holders conducting commuter operations under part 135 with powered-lift requiring two pilots by type certification. For these operations, the FAA proposes that certificate holders comply with subpart Y of part 121, the Advanced Qualification Program (AQP). This proposal will enable a pathway for these commuter operations in powered-lift to meet a higher level of safety than meeting the training and qualification requirements in subparts G and H of part 135 without imposing the inapt multiengine airplane requirements of subparts N and O on powered-lift commuter operators in part 135.

The proposal for powered-lift pilots to comply with the AQP requirements accords with the FAA's intent when codifying the original rule requiring certificate holders operating airplanes requiring two pilots by type certification in part 135 commuter operations to comply with subparts N and O of part 121. Principally, the 1995 final rule mandated that certain part 135 commuter operators comply with subparts N and O of part 121 because the part 135 training requirements imposed a lesser standard, allowing flight checks to be substituted for required training.[293] The FAA finds that, in lieu of modifying subparts N and O of part 121 to accommodate the integration of certain powered-lift commuter operations, AQP can be utilized to ensure a similarly rigorous safety standard for training and checking is maintained.

For example, AQP employs scenario-based training and evaluations and integration of safety program data to maintain the most effective training for each certificate holder. Unlike traditional aviation training, AQP uses data-informed and data-driven improvement. It encourages innovation in the methods and technology that are used during instruction and evaluation. AQP allows for customized training to the certificate holder's unique demographic and flight operation while integrating crew resource management and evaluating both the individual and crew's performance. In addition, AQP provides a trained-to-proficiency model that uses planned hours, similar to the rigorous training and checking paradigm imposed under subparts N and O of part 121.

While the requirements delineated in the AQP are not identical to the checking and training standards imposed in subparts N and O of part 121, the use of an AQP will exceed the part 135 commuter training and checking standards that would otherwise apply. As a result, the FAA proposes the use of AQP to promote a higher safety standard than that imposed under part 135, to more closely align with the training and checking required under subparts N and O of part 121. The FAA notes that the proposal to utilize an AQP is temporary. As additional information becomes available on the training and checking necessary to effectuate safety for certain part 135 commuter powered-lift operations, the FAA will revise this standard as appropriate. In short, the FAA proposes the AQP requirement to elevate the existing part 135 training and checking standards, while recognizing its use as a temporary measure until additional information is available to facilitate a permanent solution tailored to the most appropriate training and checking for pilots in commuter operations involving powered-lift for which two pilots are required by type certification.

In addition, the 1995 final rule that imposed this requirement for airplanes emphasized the ''greater flexibility'' afforded by part 121 and the ''more effective mix of training and checking activities'' available.[294] Like subparts N and O, the AQP framework increases flexibility in training, including the approval of alternative methods for training, certifying, and ensuring the competency of crewmembers and other personnel.[295] The FAA reasons that the AQP—a program designed to accommodate innovative and advancing technology [296]—provides an appropriate alternative pathway to ensure quality training and checking of powered-lift pilots while they are currently unable to follow subparts N and O in part 121 as prescribed for airplanes in § 135.3(b).

For each practical test requirement of part 61 or regulatory requirement of part 121 or 135 that is replaced by an AQP, subpart Y requires that the certificate holder detail how the AQP curriculum provides an equivalent level of safety to the part 135 training and qualification requirements.[297] AQP uses performance

[291] Air Carrier and Commercial Operator Training Programs, 59 FR 64272, 64272–73 (Dec. 13, 1994).

[292] In accordance with § 121.424 of subpart N, flight training must include at least the maneuvers and procedures specified in appendix E to part 121. In accordance with § 121.441 of subpart O, proficiency checks must include at least the maneuvers and procedures specified in appendix F to part 121.

[293] See Commuter Operations and General Certification and Operations Requirements, 60 FR 65832, 65940 (Dec. 20, 1995).

[294] Commuter Operations and General Certification and Operations Requirements, 60 FR 65832, 65940–41 (Dec. 20, 1995).

[295] See 14 CFR 121.901(a).

[296] Advanced Qualification Program, 70 FR 54809, 54810 (Sep. 16, 2005).

[297] 14 CFR 121.909(b).

data to continually improve the training and qualification program. All approvals are conducted jointly between the certificate management office and the Air Transportation Division with input from all the members of the extended review team (ERT). The ERT includes subject matter experts that are not frequently available to assist Principal Operations Inspectors on training program approvals and revisions. For each of these reasons, the FAA finds that it can ensure adequate oversight and safety for operators in which an AQP is required for powered-lift and maintain a similar level of safety while accommodating the emerging technology and operational uniqueness of powered-lift.

In addition to proposing that powered-lift commuter operations with two pilots required by type certification comply with AQP in subpart Y of part 121, the FAA also proposes in § 194.247(b)(2) that these PICs receive training, instruction and facilitated discussion on leadership and command and mentoring as part of their initial, recurrent, and upgrade ground training, similar to the initial, recurrent, and upgrade ground training requirements that govern airplane commuter operations. Proposed § 194.247(b)(2)(ii) requires that mentoring training include techniques for instilling and reinforcing the highest standards of technical performance, airmanship, and professionalism in newly hired pilots. This leadership and command and mentoring training would be required in recurrent ground training for PICs every 36 calendar months. Additionally, proposed § 194.247(b)(4) includes requirements for initial and upgrade flight training for PICs to contain sufficient scenario-based training incorporating crew resource management and leadership and command skills, to ensure the pilot's proficiency as PIC. The FAA includes these additional training requirements to equate the training received by powered-lift pilots under subpart Y of part 121 to that required for PICs in airplane commuter operations in which two pilots are required by type certification.[298]

The FAA reasons that the use of an AQP, coupled with the additional proposed requirements in the SFAR, will provide powered-lift pilots with the knowledge and skills that are required for a similar level of safety. In short, the FAA seeks to balance the unique training, checking, and operational characteristics associated with powered-lift while maintaining similar training and checking requirements as that provided in subparts N and O of part 121. The FAA proposes to effectuate this intent through the AQP in subpart Y of part 121, enabling a flexible and customizable training option for pilots of powered-lift in which two pilots are required by type certification.[299] Additional information on the safety benefits and suggested compliance mechanisms for the AQP are available in the FAA's AQP Advisory Circular No. 120–54A.

4. Section 135.4—Applicability of Rules for Eligible On-Demand Operations

Section 135.4 prescribes two-pilot flight crew experience and pairing requirements for eligible on-demand operations conducted under part 135. As currently written, § 135.4 applies to powered-lift, with the exception of § 135.4(a)(3), which specifies its applicability to fixed-wing aircraft. Section 135.4(a)(3) prescribes the operating limitations for an SIC of fixed-wing aircraft that has fewer than 100 hours of flight time as SIC in the aircraft make and model, and if a type rating is required, in the type aircraft being flown. If the SIC does not have the requisite flight time and the PIC is not an appropriately qualified check pilot, the PIC is required to make all takeoffs and landings in the situations that are detailed in paragraphs (a)(3)(i) and (ii). The FAA requires the PIC to make all takeoffs and landings in the situations listed in paragraphs (a)(3)(i) and (ii) because safety could be compromised if flown by a lesser-experienced SIC.[335]

Powered-lift have the potential for increased complexity of operation over fixed-wing aircraft during the approach and landing phases of flight, and this can especially hold true during the situations that are listed in paragraphs (a)(3)(i) and (ii). To ensure that safety is not compromised during the approach and landing phases of flight, a certain amount of familiarity with an aircraft is required. The FAA maintains that the familiarity required for SICs should not be reduced for powered-lift as compared to fixed-wing aircraft. The crew pairing and operational limitations required by this section are designed to ensure the flightcrew possess the necessary familiarity and experience to safely operate in less-than-ideal conditions or when using the provisions of § 135.385(f). Therefore, to ensure the highest level of safety for powered-lift, the FAA is proposing in § 194.309 that current § 135.4(a)(3) would apply to powered-lift under the SFAR.

5. Section 135.243—Pilot in Command Qualifications

Section 135.243 prescribes qualifications for pilots serving as PIC in certain passenger-carrying part 135 operations,[300] passenger and cargo flights under VFR,[301] and passenger and cargo flights under IFR,[302] which include minimum certificates, ratings, and hours of pilot time, cross-country time, night flight time, and, if applicable, actual or simulated instrument time. A portion of the PIC requirements in § 135.243 apply to all aircraft.[303] Therefore, these minimum requirements that apply to PICs of all aircraft in part 135 will also apply to PICs of powered-lift in part 135 when powered-lift operations under part 135 are enabled.

i. Section 135.243(a)

Section 135.243(a) prescribes the general requirements for a person to serve as PIC in certain passenger-carrying operations. Specifically, to serve as PIC in a passenger-carrying operation of (1) a turbojet airplane, (2) an airplane with a passenger-seat configuration of 10 seats or more, or (3) a multiengine airplane in a commuter operation, § 135.243(a)(1) requires a person to hold an ATP certificate with appropriate category and class ratings and, if required, an appropriate type rating for that airplane.[304] Similarly, § 135.243(a)(2) requires a person to hold an ATP certificate, appropriate type ratings, and an instrument rating to serve as PIC in passenger-carrying operations for helicopters in scheduled interstate air transportation within the 48 contiguous states.

The FAA first proposed that certain operations under part 135 should require an ATP certificate in 1977.[305] In

[298] As previously described, pilots serving in airplane commuter operations in which two pilots are required by type certification must be trained in accordance with subpart N of part 121. Leadership and command and mentoring training is required by subpart N of part 121 during PIC initial, upgrade, and recurrent training. See 14 CFR 121.420, 121.426, and 121.427.

[299] The training requirements in subparts E, G, and H of part 135 will apply to pilots of powered-lift in which one pilot is required by type certification.

[300] 14 CFR 135.243(a).

[301] 14 CFR 135.243(b). See also 14 CFR 135.243(d), which provides that § 135.243(b)(3) does not apply in certain conditions provided in § 135.243(d)(1) through (7).

[302] 14 CFR 135.243(c).

[303] 14 CFR 135.243(b)(1) and (2) and (c)(1) and (2).

[304] By definition, a commuter operation is a passenger-carrying operation. See 14 CFR 110.2 (defining scheduled operation and commuter operation).

[305] Part 135 Regulatory Review Program; Air Taxi Operators and Commercial Operators, 42 FR 43490, 43491 (Aug. 29, 1977).

that NPRM, the requirement to hold an ATP certificate to act as PIC in some part 135 operations was based in part on operational complexity and the number of persons carried. The FAA reasoned that the ATP certificate would provide a level of safety more comparable to that provided by part 121. In the 1978 final rule, the FAA concluded that there would be increased safety benefits by requiring PICs of the more complex, passenger-carrying operations under part 135 to hold an ATP certificate.[306]

Currently, § 135.243(a) applies only to airplane and helicopter operations. This paragraph does not prescribe higher certificate requirements for PICs in certain passenger-carrying powered-lift operations because powered-lift cannot yet operate in part 135. Consequently, under the current regulatory framework of § 135.243, the requirements to serve as PIC of a powered-lift in certain passenger-carrying operations would be determined under paragraphs (b) and (c) based on whether the operation is conducted under VFR or IFR. Under those provisions, a PIC of a powered-lift would be required to hold only a commercial pilot certificate with a powered-lift category rating (and a type rating, if applicable).[307] Without a regulatory change, there would be less stringent PIC requirements for powered-lift in more complex, passenger-carrying operations than those required to serve as PIC of an airplane or helicopter.

To accord the qualification requirements for PICs in powered-lift with those imposed for airplanes and helicopters, the FAA proposes to permanently add paragraph (a)(3) to § 135.243. This paragraph proposes to require the PIC of a powered-lift to hold an ATP certificate with a powered-lift category rating and an appropriate type rating not limited to VFR for that powered-lift, when serving as PIC in: (1) on-demand passenger-carrying turbojet-powered powered-lift operations; (2) on-demand operations in a powered-lift having a passenger seating configuration, excluding crewmember seats, of ten or more; and (3) powered-lift commuter operations other than turbojet-powered powered-lift (hereinafter collectively referred to as ''certain part 135 commuter and on-demand powered-lift operations'').

In support of the proposed ATP certificate requirement, the FAA proffers four reasons. First, as described in the recently published Update to Air Carrier Definitions NPRM, turbojet-powered powered-lift may be used in transoceanic, long range and international operations, similar to turbojet-powered airplanes. For this reason, the Update to Air Carrier Definitions NPRM proposes that the same part 121 provisions that apply to scheduled turbojet-powered airplanes should apply to scheduled turbojet-powered powered-lift to ensure consistency in applying the appropriate risk mitigation measures for operations of turbojet-powered aircraft.[308] To maintain consistency of risk mitigations, the FAA proposes that PICs of on-demand passenger-carrying turbojet-powered powered-lift operations must hold an ATP certificate consistent with the requirement for PICs of on-demand passenger-carrying turbojet airplane operations. At present, the FAA does not anticipate the integration of turbojet-powered powered-lift into the civilian market.

Second, the FAA's proposed requirement for powered-lift PICs to hold an ATP certificate and type rating for on-demand operations involving ten or more passenger seats aligns with the rationale for prescribing this requirement for airplane PICs. When codifying this requirement for airplanes, the FAA sought to accommodate additional operational factors that were not initially contemplated for airplane design.[309] The FAA reasoned that airplane operations with 10 or more passenger seats were operating near or over maximum certificated takeoff weight (MCTW) of 12,500 pounds, and that additional airworthiness requirements in part 23 would need to ensure the airworthiness equivalent to aircraft with a type certification of 12,500 pounds. Changes in part 23 differentiated small aircraft to those limited to 9 seats or less, and larger aircraft as those with at least 10 seats or weighing over 12,500 pounds. Similar to type-certificated aircraft that were over 12,500 pounds, the airplanes that had 10 seats or more were larger, flew for a longer duration of time, carried more people, had MCTW at or over 12,500 pounds, required more robust pilot training and certification, and had to comply with more stringent airworthiness requirements.

The rationale in support of these requirements for PICs of airplanes involving ten or more passenger seats applies equally to powered-lift. The FAA expects that on-demand operations involving powered-lift with ten or more passenger seats will also involve larger aircraft that fly for a longer duration of time and have the capacity to carry more people. Thus, the FAA proposes that PICs in on-demand operations piloting powered-lift that possess ten or more passenger seats meet similar certification requirements as those imposed for airplane PICs in these operations.

Third, powered-lift will share many operational similarities as multiengine airplanes and, therefore, a similar certification and type-rating requirement is necessary to ensure safety in powered-lift commuter operations. For example, like powered-lift, multiengine airplanes have more complicated and complex operating systems, additional gauges and differing cockpit setups, more advanced aerodynamics, operate at a faster speed and higher altitudes, and require more pilot training to handle normal operations and emergency situations.

When the FAA codified the certification requirements for multiengine airplanes under § 135.243(a)(1), it explained that these credentials were necessary because the requirement hinged on the complexity of aircraft that were currently operating under part 135 and their respective passenger-carrying capability.[310] Like the requirements imposed for multiengine airplanes, increased safety benefits will be provided by requiring PICs of more complex operations under part 135 to hold an ATP certificate. In part, powered-lift PICs will also be expected to have more robust knowledge and training to operate in complex environments to ensure the greatest level of safety.

Fourth, and relatedly, the operational environment that powered-lift PICs must navigate for commuter operations necessitates that all pilots possess a background of training and experience that allows them to adapt to complex environments when encountering varying operating conditions. Specifically, part 135 commuter powered-lift operations will often be conducted under IFR in high-traffic areas with greater frequency involving complex aircraft, requiring precision handling and skilled maneuvers to navigate these complex and challenging

[306] Regulatory Review Program; Air Taxi Operators and Commercial Operators, 43 FR 46742, 46772 (Oct. 10, 1978).

[307] Currently, § 135.243 does not prescribe an instrument rating requirement for powered-lift PICs. Instead, § 135.243(b) requires an instrument rating for PICs of airplanes and helicopters conducting VFR operations. However, § 61.3(e) requires a PIC operating in IFR to hold an instrument rating, including the PIC of a powered-lift.

[308] Update to Air Carrier Definitions, NPRM, 87 FR 74995 (Dec. 7, 2022).

[309] Airworthiness Standards: Reciprocating and Turbopropeller Powered Multiengine Airplanes, 43 FR 46742, 46734 (Oct. 10, 1978).

[310] Regulatory Review Program; Air Taxi Operators and Commercial Operators, 43 FR 46742, 46783 (Oct. 10, 1978).

operational environments. The ATP certificate requirement ensures that powered-lift PICs obtain knowledge of the skills, aptitudes, airmanship, and suitability through additional aeronautical experience, to effectively serve as PIC in these environments while also meeting the public interest and safety expectations. These certificate requirements ensure that powered-lift PICs accumulate additional flight time to develop the expertise necessary to maintain the higher level of safety required to operate under part 135 commuter powered-lift operations. The circumstances in which a powered-lift PIC must possess an ATP certificate and type rating not limited to VFR are similar to those imposed for airplane pilots.

Next, in addition to holding an ATP certificate, proposed § 135.243(a)(3) also requires that powered-lift PICs hold a type rating for the powered-lift flown, not limited to VFR. Under the VFR-only type rating proposal discussed in section V.H of this preamble, pilots can opt to take their instrument rating practical test within two calendar months from the month in which they passed the type rating practical test in a powered-lift. Despite this testing flexibility, the FAA is proposing not to allow a PIC with a powered-lift VFR-only type rating to serve in part 135 operations including those operations in § 135.243(a). As explained further in the subsequent section, the skills and experience required for an instrument rating are necessary to ensure safety in part 135 operations. The instrument rating ensures that PICs of powered-lift possess the proper training, experience hours in simulated and actual instrument conditions, and operational knowledge to safely conduct flight in operating environments where pilot error can be immediately critical, such as in inadvertent instrument conditions or areas of lower visibility.

In proposing this requirement, the FAA also notes its corresponding proposed permanent amendment to § 61.31(a), requiring the PIC in powered-lift operations to hold a type rating. Because the FAA proposes a permanent amendment to codify the type-rating requirement for powered-lift pilots under part 61, the FAA also proposes that its amendment to § 135.243(a) be permanent, rather than temporary. To promote consistency between the requirements for certain airplane, helicopter, and powered-lift PICs, and congruency between the requirements of parts 61 and 135, the FAA proposes to permanently add § 135.243(a)(3) to codify the type-rating requirement for PICs of powered-lift during certain part 135 commuter and on-demand powered-lift operations.

As the FAA collects additional data and information throughout the SFAR period, it may further evaluate the requirements currently proposed. For example, the FAA expects to gather data regarding the industry standardization of powered-lift cockpit setup and a more robust understanding of powered-lift operational capabilities. When this information becomes available, the FAA may propose subsequent amendments to modify the certification standards for powered-lift PICs under proposed § 135.243(a)(3).

The FAA also notes that, with powered-lift newly entering the civilian market, PICs may be unable to initially meet the flight time and experience requirements for an ATP certificate.[311] In turn, powered-lift PICs may not immediately possess the credentials necessary to participate in certain part 135 commuter operations and on-demand powered-lift operations. If a powered-lift PIC does not satisfy the ATP certificate requirements, they would be limited to conducting part 135 on-demand operations with non-turbojet-powered powered-lift containing less than 10 passenger seats, until the ATP certificate requirements are satisfied.

As PICs gain flight time in on-demand operations, they can obtain the experience necessary to satisfy the ATP certificate requirements. At most, the FAA expects that powered-lift PICs will gain the necessary flight time and experience to qualify for an ATP certificate within a few months,[312] causing a minimal delay to integration of powered-lift into the full part 135 commuter and on-demand framework. This marginal delay in enabling full part 135 operations is necessary to ensure pilots conducting certain complex, passenger-carrying operations possess the appropriate experience to safely serve in this capacity.

Lastly, the FAA notes that, in 2011, the FAA transferred the definitions contained in § 119.3 to a new part 110.[313] However, the FAA did not revise the corresponding references in § 135.243(a)(1) or § 135.244(a) at that time. These sections both reference part 119 for the definition of ''commuter operation.'' Therefore, the FAA proposes a permanent change to replace the reference to ''part 119'' with ''part 110'' in §§ 135.243(a)(1) and 135.244(a).

ii. Section 135.243(b) and (c)

Section 135.243(b) and (c) establish the minimum pilot certificate, ratings, and flight time that a PIC must have when conducting part 135 VFR operations and part 135 IFR operations, respectively, except as specified in § 135.243(a). Specifically, to serve as PIC of an aircraft under VFR or IFR, a person must have at least a commercial pilot certificate with appropriate category and class ratings and, if required, an appropriate type rating for that aircraft under § 135.243(b)(1) and (c)(1). Paragraphs (b)(2) and (c)(2) prescribe the minimum flight hour requirements for serving as a PIC under VFR and IFR. The experience, certificate, ratings, and flight time requirements delineated in § 135.243(b)(1) and (2) and (c)(1) and (2) apply generally to pilots of an aircraft conducting operations under VFR and IFR. Therefore, these requirements will apply to PICs of powered-lift in part 135, and the FAA proposes only minor edits to paragraphs (b)(1) and (c)(1) to include reference to a powered-lift-specific type rating not limited to VFR.

Section 135.243, paragraphs (b)(3) and (4) and (c)(3) and (4), however, prescribe airplane- and helicopter-specific requirements for instrument ratings. The regulation does not include corresponding requirements detailing when powered-lift PICs must hold an instrument rating or ATP certificate when conducting VFR or IFR operations.[314] As a result, the FAA proposes to add new paragraphs (b)(5) and (c)(5) to impose parallel permanent requirements for powered-lift operations under VFR and IFR. Proposed paragraph (b)(5) would require the PIC of a part 135 VFR operation in a powered-lift to hold an instrument-powered-lift rating or an ATP certificate for the powered-lift category. Proposed paragraph (c)(5) would require the PIC of a part 135 IFR operation in a powered-lift to hold an

[311] As noted in section V.F of this preamble, the FAA anticipates that pilots will not initially be able to meet the 250 hours in a powered-lift as a PIC, or as a SIC performing the duties of a PIC under the supervision of a PIC, or any combination thereof.

[312] In reaching this conclusion, the FAA reasons that, if all other aeronautical experience and regulatory requirements are met, it would take an additional 200 hours of flight time as PIC in a powered-lift to qualify for an ATP certificate. The FAA estimates that pilots may fly, on average, 50 hours a month. In estimating 50 hours a month, it would take approximately four months to satisfy the powered-lift specific flight time requirement for an ATP certificate.

[313] Operations Specifications, 76 FR 7482, 7483 (Feb. 10, 2011).

[314] As discussed in section V.J of this preamble, a person must hold an instrument rating to apply for an ATP certificate. As such, an ATP certificate itself is evidence of an instrument rating. Therefore, a pilot may hold an instrument rating on a commercial pilot certificate or an ATP certificate as both convey instrument privileges.

instrument-powered-lift rating or an ATP certificate with a powered-lift category. The FAA proposes these paragraphs to codify a regulatory framework that promotes consistency among airplane, helicopter, and powered-lift requirements, while simultaneously crafting rules that are specifically tailored to the unique operating characteristics of each category of aircraft.

The proposed addition of paragraph (c)(5) requires similar PIC credentials to serve in IFR operations as that imposed for PICs piloting airplanes and helicopters. For IFR operations, § 61.3(e) mandates that a PIC operating in IFR hold an instrument rating. By contrast, proposed paragraph (b)(5), which governs VFR operations, would mirror the requirements currently maintained for PICs serving in VFR airplane operations in part 135 rather than the requirement for VFR helicopter operations.

The FAA finds that an instrument rating is necessary in VFR powered-lift operations to ensure the pilot has the necessary skills in the event of an emergency situation involving an inadvertent encounter with IMC. The FAA requires an instrument rating for part 135 VFR airplane operations [315] because, if an airplane encounters inadvertent IMC, the pilot must have the necessary skills to maintain safe control of the airplane, coordinate with ATC, and maneuver the airplane to an emergency instrument approach and landing at an airport.

Conversely, the greater maneuverability and special flight characteristics of a helicopter provides a helicopter pilot with more options for corrective actions and permits a helicopter pilot to make those corrective actions in less time and distance than required for most airplanes. Additionally, the characteristics of a helicopter provide significantly more emergency landing options, enabling a helicopter pilot to make an emergency landing at locations other than an airport or heliport. Therefore, a helicopter pilot has more options available in the event of an emergency situation with inadvertent IMC. These qualities allow a helicopter pilot to operate under VFR in part 135 without an instrument rating at lower visibility and cloud clearance distances, while maintaining the same degree of safety as airplanes flying under more restrictive minima.

The FAA anticipates that, other than necessary for takeoff and landing, many powered-lift will prefer to utilize lift provided by the wing for as long as practical in order to gain efficiencies in fuel consumption, speed, and range. Since powered-lift will likely operate similar to an airplane in cruise flight, in the event of inadvertent IMC, the powered-lift pilot will require more time and distance to escape the IMC and complete an emergency approach and landing compared to a helicopter. Additionally, unlike other aircraft categories, most powered-lift may have to transition from flight on the wing to flight on the rotors or other thrust devices to conduct approach and landing operations. The FAA expects the transition of a powered-lift from forward flight to vertical flight would not be instantaneous, requiring additional time, distance, and altitude that is unique from other categories of aircraft. Therefore, requiring powered-lift pilots to have an instrument rating during VFR operations similar to the airplane requirements ensures that PICs of powered-lift possess the proper skills to safely conduct flight in the event of an inadvertent encounter with IMC, where pilot error can be immediately critical.

As an alternative to satisfying the instrument rating requirement in proposed paragraphs (b)(5) and (c)(5), the FAA proposes that the PIC may hold an ATP certificate with a powered-lift category rating. The requirement to hold an ATP certificate is consistent with § 61.3(e). Thus, the intent to ensure PICs possess knowledge and familiarity of instrument controls and conditions is similarly effectuated by alternatively requiring an ATP certificate, in lieu of an instrument rating.

The FAA acknowledges that there may be future aircraft designs such that the skill, knowledge, and experience that the instrument rating for VFR operations otherwise brings will no longer be necessary. In addition, the environment where some powered-lift operations occur may be isolated, proving that the instrument rating for VFR operations may be unnecessary to maintain safety. However, until further data is collected through operational use and experience of powered-lift, the FAA proposes to maintain the instrument rating or ATP requirement for powered-lift PICs operating under VFR, to accord the regulation with the requirements imposed for airplanes.

6. Section 135.244—Operating Experience

Section 135.244 requires a person to complete operating experience in the make and model of aircraft they will fly before serving as PIC in commuter operations. This section, through use of the term ''aircraft,'' applies to powered-lift.[316] However, in prescribing the minimum hours of operating experience required, § 135.244(a) only contemplates single engine aircraft; multiengine, reciprocating engine-powered aircraft; multiengine, turbine-engine powered aircraft; and turbojet-powered airplanes. When this section was added to the regulatory framework in 1980, the FAA did not forecast the use of powered-lift in commuter operations.[317]

In the 1980 final rule promulgating this section, the FAA crafted differing minimum hour requirements for these varying types of aircraft because of the ranging complexities associated with their operation. For example, the FAA reasoned that single-engine aircraft are generally simple aircraft with less complex operational dynamics. As a result, PICs of these aircraft comply with lesser operating experience requirements than that required for operating the other, more complex, aircraft enumerated in this section. The FAA distinguished the complexity of operating systems based on the aircraft's engine and propulsion characteristics, prescribing correspondingly greater operating experience requirements for increasingly complex aircraft. Complexity, in this regard, was informed by the aircraft's engine and propulsion system.

At present, the FAA expects powered-lift to vary widely in their expected engine makeup and propulsion designs. Some powered-lift entering the market, for example, are expected to use electric engines. Others are expected to use multiengine turbine-engine powered propulsion. And, conversely, some powered-lift may utilize unique propulsion systems that involve distinct features and intricacies, unlike those typically utilized in currently available commuter aircraft altogether. In the absence of uniform propulsion systems and engine characteristics for powered-lift expected to enter the market, the

[315] Section 135.243(d) provides a limited exception allowing a PIC to conduct part 135 VFR single engine-reciprocating-powered airplane operations in an isolated area as determined by the Administrator if the operation meets the specified requirements and is approved in the certificate holder's operations specifications. The FAA approves these operations in operations specification A020, Airplane Operations Without Instrument Rated Pilots. As of October 2022, there are four part 135 operators, with a total of nine airplanes and seven pilots, with approved operations specification A020. Three of these part 135 operators conduct operations in isolated areas of Alaska and the fourth conducts operations in an isolated area of Maine.

[316] Update to Air Carrier Definitions, 87 FR 74995 (Dec. 7, 2012).

[317] See Air Taxi Operators and Commercial Operators; Commuter Pilot in Command Operating Experience Requirements, 45 FR 7540, 7541 (Feb. 4, 1980).

FAA cannot prescribe the operating experience requirements for powered-lift based on the characteristics in § 135.244(a)(1) through (4).

Instead, the FAA proposes to prescribe the operating experience requirements based on the different handling characteristics necessary to pilot powered-lift and the associated complexity anticipated for operating these aircraft in the NAS. In support, the FAA anticipates the operation of powered-lift will require complex flight and handling qualities, including inceptors and the use of indirect flight controls. Powered-lift may also have different configurations, including tilt-wing, tilt-propeller, lift plus cruise, and tilt plus cruise designs. These unique configurations and inceptors, and potentially diversified flight controls and operating characteristics, inform the FAA's proposal to render these aircraft more akin to multiengine turbine-engine powered airplanes on the complexity scale, rather than their single-engine counterparts.[318]

For these reasons, the FAA proposes in § 194.247(c) to include a 20-hour operating experience requirement to serve as PIC in any powered-lift. To facilitate this operating experience requirement, the FAA proposes to except powered-lift from the current operating experience requirements delineated in § 135.244(a)(1) through (4). As noted above, these specific operating experience requirements do not adequately capture or control the expected complexity of powered-lift, as determined by the varying propulsion systems and engine characteristics.

Nevertheless, the FAA recognizes that, at this time, it is unknown what engine or propulsion system will apply to the majority of powered-lift that integrate the market. As a result, the FAA proposes to mandate the operating experience hour requirements for powered-lift PICs in the SFAR, rather than a permanent rule change. As additional information becomes available, the FAA may modify the 20-hour operating experience requirement to more precisely scale the operating experience to the complexity associated with operating a powered-lift.

7. Section 135.245—Second in Command Qualifications

Section 135.245 prescribes the SIC qualifications for a pilot in part 135, which includes instrument currency requirements for flights operated under IFR. Section 135.245(a) specifies that the minimum requirement for an SIC of an aircraft is at least a commercial pilot certificate with appropriate category and class ratings and an instrument rating. Paragraph (b) does not require the instrument rating for helicopter SICs operating under VFR, except for VFR over-the-top operations. Paragraph (c) prescribes SIC instrument experience requirements for airplane and helicopter pilots. Finally, paragraph (d) details the framework for an SIC to reestablish instrument currency.

i. Section 135.245(a)

Section 135.245(a) prescribes the certification requirements for SICs operating ''aircraft.'' This section, therefore, applies to powered-lift SICs without edit. Given these generally applicable requirements, that an SIC maintain at least a commercial pilot certificate with appropriate category and class ratings and an instrument rating, the FAA does not need to propose modifying paragraph (a) to accommodate the integration of powered-lift. Under the current regulation, a powered-lift SIC would be required to hold a commercial pilot certificate with a powered-lift category rating and an instrument-powered-lift rating.

ii. Section 135.245(b)

Under § 135.245(b), an SIC of a helicopter operated under VFR, other than over-the-top, must have at least a commercial pilot certificate with an appropriate aircraft category and class rating. Because the FAA proposes that powered-lift SICs comply with paragraph (a), the FAA does not propose changing the requirements of paragraph (b)—an exception to operations conducted under paragraph (a). The FAA recognizes that paragraph (b) may need to be amended in the future to accommodate powered-lift if these operations prove more congruent to those conducted in helicopters than currently anticipated.

iii. Section 135.245(c)

Paragraph (c) prescribes SIC instrument experience requirements for airplane and helicopter pilots that operate under IFR. Specifically, § 135.245(c)(1) requires SICs to perform six instrument approaches, holding procedures and tasks, and intercepting and tracking courses through navigational electronic systems within six calendar months preceding the month of a particular flight. The requirement for pilots to perform instrument maneuvers and procedures to maintain their instrument privileges is universal throughout the airman regulations. The FAA expects that, like helicopter and airplane SICs, some powered-lift will also operate under IFR. Therefore, the FAA proposes to permanently amend paragraph (c)(1) to specifically include reference to powered-lift. This proposal accords the SIC instrument experience requirements with those imposed for SICs of airplanes and helicopters who serve in IFR operations.

iv. Section 135.245(d)

Finally, § 135.245(d) prescribes how an SIC can reestablish instrument currency. Like § 135.245(a), this paragraph applies to all SICs who serve in IFR operations. Therefore, it applies to powered-lift SICs as written. The FAA does not need to propose an amendment to modify the requirements to reestablish instrument currency to integrate powered-lift into the civilian market.

8. Section 135.247—Pilot Qualifications: Recent Experience

Section 135.247 specifies the recent takeoff and landing experience that a PIC must complete within the preceding 90 days to carry passengers in an aircraft. Section 135.247(a)(1) requires the PIC to make three takeoffs and landings as the sole manipulator of the flight controls in an aircraft of the same category and class and, if a type rating is required, in that same type of aircraft. For operations at night, § 135.247(a)(2) also requires the takeoffs and landings to have been completed at night.[319]

Under § 135.247(a)(3), the PIC of a turbine-powered airplane type-certificated for more than one pilot may complete an alternative to the night takeoff and landing requirements. To complete an alternate path, a PIC must serve as PIC of a turbine-powered airplane that is type-certificated for more than one pilot crewmember and comply with the requirements listed in the regulation. The first alternative allows pilots to maintain night currency through the performance of three takeoffs and landings to a full stop over a 6-month period. The second alternative allows pilots to maintain night currency through the performance of 6 takeoffs and landings to a full stop in a simulator training program approved under part 142.

Based on the active certification projects for powered-lift, the FAA currently expects that a majority of powered-lift will not be type-certificated for more than one pilot crewmember.

[318] As discussed in section VI.A of this preamble, the FAA does not anticipate single-engine powered-lift to be developed during the term of this SFAR.

[319] Section 135.247(a)(2) describes night as beginning 1 hour after sunset and ending 1 hour before sunrise as published in the Air Almanac.

Because most powered-lift will likely require only one pilot by type certification, the purpose and text of § 135.247(a)(3) is inapplicable. In addition, even for powered-lift that may require two pilots by type certification, the FAA expects that most powered-lift PICs will be unable to satisfy the 1,500 hour aeronautical experience requirement to qualify for this alternative approach currently permitted for pilots of turbine-powered airplanes type certificated for more than one pilot crewmember. Due to the small number of expected two-pilot type-certificated powered-lift, and the minimal powered-lift pilot experience the FAA currently expects that pilots have accrued, the FAA does not presently propose extending the alternative experience requirements in § 135.247(a)(3) to powered-lift.

Most importantly, the FAA finds that extending alternative currency to all powered-lift type-certificated for more than one pilot would not be in the interest of safety. Each powered-lift may possess different flight controls and operational characteristics, unlike airplanes that have relatively uniform flight controls and cockpit designs among each type. As a result, because a pilot is current in one powered-lift, does not necessarily translate to currency or proficiency in a different powered-lift. Therefore, the FAA is not proposing any amendments to § 135.247(a)(3).

9. Section 135.293—Initial and Recurrent Pilot Testing Requirements

As discussed in section V.G of this preamble, § 135.293 requires pilots to complete initial and recurrent knowledge testing and a flight competency check to serve in part 135 operations. Section 135.293(a)(1) through (9) lists the knowledge areas for the oral or written test, which each pilot must pass. The knowledge areas do not specify airplane- or rotorcraft-specific knowledge testing, except for the provisions included in § 135.293(a)(7) and (9).

Specifically, § 135.293(a)(7) requires knowledge testing on the procedures for identifying, escaping, and avoiding hazardous weather conditions for all aircraft. The rule excepts rotorcraft pilots from the requirement to be tested on escaping from low-altitude windshear due to the unique aerodynamic characteristics of rotorcraft, as stated in § 135.293(a)(7)(ii). Powered-lift may not possess the same unique aerodynamic characteristics as rotorcraft but do share similar aerodynamic characteristics of airplanes. As a result, powered-lift pilots may encounter low-altitude windshear and, resultantly, they must possess the knowledge necessary to recover sufficient altitude to compensate for any corresponding loss of lift. Given these factors, the FAA is not proposing to amend § 135.293(a)(7) which, as currently written, would similarly include powered-lift pilots in the knowledge testing requirements of escaping from low-altitude windshear conditions. This knowledge, and corresponding testing requirements, is equally valuable for powered-lift pilots to possess, in the event that they, like pilots of airplanes, encounter low-altitude windshear during flight.

Similarly, § 135.293(a)(9) requires testing for rotorcraft pilots on rotorcraft-specific procedures to ensure recognition and avoidance of hazardous visibility conditions. The hazardous visibility conditions that must be tested for rotorcraft pilots under this section include flat-light, whiteout, and brownout conditions. The FAA expects that powered-lift pilots may similarly encounter these conditions during flight. These conditions can be especially critical when flying at low altitude. For example, flat-light can give the pilot an illusion of ascending when the aircraft is actually flying level. Absent knowledge and familiarity of this phenomenon, a pilot may over-correct the perceived ascension and rapidly descend in altitude. This is particularly critical when flying in congested airspace at low altitude over urban or densely populated areas, like the operational environment expected for powered-lift. For these reasons, the FAA finds that these testing requirements should likewise extend to powered-lift pilots. Accordingly, the FAA proposes a permanent change to § 135.293(a)(9).

Section 135.293(b) specifies the requirements for pilots to complete a competency check in practical skills and techniques in the aircraft every 12 calendar months. If a pilot serves in more than one aircraft type, this section also specifies that the categories and classes in which the pilot serves determine whether the pilot must complete a competency check in each aircraft type. For helicopters, multiengine airplanes, and turbojet airplanes, § 135.293(b) prescribes that the check must be completed in the type of helicopter, multiengine airplane, or turbojet airplane in which the pilot will serve.[320] Therefore, if a pilot will serve in more than one helicopter, multiengine airplane, or turbojet airplane, the pilot must complete a competency check in each aircraft type. Conversely, for single-engine airplanes, other than turbojet, § 135.293(b) only requires a competency check in the specific class (*i.e.,* single-engine land or single-engine sea). As such, a pilot serving in more than one single-engine land airplane is only required to complete one competency check.

Consistent with the proposed requirement that PICs serving in part 135 powered-lift operations hold a type rating for the aircraft flown, the FAA proposes that these pilots must also complete the required competency check in each type of powered-lift that the pilot will fly. This proposed requirement is consistent with the competency check requirements for airplanes and helicopters of similar complexity as powered-lift. Principally, as described in the previous discussion regarding §§ 135.243 and 135.244, the use of unique configurations and inceptors, and potentially diversified flight controls and operating characteristics expected for powered-lift, informs the FAA's conclusion that these aircraft are more akin to multiengine airplanes on the complexity scale, rather than their single-engine counterparts. As previously noted, the FAA is not able at this time to identify sufficient commonality to establish class ratings for powered-lift. Moreover, given the powered-lift currently undergoing the aircraft certification process, the FAA does not anticipate it could reach a determination that any of the initial powered-lift would have a sufficiently similar means of propulsion, the same manufacturer, and significantly similar handling or flight characteristics. Unlike airplane and helicopter operations where the flight controls the pilot uses are generally uniform from one aircraft to the next, experience in category alone does not sufficiently prepare a pilot of a powered-lift. Ensuring the pilot has the requisite knowledge and skill in each powered-lift to be a competent crewmember is necessary to ensure safety. For these reasons, the FAA proposes to permanently revise § 135.293(b) to require pilots to complete a competency check in the type of powered-lift in which the pilot will serve, like that required for multiengine airplanes.

[320] Section 135.293(b) contains an allowance that, if determined by the Administrator to have a similar means of propulsion, the same manufacturer, and no significantly different handling or flight characteristics, an airplane type for the purposes of § 135.293(b) could be a group of airplanes. The Administrator has made this determination for a limited number of airplanes; the airplanes that the Administrator has determined fit into a specific group are described in FAA Order 8900.1, Volume 3, Chapter 19, Section 1. Absent this determination, ''type'' as defined in § 1.1 applies.

Section 135.293(c) specifies that each competency check in a rotorcraft must include a demonstration of the pilot's ability to maneuver the rotorcraft solely by reference to instruments and maneuver into visual meteorological conditions (VMC) following an inadvertent encounter with IMC. For competency checks in non-IFR-certified rotorcraft, the pilot must perform such maneuvers as are appropriate to the installed equipment, the certificate holder's operations specifications, and the operating environment. The FAA added this requirement in response to the high number of fatal accidents that have resulted from helicopter inadvertent IMC encounters during VFR operations.[321]

Some powered-lift may be used only in part 135 VFR operations, and the aircraft themselves may not be IFR-equipped. Consequently, powered-lift pilots like helicopter pilots are at risk of encountering inadvertent IMC. These conditions may be immediately critical and may necessitate the powered-lift pilot to initiate emergency procedures to escape the inadvertent IMC. Absent proper knowledge and skill to initiate emergency maneuvers, compounded with the expected operation in congested airspace and low altitude, powered-lift pilots may lack the necessary handling abilities to successfully escape these conditions in a timely fashion. As a result, the FAA proposes to apply the § 135.293(c) evaluation requirement also to powered-lift to ensure these pilots possess the skills needed to handle these conditions. For competency checks in non-IFR-certified powered-lift, the pilot would be required to perform such maneuvers as are appropriate to the installed equipment, the certificate holder's operations specifications, and the operating environment.

Notably, in 2014, when the FAA added § 135.293(a)(9) and (c), the FAA also included specific language in § 135.293(h) requiring compliance after April 22, 2015.[322] Since the compliance date has passed, the FAA proposes a permanent change to remove the compliance date memorialized in § 135.293(h) and reserve this paragraph.

10. Section 135.297—Pilot in Command: Instrument Proficiency Check Requirements

i. Section 135.297(a) and (b)

Section 135.297 prescribes the instrument proficiency check (IPC) requirements for the PIC of a part 135 IFR operation. Powered-lift operations were not contemplated when this rule was written. However, the rule applies to PICs of any part 135 IFR operation as prescribed in paragraph (a). Paragraph (b) specifies how often the IPC must occur and the kinds of approaches that must be conducted. This paragraph is also not category or class specific. Therefore, the requirements in § 135.297(a) and (b) would apply to powered-lift PICs in part 135 operations as written.

ii. Section 135.297(c)

Section 135.297(c) specifies the content and standards for an IPC that an airplane or helicopter PIC must meet, which corresponds to the minimum certificate requirements prescribed in § 135.243.[323] To align with the proposed requirements to serve as a PIC in part 135 operations, and because all PICs will be expected to hold a type rating for the powered-lift flown, the FAA proposes that the IPC for a powered-lift PIC meet the same requirements as currently required for airplane and helicopter PICs. The FAA proposes that, if the PIC is required to hold an ATP certificate, then the IPC must include the procedures and maneuvers for an ATP certificate, consistent with the existing requirement for airplane PICs in § 135.297(c)(1)(i). Furthermore, the FAA proposes that if the PIC is required to hold a commercial certificate, then the IPC must include the procedures and maneuvers for a commercial certificate with an instrument rating and for the type rating, consistent with the existing requirement for airplane and helicopter PICs in § 135.297(c)(1)(ii). For these reasons, the FAA proposes a permanent amendment to § 135.297(c)(1)(ii) to modify the reference to ''airplane'' and ''helicopter,'' to ''aircraft,'' to expressly include powered-lift within this provision.

In addition, the FAA has identified an inadvertent error in § 135.297(c)(1)(i) and proposes a permanent correction. Specifically, § 135.297(c) delineates the procedures and maneuvers that are required based on whether the person is serving as a PIC under § 135.243(a) or (c). However, if the person is a PIC under § 135.243(a), § 135.297(c)(1)(i) currently applies to the PIC of an airplane only. Consequently, if a person is serving as a helicopter PIC under § 135.243(a), § 135.297(c)(1)(i) does not state which procedures and maneuvers are required for the IPC. Therefore, the FAA proposes a permanent amendment to § 135.297(c)(1)(i) to change the word ''airplane'' to ''aircraft,'' making the requirement applicable to any PIC under § 135.243(a). In making this amendment, powered-lift PICs will also fall within the full scope of §§ 135.297(c)(1)(i) and 135.243(a).

iii. Section 135.297(g)

Section 135.297(g) currently sets forth the checking requirements for PICs authorized to use an autopilot system in place of an SIC. In part, this section requires an autopilot check to be completed every 12 months during the PIC's IPC under paragraph (a). Therefore, paragraph (g) applies to powered-lift PICs authorized to use an autopilot system in place of an SIC. Paragraphs (g)(1) and (2) specify the tasks that the PIC must complete during the autopilot check. Paragraph (g)(3) specifies the standard of proficiency that the PIC must demonstrate during the performance of the tasks required by paragraphs (g)(1) and (2). However, as currently written, paragraph (g)(3) is applicable only to airplane PICs. The FAA asserts that the proficiency standard is applicable to any PIC using an autopilot in lieu of an SIC and therefore is proposing a permanent change to apply paragraph (g)(3) to all aircraft.

The use of the word ''aircraft'' would encompass airplanes, helicopters, and powered-lift in the checking requirement to show proficiency with autopilot systems installed on the aircraft. In support of this proposed amendment, the FAA notes that helicopter pilots that use autopilot instead of an SIC must already complete an autopilot check during their IPC, under paragraphs (g)(1) and (2). The requirements of paragraph (g)(3) would have minimal impact because proficiency would already have been

[321] Air Ambulance and Commercial Helicopter Operations, Part 91 Helicopter Operations, and Part 135 Aircraft Operations, Safety Initiatives and Miscellaneous Amendments, 75 FR 62640, 62668 (Oct. 12, 2010).

[322] Extension of Effective Date for the Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations Final Rule, 79 FR 22009 (Apr. 21, 2014).

[323] Section 135.297(c) also sets forth required content of the IPC including an oral or written equipment test and flight check under simulated or actual IFR conditions. The equipment test must include questions on emergency procedures, engine operation, fuel and lubrication systems, power settings, stall speeds, best engine-out speed, propeller and supercharger operations, and hydraulic, mechanical, and electrical systems, as appropriate to powered-lift operations. As further described in section VI.A of this preamble, the FAA notes that the term ''engine'' encompasses any powered-lift propulsion system, such as batteries or electric motors. The flight check includes navigation by instruments, recovery from simulated emergencies, and standard instrument approaches involving navigational facilities which that pilot is to be authorized to use.

demonstrated to meet the requirements in paragraphs (g)(1) and (2).

Furthermore, with updated avionics and technology, more helicopters operating under part 135 have an autopilot system installed than when the rule was first promulgated.[324] Thus, advancements in technology now illustrate that this equipment is likewise available and in-use on helicopters. When an autopilot system is installed and its use is contemplated, the check of proficiency must be accomplished to the same standards all other aircraft airmen are required to satisfy. For these reasons, the FAA proposes permanently amending paragraph (g)(3) to require that if the PIC is authorized to use an autopilot system in place of an SIC in any aircraft, the PIC must demonstrate proficiency in its use. Modifying paragraph (g)(3) to require the same checking standard for proficiency as that required for airplane pilots will ensure all PICs are checked on autopilot systems to the same standard. To provide sufficient time for existing rotorcraft operators to update their checking programs, if necessary, the FAA proposes a compliance date of six months after the effective date of the final rule for this subsection.

11. Section 135.340—Initial and Transition Training and Checking: Flight Instructors (Aircraft), Flight Instructors (Simulator)

Section 135.340 prescribes initial and transition training for instructors in aircraft and simulators. As currently written, this section applies to powered-lift flight instructors. As described in section V.G of this preamble, the FAA is proposing a temporary provision to allow a part 135 operator to seek approval to establish and implement an airman certification training curriculum. As part of that temporary provision, the FAA proposes that a person must hold a flight instructor certificate issued under part 61 with the appropriate ratings to provide training for the purpose of adding a powered-lift category rating, type rating, or an instrument rating to a commercial pilot certificate under a part 135 approved training program. This determination is based on (1) the lack of powered-lift experience held by pilots completing the part 135 training program, and (2) the curriculum content required for the issuance of a commercial pilot certificate with a powered-lift category rating, type rating, and an instrument-powered-lift rating. Additionally, to ensure the ATP privileges contained in § 61.167(a) are not expanded as a result of the SFAR, a temporary limitation that would prohibit a person who holds an ATP certificate with powered-lift ratings from instructing other pilots in accordance with an approved airman certification training program under part 135 for the purpose of obtaining a commercial pilot certificate with a powered-lift category rating or an instrument-powered-lift rating. Together, these two provisions would ensure that a part 135 instructor holds a flight instructor certificate with the appropriate powered-lift ratings when providing the foundational part 61 airman certification training in a powered-lift. The proposed rule language has been scoped to ensure that the current part 135 training environment is not altered by the SFAR. Accordingly, the FAA does not propose any amendment to § 135.340.

12. Section 135.345—Pilots: Initial, Transition, and Upgrade Ground Training

Section 135.345 sets forth the requirements for initial, transition, and upgrade ground training for pilots and includes a list of minimum items of instruction that must be completed as applicable to their duties. Currently, the regulation discusses general items that apply to all aircraft. However, § 135.345(b)(6)(iv) requires training on operations during ground icing conditions for airplanes only if the operator authorizes takeoffs in ground icing conditions. The FAA is proposing that the training requirements in § 135.345(b)(6)(iv), including ground icing, deicing/anti-icing procedures, and surface contamination training, be required for pilots of powered-lift, in addition to pilots of airplanes.

In support, the FAA reasons that powered-lift—like airplanes—may encounter ground icing in operations, and the pilots must be properly trained if the operator authorizes takeoffs in ground icing conditions. The FAA recognizes that aircraft icing is an aviation safety issue and, accordingly, knowledge of these conditions will ensure powered-lift pilots, like their airplane counterparts, are equipped to respond appropriately.[325] Therefore, to mitigate safety risks and accommodate the integration of powered-lift under this section, the FAA proposes to apply the airplane requirements under § 135.345(b)(6)(iv) to powered-lift.

This proposed amendment is also consistent with the FAA's proposal to extend the airplane operational requirements under § 135.227 for ground icing conditions to powered-lift discussed in section VI.D of this preamble. In proposing the amendment to § 135.227, the FAA reasoned that some powered-lift may contain sophisticated aviation technology and, in turn, possess the capability to operate during ground icing conditions. As a result, the FAA proposes to extend § 135.345(b)(6)(iv) to conform the regulation with the training that will now be required under the proposed expanded scope of § 135.227.

J. Part 142 Training Centers

The FAA proposes to amend part 142 requirements for training centers to accommodate powered-lift. These amendments will harmonize requirements for airplanes, powered-lift, and rotorcraft. The amendments are necessary because the existing regulatory framework does not reflect contemporary training and checking methods. As discussed in section V.F above, part 142 was originally codified in 1996 to enable training centers to provide standardized quality training, testing, and checking to any individual, operator, or air carrier. The final rule contained requirements for conducting training in an FSTD but did not address powered-lift because there were no powered-lift in civil use at that time.

However, in the years since part 142 was codified, significant technological advancements in aircraft design have occurred, including the development of civil use powered-lift. Along with the development of powered-lift, sophisticated training devices for powered-lift are being developed to allow for training under part 142, which is currently permitted for airplanes and rotorcraft. The FAA recognizes the value of FSTD training and seeks to provide a method to accomplish FSTD training for powered-lift, to enhance safety and serve the public interest. Therefore, the FAA proposes to amend §§ 142.11(d)(2)(iii), 142.47(c)(2), 142.53(b)(2) and (3), and 142.57(c) to permit the use of FSTDs for powered-lift training, testing, and checking. These amendments will also harmonize the eligibility and testing requirements for instructors providing inflight training in powered-lift as well as in an FSTD for all aircraft categories.

[324] See *i.e.,* Special Federal Aviation Regulation No. 108—Mitsubishi MU–2B Series Airplane Special Training, Experience, and Operating Requirements, 73 FR 7034, 7042 (Feb. 6, 2008) (explaining that ''in most of today's modern cockpits, aircraft that are permitted to be operated with a single pilot are required to have a functional autopilot installed'').

[325] See *i.e.,* NTSB Aviation Accident Final Report, Accident No. SEA07LA041 (finding probable cause of helicopter accident was due, in part, to ''snow and ice ingestion'').

1. Subpart A—General Requirements

Subpart A prescribes the requirements governing the certification and operation of training centers, and provides an alternative means to accomplish the training required by 14 CFR part 61, 63, 65, 91, 121, 125, 135, or 137.

Section 142.11 details the application requirements for issuance of a new or amended training center certificate and training specifications.[326] Specifically, § 142.11(d)(2)(iii) states that training specifications issued to a training center must include the FSTDs that the training center is authorized to use, including the qualification level, and the make, model, and series of airplane or rotorcraft being simulated in the FSTD. The FAA expects training centers to utilize powered-lift FSTDs for training, testing, and checking similar to current uses of airplane and rotorcraft FSTDs.

Therefore, the FAA proposes amending § 142.11(d)(2)(iii) to include powered-lift. The regulatory text would be amended to state that training specifications issued by the Administrator to the certificate holder must contain the make, model, and series of aircraft, or set of aircraft being simulated and the qualification level assigned. With this amendment, training centers would be able to apply for training specifications and receive authorization for the use of FAA qualified powered-lift FSTDs, in addition to existing airplane and rotorcraft requirements.

2. Subpart C—Personnel and Flight Training Equipment Requirements

Subpart C prescribes the personnel and flight training equipment requirements for a certificate holder that is providing training to meet the requirements of part 61. Section 142.47 prescribes the requirements for instructors in an approved flight training course. The rule requires each instructor to satisfactorily complete ground training on the subjects identified in paragraph (c)(1) prior to functioning as an instructor in a course. The rule further states in § 142.47(c)(2)(ii) that a written test is also required and must be of equivalent difficulty, complexity, and scope as the tests provided by the Administrator for the flight instructor airplane and instrument flight instructor knowledge tests.

Although airplane is specified, the FAA asserts that the flight instructor knowledge tests for powered-lift and rotorcraft would provide the most comprehensive and relevant knowledge items that are specific to those categories of aircraft. An aircraft category-specific test allows the instructor to demonstrate the knowledge and expertise the FAA considers appropriate for a part 142 training center to provide for a specific category of aircraft. This is consistent with the original intent of part 142 to establish a quality source of standardized training and testing for instructors. Therefore, the FAA finds it is necessary to amend the rule to include these categories of aircraft.

Accordingly, the FAA proposes to amend § 142.47(c)(2)(ii) to require that a training center instructor complete a written test that is the equivalent difficulty, complexity, and scope as the FAA flight instructor and instrument flight instructor knowledge tests applicable to the specific category of aircraft in which the instructor will be qualified. The proposed amendment will ensure that powered-lift, airplane, and rotorcraft training center instructors are adequately tested and qualified, and that the test they complete contains the appropriate scope of material applicable to the category of aircraft in which they will instruct.

Section 142.53 prescribes training center instructor training and testing requirements. Under paragraph (b), each instructor who instructs in an FFS that the FAA has approved for all training and testing for the ATP certification test or aircraft type rating test must meet one of three requirements prior to designation and every 12 calendar months thereafter. Of these three requirements that an instructor may meet to satisfy § 142.53(b), two of the three are airplane specific. Specifically, § 142.53(b)(2)(i) and (b)(3)(i) are specific to airplanes and do not include powered-lift or rotorcraft. As a result, powered-lift and rotorcraft FFS instructors are currently limited to a single compliance option under § 142.53(b)(1), which requires FFS instructors to conduct inflight operations to maintain recency of experience.

Section 142.53(b)(1) requires the instructor to perform two hours in flight, including three takeoffs and three landings as the sole manipulator of the controls of an aircraft of the same category and class, and, if a type rating is required, of the same type replicated by the approved FFS in which that instructor is designated to instruct. The FAA recognizes that satisfaction of this inflight experience requirement may pose a challenge for FFS instructors that do not hold a medical certificate. For those individuals, another qualified person would have to accompany the instructor to act as PIC in the aircraft because, without a medical certificate, the FFS instructor would not be qualified to serve as PIC. As a result, some experienced instructors that do not hold a medical certificate may be excluded from serving as an FFS instructor. The FAA's current proposal to afford FFS instructors additional options other than satisfying the inflight experience requirement provides greater flexibility for powered-lift and rotorcraft FFS instructors, like that provided for their airplane FFS instructor counterparts.

The FAA acknowledges that inflight operations provide many training benefits and improve pilot confidence and competence. Pilots are able to maintain their skills in the actual operating environment, improve their decision making, maintain situational awareness, and exercise crew resource management. However, the FAA also considers that a line-observation program as described in § 142.53(b)(2), or an inflight observation program as specified in § 142.53(b)(3), provide equivalent training and experience for FFS instructors. This allows all FFS instructors (regardless of ability to actively access inflight operations) the opportunity to be immersed in the operational environment. Observation programs are beneficial for airplane FFS instructors and the FAA asserts these programs will be equally beneficial for powered-lift and rotorcraft FFS instructors.

The FAA anticipates that powered-lift FFSs will have advanced technology, visual cues, and be able to replicate flight to the same degree as current FFSs used for airplanes. The FAA believes powered-lift instructors should have the same flexibility to comply with any of the three enumerated options in this section. Additionally, rotorcraft FFSs also incorporate advanced technology, similar to airplane FFSs, and mirror the airplane FFSs' visual cues and aircraft feel, and replicate flight of an actual rotorcraft. Therefore, the FAA proposes to amend paragraphs (b)(2) and (3) to change the word ''airplane'' to ''aircraft.'' Resultantly, changing the text to aircraft enables powered-lift and rotorcraft instructors to complete an observation program in addition to the inflight training option under paragraph (b)(1). This provides flexibility to select the best option for instructors, reducing environmental impact, congestion in the NAS, and granting all instructors the

[326] As defined in 14 CFR 142.3, training specifications are a document issued to a training center certificate holder by the Administrator that prescribes that center's training, checking, and testing authorizations and limitations, and specifies training program requirements.

ability to participate in an approved line-observation program.

Finally, § 142.57 prescribes requirements for training center certificate holders and applicants that use aircraft for flight instruction. Paragraph (b) requires the training center certificate holder or applicant to ensure, in part, that aircraft used in flight instruction are two-place aircraft with engine power controls and flight controls easily reached from both pilot stations. Paragraph (c) provides an exception to this requirement, specifically permitting the training center to use an airplane where certain controls are not easily reached by both pilots if the certificate holder has determined that the flight instruction can be conducted in a safe manner.

As currently written, paragraph (c) only applies to training centers using airplanes. In the NPRM published on August 11, 1992, the FAA's accompanying explanation for this regulation illustrates that it did not intend to limit the relief afforded by this paragraph to only airplanes. In fact, the preamble stated, ''certain uniquely configured aircraft can be safely operated with flight controls that do not meet the above standards, paragraph (c) of this proposed section would permit a training center to authorize the use of such aircraft upon a finding that flight instruction can be safely conducted in them.'' [327] The FAA clearly intended for this paragraph to apply to all aircraft but that intent was not realized when the regulatory text used the word ''airplane.''

Two-place aircraft with engine power controls and flight controls that are not easily reached from both pilot stations are continually designed and manufactured; this is not unique to only airplanes. These aircraft are distinctly configured, and the certificate holder is in a position to determine whether they may be safely operated for the purposes of flight instruction considering the location of controls and operation for that specific aircraft. Therefore, the FAA continues to support the original intention that relief is warranted for all aircraft and proposes to change the word ''airplane'' in § 142.57(c) to ''aircraft.'' This amendment would allow training centers to utilize an airplane, powered-lift, or rotorcraft with controls not easily reached and operated in a conventional manner by both pilots if the certificate holder determines the flight instruction can be conducted in a safe manner considering the location of controls and their nonconventional operation, or both.

3. Temporary Alternate Means To Satisfy Minimum Curriculum Content in Training Courses Under Part 142

As discussed previously in section V.G.1 of this preamble, some powered-lift may not be capable of performing all the tasks listed in the appropriate ACS for that practical test for the certificate or rating sought. The FAA proposes that if it authorizes an examiner to waive a specific task during the practical test because the powered-lift is incapable of performing the task, the applicant should also be relieved from the requirement to receive flight training on that task. Therefore, in proposed § 194.251, the FAA proposes that a training course for which approval is requested is not required to consist of training on a task specified in an area of operation if the powered-lift is not capable of performing the task, provided the FAA has issued waiver authority for that task in accordance with § 194.207(b).

K. Subpart K of Part 91 Pilot Qualifications

Subpart K was added to part 91 in 2003 to establish criteria for fractional ownership programs.[328] It allows fractional owners and the management company to share operational control of the aircraft and delineates operational control responsibilities. It also contains regulatory safety standards for operations under fractional ownership programs, including pilot training. Subpart K currently has two powered-lift references in §§ 91.1001(b)(10) and 91.1053(a)(2). These references were included when subpart K of part 91 was codified to prescribe specific applicability and crew training requirements for fractional ownership operations.

Section 91.1053 prescribes the FAA certification and ratings required to serve as a pilot in a powered-lift as part of a fractional ownership program and is applicable to powered-lift as written. Section 91.1053(a)(2)(i) requires the PIC of a powered-lift to hold an ATP certificate and applicable type ratings to conduct operations under subpart k of part 91. The FAA proposes to permanently amend § 91.1053(a)(2)(i) to clarify that the type rating required cannot be limited to VFR only operations.

Under the VFR only type rating proposed in section V.H of this preamble, a pilot may take their instrument rating practical test within two calendar months after they pass the type rating practical test in a powered-lift. However, the FAA finds that the skills and experience required to pass an instrument rating practical test are necessary to ensure safety in subpart K operations. In part, the instrument rating requirements necessary to pass the associated practical test ensure that PICs of powered-lift possess proper training and experience in simulated and actual instrument conditions. This is particularly important when considering the operating environment anticipated for powered-lift in subpart K operations, where pilot error can be immediately safety-critical when encountering IMC or areas of lower visibility. For these reasons, and those discussed more fully in support of restricting the use of a VFR only type rating in part 135 operations above, the FAA proposes a permanent amendment to § 91.1053(a)(2)(i) to clarify that the type rating required to operate under subpart k of part 91 cannot be limited to VFR only operations.

Section 91.1055 prescribes pilot operating limitations and pairing requirements for fixed-wing program aircraft. The regulation requires the PIC to execute takeoffs and landings under certain operational conditions when the SIC has less than 100 hours of flight time as SIC in the aircraft make and model and type, if a type rating is required, and the PIC is not an appropriately qualified check pilot. The FAA maintains that the familiarity required for SICs should be the same for powered-lift as required for fixed-wing aircraft. The crew pairing and operational limitations required by this section are designed to ensure the flightcrew possess the necessary familiarity and experience to safely operate the aircraft. Therefore, to ensure an appropriate level of safety for powered-lift, the FAA is proposing that this rule apply to powered-lift under the SFAR.

Lastly, § 91.1065 prescribes the initial and recurrent pilot testing requirements. To ensure an appropriate level of safety is maintained when these aircraft are operated, the FAA notes that § 91.1065(b) applies to each type of anticipated powered-lift because this section currently applies to the type of multiengine aircraft, turbojet airplane, or rotorcraft. As described in section VI.A of this preamble, all powered-lift coming to market are multiengine aircraft, and the FAA does not anticipate civil single-engine powered-lift to be developed during the term of this SFAR. As such, in accordance with

[327] Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers, 57 FR 35905 (Aug. 11, 1992).

[328] Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations, 68 FR 54561 (Sep. 17, 2003).

existing § 91.1065(b), PICs and SICs of powered-lift fractional ownership program operations must complete a competency check in each type of powered-lift in which the pilot will serve every 12 calendar months. Accordingly, the FAA is not proposing any amendments to § 91.1065(b).

L. Summary of Proposed Regulatory Changes for Airmen

TABLE 8—SUMMARY OF PROPOSED TEMPORARY PROVISIONS IN SFAR

Topic	14 CFR § affected	Current requirement	Proposed SFAR §	Summary of proposed alternate requirement in SFAR
Cross-country time	61.1(b)	• To log cross-country time in a powered-lift, the flight must include at least a straight-line distance of more than 50 nautical miles.	194.201	• Allows a person to log cross-country time in a powered-lift when the flight includes at least a straight-line distance of more than 25 nautical miles.
Qualification requirements for part 135 flight instructors	61.3(d)(2) 61.3(d)(3)(ii) 61.167(a)(2) 61.195(b)(1)	• To instruct in a powered-lift under a part 135 approved training program, a person must hold either a flight instructor certificate or an ATP certificate with the appropriate powered-lift ratings.	194.203(b) 194.205 194.243(a)(1)	• Requires a person to hold a flight instructor certificate with the appropriate powered-lift ratings to conduct training in accordance with a part 135 approved training curriculum that culminates in a commercial pilot certificate with a powered-lift category rating, an instrument-powered-lift rating, and an initial powered-lift type rating.[329]
Practical tests in powered-lift that are incapable of performing certain tasks	61.45(b)	• An applicant for a certificate or rating may use an aircraft with operating characteristics that preclude the applicant from performing all the tasks required for the practical test, but the certificate or rating will be issued with an appropriate limitation.	194.207(a) and (b)	• Allows an examiner who conducts a practical test in a powered-lift that is unable to perform all the tasks required for the practical test to waive any task for which the FAA has provided waiver authority and enables the issuance of powered-lift ratings without limitations.
Flight training on tasks for which the FAA has provided waiver authority	61.107(a), (b)(5) 61.127(a), (e)	• An applicant for a private pilot certificate or a commercial pilot certificate with a powered-lift category rating must receive flight training on the areas of operation listed in § 61.107(b)(5) or § 61.127(e), as appropriate to the certificate sought.	194.207(c); 194.251	• Relieves an applicant from the requirement to receive flight training on a task specified in an area of operation if the task cannot be performed in the powered-lift, as determined by the FAA's issuance of waiver authority for the task on a practical test.
Additional qualification requirements for certain pilots serving as SIC	61.55	• A person serving as SIC of an aircraft type certificated for more than one required pilot flight crewmember or in operations requiring an SIC pilot flight crewmember must meet the qualification requirements contained in § 61.55.	194.209	• Adds an SIC qualification requirement for persons who obtain a powered-lift category rating by passing a practical test during which the examiner waived a required task. To serve as SIC of a powered-lift that is capable of performing the waived task, the person must receive training from an authorized instructor on the task and an endorsement certifying that the person has satisfactorily demonstrated proficiency of the task, subject to certain exceptions.
Eligibility requirements for a person seeking a powered-lift type rating	61.63(d) and (e)	• An applicant seeking an aircraft type rating concurrently with an aircraft category rating must hold or concurrently obtain an appropriate instrument rating unless the aircraft is not capable of instrument maneuvers and procedures.	194.211	• Relieves an applicant seeking a powered-lift type rating concurrently with a powered-lift category rating from the requirement to concurrently obtain an instrument-powered-lift rating, which would require three practical tests simultaneously. Instead, allows the applicant to complete the instrument rating practical test and the instrument portion of the type rating practical test later by issuing a ''VFR only'' limitation on the powered-lift type rating, which would remain valid for 2 calendar months.[330]

[329] As discussed in section V.F of this preamble, this proposal would not alter the current part 135 training environment. A part 135 instructor would only be required to hold a flight instructor certificate with powered-lift ratings to conduct training in the part 135 operator's airmen certification curriculum proposed in § 194.243(a).

[330] A person holding a private pilot certificate is not required to remove the ''VFR Only'' limitation if the limitation applies to a powered-lift type that is not a large aircraft or turbojet-powered.

TABLE 8—SUMMARY OF PROPOSED TEMPORARY PROVISIONS IN SFAR—Continued

Topic	14 CFR § affected	Current requirement	Proposed SFAR §	Summary of proposed alternate requirement in SFAR
Aeronautical experience and logging requirements for a commercial pilot certificate with a powered-lift category rating	61.129(e) 61.51(e)	• Section 61.129(e) contains the aeronautical experience requirements for a person seeking a powered-lift category rating on a commercial pilot certificate. Section 61.51(e) contains the requirements for logging PIC flight time.	194.215; 194.217 through 194.223; 194.233	• Establishes alternate experience and logging requirements that remove current regulatory burdens and facilitate commercial pilot certification in the powered-lift category for the following groups of pilots: (1) test pilots and instructor pilots, (2) initial cadre of instructors for an approved training program under part 135, 141, or 142, and (3) persons completing an approved training program under part 135, 141, or 142. • See Tables 2, 3, and 4 in section V.E of this preamble for additional information.
Aeronautical experience and logging requirements for an instrument-powered-lift rating	61.65(f) 61.51(e)	• Section 61.65(f) contains the aeronautical experience requirements for a person seeking an instrument-powered-lift rating. Section 61.51(e) contains the requirements for logging PIC flight time.	194.215; 194.225 through 194.231; 194.235	• Establishes alternate experience and logging requirements that remove current regulatory burdens and facilitate the ability to obtain an instrument-powered-lift rating for the following groups of pilots: (1) test pilots and instructor pilots, (2) initial cadre of instructors for an approved training program under part 135, 141, or 142, and (3) persons completing an approved training program under part 135, 141, or 142 • See Tables 5, 6, and 7 in section V.E. of this preamble for additional information.
Cross-country aeronautical experience requirements for a private pilot certificate with a powered-lift category rating	61.109(e)(2)(i), (e)(5)(ii)	• Requires an applicant for a private pilot certificate with a powered-lift category rating to complete (1) a cross-country flight of over 100 nautical miles total distance, and (2) a solo cross-country flight of 150 nautical miles total distance with one segment of the flight consisting of a straight-line distance of more than 50 nautical miles.	194.237	• Establish alternate cross country experience requirements that allow an applicant for a private pilot certificate with a powered-lift category rating to complete certain cross-country flights with reduced nautical mile distances.
PIC and SIC operating limitations and pairing requirement in part 91, subpart K, operations	91.1055(a)	• Requires SIC of a fixed-wing program aircraft with fewer than 100 hours of flight time as SIC flying in the aircraft make and model and, if a type rating is required, in the type aircraft being flown, to have the PIC, if not an appropriately qualified check pilot, make all takeoffs and landings in the situations listed in paragraphs (a)(1) and (2).	194.245(a)	• Applies fixed-wing program aircraft pairing requirement to SICs operating powered-lift.
Commuter operations with airplanes requiring two pilots by type certification	135.3(b)	• Requires certificate holders that conduct commuter operations under part 135 with airplanes in which two pilots are required by type certification rules of chapter I to comply with subparts N and O of part 121, instead of subparts E, G, and H of part 135.	194.247(b)	• Adds a requirement for certificate holders conducting commuter operations under part 135 with powered-lift requiring two pilots by the aircraft flight manual to comply with subpart Y of part 121, the Advanced Qualification Program (AQP). PICs would also be required to receive other instruction, facilitated discussion, and training, including scenario-based training, as part of their initial, recurrent, and upgrade ground training.
PIC operating experience requirements in commuter operations	135.244(a)(1) through (4)	• Requires PIC in commuter operations to complete the applicable operating experience listed in paragraphs (a)(1) through (4) in the make and basic model of aircraft to be flown.	194.247(c)	• Makes operating experience requirements in paragraphs (a)(1) through (4) inapplicable to powered-lift PICs and establishes 20-hour PIC operating experience requirement in each make and basic model of powered-lift to be flown.

TABLE 8—SUMMARY OF PROPOSED TEMPORARY PROVISIONS IN SFAR—Continued

Topic	14 CFR § affected	Current requirement	Proposed SFAR §	Summary of proposed alternate requirement in SFAR
Initial, transition, and upgrade ground training for pilots	135.345(b)(6)(iv)	• Requires initial, transition, and upgrade ground training for pilots for each aircraft type to include knowledge and procedures for operating airplanes during ground icing conditions, including the areas listed in paragraphs (b)(6)(iv)(A) through (G), if the certificate holder expects to authorize takeoffs in ground icing conditions.	194.247(d)	• Establishes that initial, transition, and upgrade ground training under § 135.345 for powered-lift pilots must include instruction in § 135.345(b)(6)(iv), as applicable.
Pilot certification through completion of training, testing, and checking under part 135	N/A	• No current requirement.	194.243	• Allows part 119 certificate holders authorized to conduct part 135 operations to establish and implement certain training curriculums to satisfy training and experience requirements by facilitating alternate eligibility standards for pilots who may be trained under such curricula and using competency checks and proficiency checks required by part 135 to satisfy practical test requirements.
Qualification requirements for chief instructors, assistant chief instructors, and check instructors	141.35(a)(1) 141.36(a)(1) 141.37(a)(2)(ii)	• Requires a chief instructor, assistant chief instructor, and a check instructor (for checks and tests that relate to a flight training course) to hold (1) a commercial pilot certificate or ATP certificate with the appropriate aircraft category and class ratings, and (2) a flight instructor certificate with the appropriate category and class ratings.	194.241(a)	• Relieves persons seeking designation as a chief instructor, assistant chief instructor, or check instructor (for checks and tests that relate to flight training) in a course of training for a powered-lift from the requirement to hold a class rating on the pilot certificate and flight instructor certificate.
Qualification requirements for check instructors for checks and tests that relate to ground training	141.37(a)(3)(ii)	• Requires a check instructor (for checks and tests that relate to ground training) to hold ground instructor certificate or a flight instructor certificate with the appropriate category and class ratings.	194.241(b)	• Relieves persons seeking designation as a check instructor (for checks and tests that relate to ground training) in a course of training for a powered-lift from the requirement to hold a class rating on the flight instructor certificate.

TABLE 9—SUMMARY OF PROPOSED PERMANENT CHANGES

Provision	14 CFR § affected	Summary of proposed provision
Certificates and ratings issued under part 61.	61.5(b)(7)	• Adds powered-lift to the list of aircraft type ratings that may be placed on a pilot certificate when an applicant satisfactorily accomplishes the training and certification requirements for the rating sought. • Relocates the SIC pilot type rating from the list of aircraft type ratings to an independent provision.
Type rating requirements	61.31(a)	• Adds powered-lift to the list of aircraft for which a PIC must hold a type rating.
SIC qualifications	61.55(a)	• Adds a provision to cross-reference the proposed SIC qualification requirements in the SFAR that would apply only to persons seeking to serve as SIC of a powered-lift that is capable of performing tasks that the person was never trained or tested on.
Additional aircraft ratings	61.63(h) 61.165(g)	• Removes provisions that enable a pilot to apply for a category and class rating that is limited to a specific make and model of experimental aircraft based on flight time that was logged between September 1, 2004, and August 31, 2005. Because persons have had over 15 years to obtain a limited rating under these provisions, FAA anticipates that these provisions are obsolete.
Clarification of Requirements for a Practical Test in an Aircraft Requiring a Type Rating.	61.39(a)(iii); 61.43(g); 61.47(d)	• Adds a provision to make clear that a person may not furnish an aircraft that requires a type rating (or a FSTD representing an aircraft requiring a type rating) for the practical test without seeking a type rating for that aircraft.
Use of an FFS or FTD	61.64(e), (f)	• Requires a person completing the entire practical test in a Level C or higher FFS to obtain a powered-lift type rating with a PIC limitation unless the person has 500 hours of flight time in the type of powered-lift.

TABLE 9—SUMMARY OF PROPOSED PERMANENT CHANGES—Continued

Provision	14 CFR § affected	Summary of proposed provision
Private Pilot Aeronautical experience: Powered-lift category rating.	61.109(e)(5)	• Requires a person seeking a powered-lift category rating on a private pilot certificate to obtain 10 hours of solo flight time in a powered-lift.
ATP Aeronautical experience: Powered-lift category rating.	61.163(c)	• Permits flight time logged under SIC PDP to be credited towards 1,500 hours of total time required for an ATP certificate with a powered-lift category rating.
ATP privileges and limitations	61.167(a)(2)	• Adds reference to the ATP experience requirements of § 61.163 to enable a person who holds an ATP certificate with a powered-lift category rating to have instructional privileges consistent with those afforded to ATP certificate holders with airplane and helicopter ratings.
Crewmember experience and minimum equipment list requirements for program aircraft.	91.1053(a)(2)(i) 91.1115(b)(1)	• Requires that type rating for PIC operating powered-lift in program operations under subpart K of part 91 not be limited to VFR only. • Adds powered-lift and other aircraft to regulation prescribing instruments and equipment that may not be included in the Minimum Equipment List.
PIC qualifications for certain part 135 passenger-carrying operations.	135.243(a)	• Adds requirement to hold an ATP certificate with a powered-lift category rating and an appropriate type rating not limited to VFR for that powered-lift, when serving as PIC in: (1) on-demand passenger-carrying turbojet-powered powered-lift operations; (2) on-demand operations in a powered-lift having a passenger seating configuration, excluding crewmember seats, of ten or more; and (3) powered-lift commuter operations other than turbojet-powered powered-lift.
PIC qualifications to conduct VFR and IFR operations under part 135.	135.243(b) and (c)	• Requires the PIC of a part 135 VFR operation in a powered-lift to hold a commercial pilot certificate with appropriate category ratings, an appropriate type rating not limited to VFR, and an instrument-powered-lift rating or an ATP certificate with a powered-lift category rating. • Requires the PIC of a part 135 IFR operation in a powered-lift to hold a commercial pilot certificate with appropriate category ratings, a type rating for the aircraft not limited to VFR, and an instrument-powered-lift rating or an ATP certificate with a powered-lift category rating.
SIC qualifications under part 135	135.245(c)	• Adds requirements for maintaining instrument experience for powered-lift SICs that operate under IFR.
Initial and recurrent pilot testing requirements in part 135 operations.	135.293(a)(9), (b), and (c)	• Adds testing requirement for powered-lift pilots on specific procedures to recognize and avoid hazardous visibility conditions. • Adds competency check requirement to be conducted in the type of powered-lift in which the pilot will serve. • Requires competency check in a powered-lift to include a demonstration of the pilot's ability to maneuver the powered-lift solely by reference to instruments; safely maneuver the powered-lift into VMC following an inadvertent encounter with IMC; and, for non-IFR-certificated powered-lift, requires performance of maneuvers appropriate to the powered-lift's installed equipment, the certificate holder's operations specifications, and the operating environment.
PIC instrument proficiency check requirements under part 135.	135.297(c)(1), (g)(3)	• Modifies instrument proficiency check requirements to align powered-lift, rotorcraft, and airplane PIC IPC requirements. • Modifies PIC IPC requirements when using autopilot instead of an SIC in powered-lift and rotorcraft, to align with IPC requirements when using autopilot instead of an SIC in an airplane.
Training center certificate holder training specifications.	142.11(d)(2)(iii)	• Adds training specification requirements for powered-lift flight simulators and flight training devices.
Training center instructor eligibility requirements.	142.47(a)(5)(ii) and (c)(2)(ii)	• Adds requirement that instructors providing instruction in flight simulators or flight training devices that represent aircraft requiring a type rating, or in a curriculum leading to an ATP certificate or adding a rating to an ATP certificate, meet the aeronautical experience requirements of § 61.159, § 61.161, or § 61.163. • Clarifies scope of knowledge tests that instructors must satisfactorily complete.
Training center instructor training and testing requirements.	142.53(b)(2)(i) and (b)(3)(i)	• Adds allowance for instructors instructing in a flight simulator for an ATP certificate or type rating to meet one of three requirements.
Flight instruction aircraft requirements for training centers.	142.57(c)	• Adds exception for training centers to use aircraft with controls not easily reached from both pilot stations if the certificate holder determines the flight instruction can be conducted in a safe manner.

VI. Operational Rules for Powered-Lift

A. Introduction

The following sections detail the operational rules that the FAA proposes to apply to powered-lift under the SFAR. Through the proposed SFAR, the FAA would provide a pathway to integrate powered-lift operations into parts 91, 97, 135, and 136. The FAA proposes to apply specific airplane, rotorcraft, and helicopter rules to powered-lift as appropriate.[331]

Currently, parts 43, 91, 97, 135, and 136 contain certain provisions applicable to aircraft, generally, and do

[331] The FAA notes that there are some inconsistencies in how FAA regulations currently refer to ''rotorcraft'' versus ''helicopter.'' In this preamble, the FAA references the term that is currently used in each regulation. In the future, the FAA may propose standardizing the use of ''rotorcraft'' or ''helicopter.''

not specify applicability to a particular kind of aircraft (*e.g.,* airplane, rotorcraft, or powered-lift). Accordingly, these provisions are already applicable to powered-lift because powered-lift meet the definition of aircraft in § 1.1. In order to mitigate the safety gaps that exist due to the absence of operational regulations specifically applicable to powered-lift, the FAA proposes, through the SFAR, to apply specific airplane, rotorcraft, and helicopter rules contained in parts 43, 91, 97, 135, and 136 to powered-lift as appropriate. The FAA conducted a comprehensive review of the operational rules, taking into consideration the anticipated capabilities of powered-lift and the lack of operational data. Each rule was evaluated to determine whether the airplane or the rotorcraft/helicopter provisions would maintain a level of safety for powered-lift operations as is provided in the current rules. Based on this review, the FAA asserts that the proposed provisions will maintain an equivalent level of safety for operations conducted in powered-lift to those conducted in airplanes, rotorcraft, or helicopters.

In conducting its analysis, the FAA noted the hybrid nature of the performance characteristics for powered-lift and reviewed the rules that explicitly state airplane, rotorcraft, and helicopter. Powered-lift have the ability to takeoff and land vertically like helicopters, but also fly similar to an airplane. The FAA anticipates some powered-lift may also be capable of conducting takeoff and landing operations that depend on wing-borne lift, similar to an airplane. The FAA also anticipates powered-lift operators will maximize the aircraft's unique characteristics to conduct a range of different operations. These operations will likely include low speed, short distance, and short duration flights typically flown in helicopters; as well as longer, faster, and higher altitude flights typically flown by airplanes. The FAA reasons that while powered-lift have a range of performance characteristics, the majority of the powered-lift flight time will be during cruise operations. Moreover, when operating similar to a helicopter, powered-lift may have substantial differences in performance, transition times, and methods; and vary in their ability to sustain hover, land at a heliport, or execute copter approaches. The FAA acknowledges that the capability of every powered-lift may not be captured or accommodated by the SFAR. However, the SFAR is a temporary regulatory structure that allows the FAA time to draft permanent rules. Ultimately, the FAA proposes rules it considers appropriate for powered-lift based on risk and available data. The FAA seeks comment on this approach for operational rules as temporarily applied to powered-lift.

1. Aircraft References and Other Definitions in Section 1.1

As discussed previously, the regulations under title 14 of the Code of Federal Regulations that reference ''aircraft'' currently apply to powered-lift. As a result, the FAA generally does not address regulations pertaining to aircraft within the operational section of this preamble. The FAA analyzed regulations that reference airplane, rotorcraft, aircraft with propellers or rotors, helicopter, powerplant, and engine to determine which of those regulations should apply to powered-lift, in addition to the requirements already applicable to ''aircraft.''

To enable powered-lift to conduct extended overwater operations and to use heliports in those operations, the FAA proposes to apply the ''extended over-water operation'' and ''heliport'' definitions in § 1.1 to powered-lift. ''Extended over-water operation'' for helicopters is defined as ''an operation over water at a horizontal distance of more than 50 nautical miles from the nearest shoreline and more than 50 nautical miles from an off-shore heliport structure.'' Section 1.1 defines ''heliport'' as ''an area of land, water, or structure used or intended to be used for the landing and takeoff of helicopters.'' The FAA recognizes that it has published interim guidance for vertiport design, and industry is seeking use of existing infrastructure, including heliports. The FAA is evaluating whether these structures could be used with modification. The FAA proposes to enable operations using heliports and solicits comments from industry on the viability of this proposal. The FAA discusses this proposal in more detail in sections VI.B and VI.D of this preamble.

2. Powerplant and Engine References

Within the operational rules of this SFAR, the FAA generally does not impose requirements based on the powerplant of the powered-lift. For example, where a regulation refers to an aircraft powered by turbines, the FAA takes the approach that such regulations should apply to all powered-lift. The FAA anticipates that certain powerplants, such as electric motors, may have equal or better performance in comparison to internal combustion engines, which could lead to higher performance capabilities, so in an abundance of caution, the FAA is generally taking a more conservative approach and requiring that certain operating regulations apply to all powered-lift, regardless of powerplant. There are, however, some regulations where the FAA proposes to apply certain regulations based on powerplant because those regulations contain factors other than performance which trigger the applicability of that particular regulation (*e.g.,* the regulation is powerplant specific to maintain the intent for noise abatement in certain classes of airspace). In those instances, the FAA explains why it proposes to retain the powerplant reference.

Notably, as stated in section V.J of this preamble, at present, the FAA does not anticipate the introduction of turbojet-powered powered-lift into the civilian market. The FAA recognizes that in the Update to Air Carrier Definitions NPRM, the FAA proposes amendments to definitions to distinguish between powered-lift that are turbojet-powered and those that are not for purposes of forecasting an operational framework based on aircraft performance. The FAA also references turbojet-powered powered-lift for purposes of proposing an airman certification framework for pilots of those aircraft; however, due to the lack of turbojet-powered powered-lift expected to enter the civilian market during the term of this SFAR, it is appropriate for the operating regulations to generally remain powerplant neutral at this time.

This proposed rule refers to powered-lift electric motors as ''engines.'' The FAA has previously determined that it is appropriate to use the term ''engine'' for powered-lift electric motors to remain consistent with regulatory references to ''engines'' and to ensure the appropriate regulations apply to powered-lift.[332] In addition, the FAA does not impose requirements specifically for ''multiengine'' powered-lift, even though many regulations within parts 91, 135, and 136 reference ''multiengine'' airplanes and aircraft.[333] The FAA acknowledges that currently all civil powered-lift coming to market are multiengine aircraft, and it does not anticipate civil single-engine powered-lift to be developed during the term of this SFAR. Accordingly, to reduce redundancy and to ensure the

[332] The FAA issued the first special conditions for an electric engine in September 2021. See Special Conditions: magiX USA, Inc., magni350 and magni650 Model Engines; Electric Engine Airworthiness Standards, 86 FR 53508 (Sep. 27, 2021).

[333] See, *e.g.,* §§ 91.501 (applying the operational requirements of subpart F to turbine-powered multiengine airplanes) and 135.152 (requiring FDRs on certain multiengine, turbine-engine powered airplanes).

regulations apply as intended, the FAA applies multiengine regulations to all powered-lift.

3. Flight Modes

The operational rules of this SFAR refer to two flight modes: wing-borne flight mode and vertical-lift flight mode. Wing-borne flight mode refers to powered-lift that are operating more like traditional airplanes, which use a wing to generate lift and depend exclusively or partially on nonrotating airfoil(s) for lift during takeoff, landing, or horizontal flight. Vertical-lift flight mode refers to powered-lift that are operating like traditional rotorcraft, which are capable of vertical takeoff, vertical landing, and low speed flight; and depend principally on engine-driven lift devices or engine thrust for lift.

4. Incorporation by Reference

Incorporation by reference (IBR) is a mechanism that allows Federal agencies to comply with the requirements of the Administrative Procedure Act to publish rules in the **Federal Register** and the CFR by referring to material published elsewhere.[334] Material that is incorporated by reference has the same legal status as if it were published in full in the **Federal Register**. The standards referenced in this rule include technical information and specifications for equipment and capabilities required to meet terrain awareness and warning systems and helicopter terrain awareness and warning systems.

The standards referenced in §§ 194.109, 194.302, 194.307, and 194.308 of this proposed rule are proposed to be incorporated by reference with the approval of the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51.

1. TSO–C194, Helicopter Terrain Awareness and Warning System (Dec. 17, 2008). This TSO contains the minimum performance standards the helicopter terrain awareness and warning system must meet for approval and identification with the TSO marking. It may be obtained from the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse M30, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785; telephone (301) 322–5377. It is also available on the FAA's website at *www.faa.gov/aircraft/air_cert/design_approvals/tso/.* Select the link ''Search Technical Standard Orders.''

2. Section 2, Equipment Performance Requirements and Test Procedures, of RTCA DO–309, Minimum Operational Performance Standards (MOPS) for Helicopter Terrain Awareness and Warning System (HTAWS) Airborne Equipment (Mar. 13, 2008). Section 2 of RTCA DO–309 contains the equipment performance requirements and test procedures for Helicopter Terrain Awareness and Warning Systems. It may be obtained from RTCA, Inc., 1150 18th St. NW, Suite 910, Washington, DC 20036; telephone (202) 833–9339; website: *www.rtca.org/products.*

In accordance with 5 U.S.C. 552(a) and 1 CFR part 51,[335] all approved materials are available for inspection at the FAA's Office of Rulemaking, 800 Independence Avenue SW, Washington, DC 20590 (telephone (202) 267–9677).

B. Part 91 Rules for Powered-Lift

Part 91 prescribes flight rules governing the operation of aircraft within the U.S., including the waters within 3 nautical miles of the U.S. coast.[336] Part 91 establishes broad requirements for aircraft operators, aircraft equipment, and aircraft maintenance, and specifically references powered-lift in subpart K. The references to powered-lift were added to part 91 in 2003 as part of the fractional ownership amendments.[337] At the time of the fractional ownership amendments to part 91, the FAA did not consider it necessary to address powered-lift throughout part 91 because powered-lift were not available for civil operations. As a result, powered-lift were not included as a type of aircraft in part 91, and the part 91 operational rules that are based on category or class of aircraft do not apply to powered-lift.

The FAA limits the scope of this SFAR to include only the relevant operational rules in 14 CFR part 91, subparts A through H[338] and K. Applying the specific airplane or helicopter rules from these subparts will provide an appropriate level of safety for powered-lift operations. Regulations from subparts I, J, L, M, and N[339] are not addressed in this SFAR because they apply to aircraft generally, and thus already apply to powered-lift, or because they apply to a distinct class of aircraft to which powered-lift do not belong.

The discussion that follows explains the proposed application of specific part 91 regulations to powered-lift, as reflected by the tables contained in proposed §§ 194.302 and 194.303. These provisions are organized by subpart in the rule. As an additional note, § 91.905 has a list of specific regulations that are subject to waiver, as described in § 91.903. Powered-lift operators may also apply for waivers from those provisions if they cannot comply with the requirements subject to waiver, including those modified by the SFAR, or, if the provision is not subject to waiver, the operator may seek an exemption.

1. Subpart A—General Requirements

Subpart A prescribes rules governing the operation of aircraft within the U.S., including the waters within 3 nautical miles of the U.S. coast.[340] The provisions are applicable to all aircraft operating in the NAS, unless specifically excepted, such as for aircraft governed by part 103 or 107.

The proposed SFAR addresses only one section of subpart A, § 91.9. Paragraphs (a) and (b) of § 91.9 specify the requirements for complying with the operating limitations in an approved Airplane or Rotorcraft Flight Manual, and requirements for maintaining the Airplane or Rotorcraft Flight Manual in the aircraft, as appropriate to the aircraft. The FAA proposes in § 194.302(a) to apply the requirement to comply with the operating limitations of the aircraft's approved flight manual to powered-lift and to maintain the flight manual in the powered-lift. The FAA expects such aircraft to have an Aircraft Flight Manual approved through the airworthiness certification process, just as with airplane and rotorcraft certification and intends for powered-

[334] *See* 5 U.S.C. 552(a) and 1 CFR part 51.

[335] 5 U.S.C. 552(a) requires that matter incorporated by reference be ''reasonably available'' as a condition of its eligibility. Further, 1 CFR 51.5(a)(1) requires that agencies seeking to incorporate material by reference discuss in the preamble of the proposed rule the ways that the material it is incorporating by reference is reasonably available to interested parties and how interested parties can obtain the material.

[336] The FAA notes that in addition to part 91 regulating the operation of aircraft within 3 nautical miles of the U.S. coast, certain part 91 regulations apply to persons operating aircraft over waters between 3 and 12 nautical miles from the U.S. coast. *See* 14 CFR. 91.1(b).

[337] Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations; Final Rule, 68 FR 54520 (Sep. 17, 2003).

[338] Subparts A through H address general operating rules flight rules; equipment instrument and certificate requirements; special flight operations, maintenance, preventive maintenance and alteration, large and turbine-powered multiengine airplanes and fractional ownership program aircraft; and additional equipment and operating requirements for large and transport category aircraft, respectively.

[339] See subpart I, Operating Noise Limits; subpart J, Waivers; subpart L, Continued Airworthiness and Safety Improvements; subpart M, Special Federal Aviation Regulations; and subpart N, Mitsubishi MU–2B Series Special Training, Experience, and Operating Requirements.

[340] As previously mentioned, in addition to part 91 regulating the operation of aircraft within 3 nautical miles of the U.S. coast, certain part 91 regulations apply to persons operating aircraft over waters between 3 and 12 nautical miles from the U.S. coast. *See* 14 CFR. 91.1(b).

lift operators to comply with the manual requirements in this section, as is the case for airplanes and rotorcraft. The FAA also proposes a permanent amendment to § 91.1(d) to change the term ''airplane'' to ''aircraft'' because these provisions apply to all aircraft.

2. Subpart B—Flight Rules

Subpart B prescribes the flight rules governing the operation of aircraft within the U.S. and within 12 nautical miles from the coast of the U.S. This subpart primarily imposes requirements on all ''aircraft,'' which, as mentioned previously, already apply to powered-lift.

i. General

Section 91.103—Preflight action—contains the requirement for a PIC to be familiar with all available information concerning that flight. This information must include takeoff and landing distance data as specified in an approved Airplane or Rotorcraft Flight Manual. The FAA proposes that powered-lift with an Aircraft Flight Manual approved through the aircraft certification process in part 21 comply with the provisions in § 91.103. The FAA has determined that the requirement to be familiar with the takeoff and landing distance data in the manual, as set forth in paragraph (b), would also be applicable to powered-lift, as reflected in proposed § 194.302(b). Powered-lift are expected to takeoff and land similar to either an airplane or rotorcraft, depending on flight mode, and the distances referenced in this section would also be relevant for powered-lift operators to familiarizes themselves with.

Section 91.107 describes the use of safety belts, shoulder harnesses, and child restraint systems. Specifically, it requires that each person onboard an aircraft operated under part 91 occupy an approved seat or berth with a separate safety belt and, if installed, shoulder harness properly secured about the person during movement on the surface, takeoff, and landing. For seaplane and float-equipped rotorcraft operations during movement on the surface, this section excepts the person pushing off the seaplane or rotorcraft from a dock and the person mooring the seaplane or rotorcraft at a dock from the preceding seating and safety belt requirements.

In 1992, the FAA published a final rule [341] revising § 91.107 and acknowledged that it would be impossible to moor or launch a seaplane or a float-equipped rotorcraft unless a pilot or passenger has their safety belt or shoulder harness unfastened so that they can vacate their seat for the purpose of launching or mooring the seaplane or float equipped rotorcraft. The FAA proposes in § 194.302(c) to apply the same exception to powered-lift when the powered-lift is operating like a seaplane or float-equipped rotorcraft. A pilot or passenger would also have to push a powered-lift conducting operations similar to a seaplane or float-equipped rotorcraft off a dock or moor a powered-lift to a dock. Accordingly, the exception contained in § 91.107(a)(3) would be appropriate to apply in such situations so that those individuals can push-off or moor an aircraft without violating the requirement to remain harnessed.

Section 91.113 prescribes the rule for converging aircraft based on category and type of operation (*e.g.,* towing). Under § 91.113(d), when aircraft of the same category are converging at approximately the same altitude (except head-on, or nearly so), the aircraft to the other's right has the right-of-way. When the aircraft are of different categories, § 91.113(d)(1) through (3) establishes a hierarchy giving priority to balloons, then gliders, followed by airships, and then to airplanes and rotorcraft. An aircraft that is towing or refueling other aircraft has right-of-way over all other engine-driven aircraft. The FAA emphasized aircraft maneuverability when establishing the right-of-way hierarchy for converging aircraft in § 91.113(d)(1) through (3). The preamble for the original right-of-way rule states ''an aircraft will give way to another of a different class which is less maneuverable and is unable to take as effective action to avoid collision.'' [342]

The FAA proposes in § 194.302(d) that powered-lift comply with the airplane provisions in this paragraph and yield right-of-way as prescribed in this section. For example, if a powered-lift is converging with an airplane, the aircraft to the right would have the right of way. The FAA proposes powered-lift, airplanes, and rotorcraft should be grouped in the same right-of-way category. The proposed approach is consistent with the FAA's historical prioritization of maneuverability for right-of-way considerations, and with the original purpose of the rule, which was to require more maneuverable aircraft give way to less maneuverable aircraft.

Section 91.119 prescribes the minimum safe altitude (MSA) for aircraft operations. This section establishes less restrictive minima for helicopters, with helicopters being allowed to operate below the minimum altitudes prescribed in § 91.119(b) and (c) in certain circumstances. The justification for allowing helicopters to operate below minimum altitudes was based on helicopter performance capability. In the preamble [343] to the original MSA rule, the FAA stated that the rule recognizes the helicopter special flight characteristics which can accomplish an emergency landing within a relatively small space. However, if a helicopter is flown over a congested area at less than 1,000 feet above the highest obstacle, the pilot is required to fly with due regard to places where an emergency landing can be made safely and to maintain an altitude along the flight path from which such an emergency landing can be affected at any time.

Helicopter maneuverability and autorotation capability after an engine failure were key factors in the FAA's decision to allow helicopter operations below MSA. Likewise, the FAA considered, for purposes of this proposal, whether powered-lift with helicopter characteristics should also be allowed to conduct operations below MSA.

Some powered-lift may not have autorotation capability, while other powered-lift may lose significant altitude while transitioning the aircraft rotors to a vertical position suitable for autorotation. The transition of a powered-lift from forward flight to vertical flight would not be instantaneous, requiring additional time, distance, and altitude that is unique from helicopters. Although some powered-lift may be capable of performing an emergency autorotation into a more confined space, the FAA anticipates that additional altitude would increase the chances of a successful outcome without undue hazard to persons or property on the surface. Accordingly, the FAA is not proposing to apply the helicopter minimum altitude requirements of § 91.119 to powered-lift. The FAA anticipates learning more about powered-lift operational capabilities and commonalities during the term of the proposed SFAR.

Section 91.126(b) describes directions of turns when approaching to land at an airport without an operating control tower in Class G airspace. The FAA anticipates that some powered-lift will

[341] Miscellaneous Operational Amendments, 57 FR 42671 (Sep. 15, 1992).

[342] See 12 FR 5547 at 5548 (Aug. 16, 1947), Civil Aeronautics Board Air Traffic Rule, note to § 60.104, later codified at 14 CFR 91.113.

[343] Id.

transition much like a helicopter, from forward flight (wing-borne flight mode) to vertical flight (vertical-lift flight mode) upon entering the traffic pattern to land.[344] The FAA proposes in § 194.302(e) to apply the airplane provisions detailed in § 91.126(b)(1) when the operator of the powered-lift intends to land in wing-borne flight mode, which is how an airplane lands. The FAA proposes in § 194.303(b) to apply the helicopter provisions detailed in § 91.126(b)(2) to powered-lift when the powered-lift intends to land in vertical-flight mode. This proposal would provide the flexibility for powered-lift operators capable of landing in vertical-flight mode to approach to land at most helicopter pads while avoiding the flow of fixed-wing aircraft. This application of the rule gives flexibility to the novel capabilities of powered-lift while maintaining an appropriate level of operational safety by using the standard traffic pattern flow at airports without operating control towers.

Section 91.126(c) outlines the final flap settings required for turbojet-powered airplanes as outlined in the Airplane Flight Manual. Specifically, it requires the PIC of a civil turbojet-powered aircraft to use, as a final flap setting, the minimum certificated landing flap setting set forth in the approved performance information in the Airplane Flight Manual for the applicable conditions. Paragraph (c) uses the term turbojet-powered aircraft; however, the history of this rule indicates it was intended for turbojet-powered airplanes only.[345] Furthermore, the FAA is not aware of any turbojet-powered powered-lift currently in the certification process, nor are any anticipated during the term of this SFAR. The FAA understands that some powered-lift utilize automatic flap settings. Requiring a powered-lift to transition out of its automatic settings creates opportunities for error which could inhibit a safe landing. To ensure that powered-lift can land safely at airports in Class G airspace, the FAA does not propose to apply this paragraph to powered-lift.

Section 91.129 provides requirements for operations in Class D airspace. The provisions of § 91.129(a) through (d), (g)(1), and (i) refer to aircraft, and accordingly are already applicable to powered-lift. However, paragraphs (e)(1) and (2) require minimum altitudes when operating to an airport in Class D airspace in large or turbine-powered airplanes. Under the existing rule of paragraph (e)(1), unless required by the applicable distance-from-cloud criteria, each pilot operating a large or turbine-powered airplane must enter the traffic pattern at an altitude of at least 1,500 feet above the elevation of the airport and maintain at least 1,500 feet until further descent is required for a safe landing. For paragraph (e)(2), a pilot operating a large or turbine-powered airplane approaching to land on a runway served by an instrument approach procedure with vertical guidance, if the airplane is so equipped, must operate that airplane at an altitude at or above the glide path between the published final approach fix and the decision altitude (DA), or decision height (DH), as applicable; or if compliance with the applicable distance-from-cloud criteria requires glide path interception closer in, operate that airplane at or above the glide path, between the point of interception of glide path and the DA or the DH. The FAA promulgated these particular requirements to address noise abatement concerns related to large and turbine-powered airplanes.[346] In order to remain consistent with this established agency policy for powered-lift operations that are likely to result in similar noise due to size and powerplant, the FAA proposes in § 194.302(f) that large [347] or turbine-powered powered-lift comply with paragraphs (e)(1) and (2). The FAA anticipates that for large and turbine-powered powered-lift, compliance with these requirements will be necessary for adequate noise abatement within Class D airspace.

For paragraph (e)(3), a pilot operating an airplane approaching to land on a runway served by a visual approach slope indicator (VASI) must operate that airplane at an altitude at or above the glide path until a lower altitude is necessary for a safe landing. The requirement for all airplanes to remain at or above the glide path provides an additional measure of safety such as obstacle clearance to airplanes during their approach. The FAA proposes in § 194.302(g) that powered-lift intending to land in wing-borne flight mode comply with this provision of paragraph (e)(3) to ensure adequate obstacle clearance is maintained during the approach. For those powered-lift intending to land in the vertical mode, the FAA anticipates they will be flying more slowly than when in wing-borne flight mode and able to maneuver similar to a helicopter and accordingly, compliance with this provision would not be required.

Section 91.129(f) imposes requirements for approaches except when conducting circling approaches under part 97 for airplanes and helicopters. The FAA anticipates that powered-lift will often transition from forward flight (wing-borne flight mode) to vertical flight (vertical-lift flight mode) upon entering the traffic pattern to land much like a traditional helicopter. The FAA proposes in § 194.302(h) that powered-lift comply with the airplane rule in § 91.129(f)(1) when the powered-lift is intending to land in wing-borne flight mode. When the operator of the powered-lift intends to land in vertical-flight mode, the powered-lift shall comply with the helicopter provisions detailed in § 91.129(f)(2). This application of the rule gives flexibility to the novel capabilities of powered-lift while maintaining operational safety by using the standard traffic pattern flow at airports. The requirements of § 91.129(f)(1) and (2) do not apply to powered-lift conducting a circling approach under part 97 because a circling approach may have specific procedures established or turns may be requested by ATC to ensure safety in the traffic pattern.

Section 91.129(g)(2) requires that, unless otherwise required by the prescribed departure procedure for that airport or the applicable distance from clouds criteria, each pilot of a turbine-powered airplane and each pilot of a large airplane must climb to an altitude of 1,500 feet above the surface as rapidly as practicable. The FAA proposes in § 194.302(f) that large or turbine-powered powered-lift also comply with this requirement, to ensure that powered-lift will be operated at an equivalent level of safety to existing large or turbine-powered airplanes. This requirement will also provide adequate terrain clearance and improved noise abatement for these powered-lift and is consistent with previous rulemakings that established the 1,500 feet altitude requirement for noise abatement purposes.[348]

[344] When approaching to land at an airport without an operating control tower in Class G airspace. 14 CFR 91.126(b).

[345] In a 1989 proposed rulemaking updating airspace classifications, the FAA inadvertently included reference to ''aircraft'' in the first sentence of paragraph (c) (then, § 91.85(b)), but the remainder of the paragraph refers to ''airplane''. See Airspace Reclassification, NPRM, 54 FR 42916, 42929 (Oct. 18, 1989).

[346] Noise Abatement Rules, 32 FR 15422 (Nov. 4, 1967), Noise Abatement Rules, 32 FR 5559 (Apr. 5, 1967).

[347] Large aircraft are defined in § 1.1 as weighing more than 12,500 pounds, maximum certificated takeoff weight.

[348] Noise Abatement Rules, 32 FR 15417, 15422 (Nov. 4, 1967).

For runway usage requirements, the FAA proposes in § 194.302(f) that large or turbine-powered powered-lift comply with § 91.129(h), which states that where a formal runway use program has been established by the FAA, each pilot of a large or turbine-powered airplane assigned a noise abatement runway by ATC must use that runway. However, consistent with the final authority of the PIC concerning the safe operation of the aircraft as prescribed in § 91.3(a), ATC may assign a different runway if requested by the pilot in the interest of safety. This requirement is consistent with previously established FAA policy regarding noise abatement and operational safety,[349] and the FAA considers this requirement to be appropriate for powered-lift operations to ensure adequate noise abatement.

Section 91.131 contains rules governing operations in Class B airspace. Paragraph (a)(2) of this section requires that each person operating a large turbine-engine powered airplane to or from a primary airport for which Class B airspace area is designated must operate at or above the designated floor of the Class B airspace while within the lateral limits of that area.

The FAA proposes in § 194.302(i) that § 91.131(a)(2) apply to large powered-lift regardless of powerplant type. When operating to or from a primary airport within Class B airspace, the FAA expects the performance characteristics of a large powered-lift to be similar to a large turbine-engine powered airplane. Compliance with § 91.131(a)(2) will ensure the safe and efficient flow of air traffic within this high-traffic airspace and ensure that large powered-lift remain deconflicted from smaller aircraft that may be operating under the Class B airspace and not receiving air traffic services. Finally, the proposed approach is the most conservative application of this rule and is consistent with FAA initiatives to effectively manage and segregate high-performance aircraft from other air traffic.[350]

ii. Visual Flight Rules

Section 91.151 prescribes fuel requirements for flight in VFR conditions. The regulation requires airplanes to carry a 30-minute fuel reserve for daytime operations, and a 45-minute fuel reserve for nighttime operations. In contrast, rotorcraft only require a 20-minute fuel reserve regardless of whether the operation occurs during the day or night. The FAA expanded the fuel reserve requirements in the 1970s following an increase in fuel exhaustion accidents in VFR operations.[351] The stated goal was to prevent future fuel exhaustion accidents. The FAA also noted that the airplane fuel reserve requirements were necessary for night VFR due to the distance between adequately lit airports. For powered-lift, the FAA proposes in § 194.302(j), that powered-lift comply with the airplane reserve requirements in § 91.151(a) because the FAA lacks powered-lift operational data to support use of the less restrictive rotorcraft fuel reserve. This approach is consistent with the FAA's overall approach throughout this proposed SFAR, until such time as the FAA has information to validate a less conservative approach.

The FAA is aware that the use of the term ''fuel'' rather than the term ''energy'' could lead individuals to reach the conclusion that this term excludes electric propulsion systems. In a prior rulemaking, the FAA stated it did not intend to preclude the certification of electric propulsion systems or other non-fossil-fuel-based propulsion systems, such as provided by carbon-based fuels or electrical potential, and the FAA maintains that position in this SFAR.[352] The term ''fuel systems'' also includes a means of storage for the electrical energy provided (*e.g.,* batteries that provide energy to an electric motor) or devices that generate energy for propulsion (*e.g.,* solar panels or fuel cells).[353]

Sections 91.155 and 91.157 prescribe basic VFR and special VFR weather requirements. Under these rules, helicopter operations are permitted at lower weather minima than other aircraft because helicopters operate at lower altitudes and slower airspeeds. In a 1963 rulemaking, the FAA provided different weather minima for helicopters than for airplanes and explained that when a helicopter is below 1,200 feet above the surface at a speed that allows the pilot adequate opportunity to see any air traffic or other obstruction in time to avoid a collision, those circumstances form an adequate basis to impose a lower visibility minimum.[354]

When explaining the intent of § 91.155, the FAA stated that a helicopter pilot need only remain clear of clouds, regardless of flight visibility, because ''[h]elicopters have the ability to operate at lower speeds and with a significantly higher degree of maneuverability than airplanes. These qualities allow a helicopter to be operated at lower visibility and cloud clearance distances while maintaining the same degree of safety as fixed-wing aircraft flying under more restrictive minima.'' [355]

While powered-lift possess some helicopter performance characteristics, these characteristics vary widely across the range of powered-lift and are typically related to the takeoff and landing portions of the flight. During cruise operations, powered-lift perform similar to an airplane, operating at high speeds and possibly without the ability to maneuver as quickly as a helicopter to avoid a collision with other traffic or obstacles. Therefore, based on the forgoing, this SFAR proposes in § 194.302(k) that powered-lift operating in Class G airspace comply with the same weather minima prescribed in § 91.155(b)(2) for airplanes in such airspace because the airplane-specific requirements in this section provide the appropriate level of risk mitigation for powered-lift operations. Weather minima generic to all aircraft in this section also continue to apply to powered-lift.

Section 91.157 provides the conditions under which special VFR weather minima may be conducted. The majority of this section applies to all aircraft except for paragraphs (b)(3) and (4) which are specific to helicopters. For the reasons described in the previous paragraphs, this SFAR will not incorporate these helicopter exceptions for powered-lift. The FAA proposes to continue to require powered-lift to comply with the requirements applicable to all aircraft in this section.

iii. Instrument Flight Rules

Section 91.167 prescribes the fuel requirements for flight in IFR conditions. Under this rule, helicopter operations are permitted with lower fuel minima. Section 91.167 requires aircraft to carry a 45-minute fuel reserve and helicopters to carry a 30-minute fuel reserve. The FAA has determined that

[349] Airspace Reclassification, 54 FR 42916 (Oct. 18, 1989).

[350] See Transponder with Automatic Altitude Reporting Capability Requirement, 53 FR 23356, 23363 (June 21, 1988). Discussion of FAA's ''Keep 'em High Program'' as an effective method for segregating high-performance aircraft from other traffic.

[351] General Operating and Flight Rules and Related Airworthiness Standards and Crewmember Training, 43 FR 46230, 46231 (Oct. 5, 1978).

[352] See Revision of Airworthiness Standards for Normal, Utility, Acrobatic, and Commuter Category Airplanes, 81 FR 96640–96641 (Dec. 30, 2016).

[353] For example, § 91.205(b)(9), which refers to a ''[f]uel gauge indicating the quantity of fuel in each tank.'' In instances such as this, the electric battery that stores the energy would be equivalent to the fuel tank.

[354] Air Traffic and General Operating Rules; Definitions and Abbreviations, 28 FR 6704 (Jun. 29, 1963).

[355] Inapplicability of Basic VFR Weather Minimums for Helicopter Operations, 56 FR 48088 (Sep. 23, 1991).

powered-lift should initially have a 45-minute fuel reserve, consistent with aircraft requirements. The 30-minute fuel reserve requirement for helicopters was initially granted under SFAR No. 29.[356] Operations under SFAR No. 29 gave the FAA insight to make a safety and risk analysis enabling SFAR No. 29 to be codified in §§ 91.167 and 135.223. The final rule language for § 91.167(a)(3), and similarly for § 135.223, noted that the FAA had gained sufficient experience with operations conducted under SFAR No. 29 to justify a reduction for minimum fuel reserve requirements for helicopters.[357] At this time, the FAA does not have sufficient experience to reduce minima for powered-lift fuel requirements. Accordingly, consistent with the previous approach the FAA took to evaluate and ultimately to lessen minima for helicopters, the FAA will retain the 45-minute fuel reserve requirement applicable to all aircraft for powered-lift while the FAA obtains data during the term of this SFAR. The FAA may reevaluate the 45-minute fuel reserve requirement once it has sufficient data to do so.

Under § 91.167, for operations in weather conditions that require an alternate airport to be identified, no person may operate in IFR flight unless the aircraft has adequate fuel to fly to the first airport of intended landing and to the alternate airport and still have a 45-minute fuel reserve. In accordance with § 91.167(b)(2)(i) for aircraft other than helicopters, when the appropriate weather reports indicate that at least 1 hour before and for 1 hour after the estimated time of arrival, the ceiling will be at least 2,000 feet above the airport elevation and the visibility will be at least 3 statute miles, the fuel reserve necessary to fly to the alternate airport is not required. As explained previously, the FAA does not currently have the operational experience with powered-lift fuel reserves to allow them to utilize the helicopter minima in this section. As a result, the FAA does not propose changes to the current applicability of § 91.167(b)(2)(i), which requires that powered-lift comply with the requirements imposed on aircraft other than helicopters, to ensure an appropriate level of risk mitigation for these new entrant aircraft.

Section 91.169 prescribes the information required for filing an IFR flight plan. Under this rule, helicopter operations are permitted to use lower weather minima before an alternate must be filed because helicopters operate at lower altitudes and slower airspeeds. The final rule language for § 91.169 recognizes the differences in operating characteristics between rotorcraft and airplanes.[358] Rotorcraft fly shorter distances at slower airspeeds than most other aircraft, carry less fuel than an airplane, and generally remain in the air for shorter periods of time between landings. As a result, once a rotorcraft is in a weather system, it is often more difficult for the rotorcraft to fly out of that system to an alternate destination because the rotorcraft has less range capability than an airplane. However, the FAA anticipates powered-lift will generally fly at higher speeds than many rotorcraft and have the ability to maneuver out of a weather system to an alternate destination. The FAA will continue to require powered-lift to comply with the provisions of § 91.169(b)(2)(i) and (c)(1)(i) as written for aircraft other than helicopters and will plan to evaluate this determination during the term of this SFAR.

Section 91.175 governs takeoff and landing under IFR. Section 91.175(f)(2)(i) and (ii) applies to powered-lift as written because those paragraphs are applicable to all aircraft. At this time, the FAA does not have sufficient experience with powered-lift to allow takeoff operations at the lower weather minima prescribed for helicopters. The FAA considers this approach to be consistent with previous rulemakings where, at initial inception, helicopter operational requirements aligned with airplane operational requirements until sufficient data were available.[359]

Section 91.175(f)(4)(i) requires airplanes operating under part 121 or 135 to comply with the takeoff obstacle clearance or avoidance procedures contained in subpart I of part 121 or subpart I of part 135, as applicable, for IFR takeoffs. Accordingly, the FAA proposes in § 194.302(l) that any powered-lift that would be required to comply with the provisions of subpart I of part 135, as proposed in section VI.D of this preamble, must also comply with the provisions of this paragraph.

3. Subparts C and D—Equipment, Instrument, and Certificate Requirements and Special Flight Operations

Subpart C prescribes the equipment, instrument, and certificate requirements for aircraft. As previously described, powered-lift are already required to comply with provisions applicable to aircraft. The airplane regulations the FAA proposes to apply to powered-lift in this subpart impose certain equipment requirements that the FAA has determined are necessary to provide an adequate level of safety for powered-lift operations.

Section 91.205 states that no person may operate a powered civil aircraft with a standard category U.S. airworthiness certificate in VFR day or night, IFR, at or above 24,000 feet, in Category II or III operations, or in night vision goggle operations, unless the aircraft contains instruments and equipment specified in this section (or FAA-approved equivalents). Section 91.205(a) references aircraft, but there are also airplane-specific provisions set forth in § 91.205(b)(11) and (14).[360]

Section 91.205(b)(11) requires that small civil airplanes certificated after March 11, 1996, in accordance with part 23, have installed an aviation red or aviation white anticollision light system. The requirement to have an anticollision light system is necessary in order to provide sufficient time for other aircraft to avoid a collision. This requirement invokes the latest airworthiness requirements for all airplanes regardless of type certification date. For powered-lift that meet the definition of small aircraft in § 1.1, the FAA proposes in § 194.302(m) that the position and anti-collision lights meet the requirement set forth in § 23.2530(b), which states that any position and anti-collision lights, if required by part 91, would be required to have the intensities, flash rate, colors, fields of coverage, and other characteristics to provide sufficient time for another aircraft to avoid a collision. The FAA proposes that this requirement apply to small powered-lift to provide

[356] The FAA promulgated SFAR No. 29 in 1975 to allow the Administrator to issue approvals for rotorcraft IFR operations on an interim basis pending the conclusion of a study to determine whether the FAA should establish a ''limited'' IFR category for these rotorcraft, including flight characteristics and equipment requirements, operating procedures and limitations, flight crew requirements, and training requirements. See FAA Study of Limited IFR Operations in Rotorcraft, 40 FR 2420 (Jan. 13, 1975).

[357] Rotorcraft Regulatory Review Program Amendment No. 5; Operations and Maintenance, 51 FR 40695 (Nov. 7, 1986).

[358] Flight Plan Requirements for Helicopter Operations Under Instrument Flight Rules, 65 FR 3546 (Jan. 21, 2000).

[359] For example, §§ 91.119 (Minimum safe altitudes: General) and 91.151 (Fuel requirements for flight in VFR conditions) both had requirements identical to airplanes at initial inception which were subsequently relaxed following helicopter operational experience.

[360] As noted earlier in the fuel requirements section, § 91.205(b)(9) references a ''[f]uel gauge indicating the quantity of fuel in each tank.'' Because the FAA considers ''fuel'' to include any form of energy used by an engine or powerplant installation, including via electrical potential, the electric battery that stores the energy would be equivalent to the fuel tank under § 91.205(b)(9).

an equivalent level of safety to that of small airplanes, and to ensure that those powered-lift have an adequate anticollision lighting system that provides sufficient time for another aircraft to avoid a collision.

Paragraph (b)(14) in § 91.205 requires that small civil airplanes certificated after December 12, 1986, have an installed and approved shoulder harness or restraint system for all seats. The FAA proposes in § 194.302(m) that small powered-lift also require the installation of an approved shoulder harness or restraint system for all seats, also to provide an equivalent level of safety to small airplanes. The FAA is also proposing that large powered-lift be required to be equipped with shoulder harnesses in accordance with § 91.521, as discussed further in VI.B of this preamble.

Paragraph (d) of § 91.205 prescribes instruments and equipment requirements for IFR flight. Under § 91.205(d)(3), an aircraft must have installed a gyroscopic rate-of-turn indicator unless the aircraft is equipped with a third attitude instrument system installed as provided in § 121.305(j). For airplanes, the third attitude instrument system installed must be usable through flight attitudes of 360 degrees of pitch and roll. For rotorcraft, the third attitude instrument system installed must be usable through flight attitudes of ±80 degrees of pitch and ±120 degrees of roll. The FAA anticipates that some powered-lift may be capable of exceeding 80 degrees of pitch and/or 120 degrees of roll. Therefore, the FAA proposes in § 194.302(n) that all powered-lift approved for IFR during type certification [361] would be required to comply with the airplane provisions in § 91.205(d)(3)(i) for IFR flight, which require the installation of either a gyroscopic rate-of-turn indicator or a third attitude instrument system usable through flight attitudes of 360 degrees of pitch and roll. The FAA considers the airplane rule to be appropriate for powered-lift to ensure that the powered-lift are equipped to recover from any inadvertent flight attitude encountered.

Section 91.207 requires an emergency locator transmitter (ELT) for airplane operations. An ELT is used to facilitate search and rescue efforts in locating downed aircraft. The ability to locate powered-lift in the event of a crash is essential for reaching survivors as quickly as possible and potentially saving lives. The FAA considers this to be a necessary requirement for powered-lift, particularly as a new entrant aircraft with no civil operational history. Accordingly, the FAA proposes applying § 91.207 to powered-lift in § 194.302(o).

Section 91.213 provides limitations on operations with inoperative instruments and equipment as well as relief for operations with inoperative instruments and equipment for aircraft with and without an approved Minimum Equipment List (MEL). Section 91.213(d) provides specific relief for an aircraft without an approved Minimum Equipment List (MEL). The FAA evaluated whether to propose that powered-lift be allowed to operate without an approved MEL; however, the complexity of the new technology coupled with the lack of operational data supports the application of a conservative MEL approach. Accordingly, the FAA does not propose to apply the provisions set forth in § 91.213(d) to powered-lift.

Section 91.215 describes ATC transponder and altitude reporting equipment and use. Section 91.215(b) states that no person may operate an aircraft in the airspace described in paragraphs (b)(1) through (5) of this section unless that aircraft is equipped with an operable coded radar beacon transponder. The FAA anticipates that all new entrant powered-lift will have a substantial electrical system; however, it may be powered from batteries and not an engine-driven system. The FAA notes that § 91.215(b)(3) and (5) allow aircraft to operate without a transponder if they were certificated without an engine-driven electrical system. The FAA acknowledges that some powered-lift may be certificated without engine-driven electrical systems but does not consider it appropriate to provide relief to new entrant powered-lift because transponders provide critical information, such as aircraft position, speed, and altitude to ATC for aircraft separation. Therefore, the FAA proposes in § 194.305 that all powered-lift be equipped with an operable coded radar beacon transponder as required in § 91.215(b)(1), (2), and (4).

Section 91.219 prohibits the operation of a turbojet-powered U.S.-registered civil airplane unless that airplane is equipped with an approved altitude alerting system or device. This rule was adopted by the FAA in 2007, allowing flexibility in accommodating technological advances.[362] In a performance-based NAS, operational flexibility depends upon many factors including the performance capability of the aircraft, communication and navigation equipment, the availability of the communication and navigation facilities along the route to be flown, and the performance capabilities of those (communication and navigation) facilities that are made available for use by air traffic management service providers. Turbojet-powered airplanes operate within reduced vertical-separation minimum (RVSM) airspace, often within congested airspace, and in close proximity to other fast-moving aircraft. As a new entrant aircraft, the FAA considers it essential that powered-lift operations are conducted in a manner that capitalizes on existing technological capabilities that improve safety and facilitate collision avoidance in the NAS. The FAA previously determined that an altitude alerting system or device is necessary for turbojet-powered civil airplanes because lack of altitude awareness is accentuated by the high rates of climb and descent.[363] The FAA anticipates that this reasoning also applies to all powered-lift because of their high-performance capabilities, regardless of powerplant type. Accordingly, this SFAR proposes in § 194.302(p) that all powered-lift comply with the altitude alerting requirements under § 91.219.

Section 91.223 prohibits the operation of a turbine-powered U.S.-registered airplane configured with six or more passenger seats, excluding any pilot seat, unless that airplane is equipped with an approved terrain awareness and warning system (TAWS). TAWS provides turbine-powered airplanes operating at or near maximum prescribed speeds in close proximity to the ground with early warning of threats from terrain. This early warning allows pilots to react by reducing the time required to perceive these threats.

Powered-lift have the ability to operate similarly to both airplanes and helicopters, so, individually, the current TAWS and HTAWS are not a perfect solution for powered-lift due to each equipment's capabilities and limitations. The FAA considered both TAWS and HTAWS and determined that the current HTAWS specification would provide the best level of safety because HTAWS has a different alerting envelope than TAWS and is designed for low altitude operations, thereby reducing the risk of nuisance alerts.[364] Although there is no specification yet

[361] The FAA acknowledges that most powered-lift initial type certification projects are for VFR approval. However, the FAA anticipates that powered-lift operators will seek IFR approval in the future.

[362] Area Navigation (RNAV) and Miscellaneous Amendments, 72 FR 31661 (Jun. 7, 2007).

[363] Turbojet Powered Civil Airplanes, 32 FR 19191 (Dec. 20, 1967).

[364] For further discussion on TAWS nuisance alerts, see section VI.D of this preamble discussing § 135.154.

developed that incorporates the features of both TAWS and HTAWS in a single unit, the FAA is proposing to allow a hybrid system in a powered-lift that utilizes the features of a TAWS A system for wing-borne flight and HTAWS for vertical flight modes of operation for compliance with § 91.223. Without a TAWS A/HTAWS hybrid system, the FAA considers the current HTAWS specification would provide the best level of safety without an undue number of nuisance warnings. The FAA proposes in § 194.302(q) that all powered-lift—regardless of powerplant type—with 6 or more seats be equipped with an HTAWS system that meets the Technical Standard Order (TSO) C194 or an FAA-approved TAWS A/HTAWS hybrid system.

In addition, the FAA proposes in § 194.302(q) that powered-lift comply with § 91.223(c), which imposes a requirement for a manual containing appropriate procedures on the use of terrain awareness equipment and the proper flight crew reactions in response to a TAWS activation. Because the FAA is proposing to apply § 91.223, but with HTAWS or a hybrid Class A/HTAWS system, the FAA proposes applying paragraph (c) to powered-lift, thereby requiring their Aircraft Flight Manual to contain the appropriate HTAWS or hybrid system procedures. This will ensure powered-lift equipped with HTAWS or a FAA approved TAWS A/HTAWS hybrid system are operated at a level of safety that a terrain awareness system currently provides for airplanes. Finally, the FAA notes that the exceptions in § 91.223(d) for certain parachuting operations, firefighting, and aerial application of chemicals and other substances also apply to powered-lift.[365]

Section 91.313 prescribes operating limitations for restricted category civil aircraft. Paragraphs (a) through (e) apply to powered-lift because they apply to all restricted category aircraft. Section 91.313(f) is not applicable to powered-lift because powered-lift are not currently authorized to conduct operations under part 133. Section 91.313(g) requires small restricted-category airplanes to be equipped with a shoulder harness or restraint system for each front seat. For the same reasons as discussed regarding applicability of § 91.205(b)(14), the FAA proposes in § 194.302(r) that restricted category small powered-lift require the installation of an approved shoulder harness or restraint system for all seats to provide an adequate level of safety for powered-lift operations.

4. Subpart E—Maintenance, Preventive Maintenance, and Alterations

Subpart E prescribes rules governing the maintenance, preventive maintenance, and alterations of U.S.-registered civil aircraft operating within or outside the U.S. The majority of provisions in Subpart E already apply to powered-lift as they apply to aircraft generally (*i.e.,* §§ 91.401, 91.403, 91.405, 91.407, 91.413, 91.415, 91.417, 91.419 and 91.421).

Section 91.409 prescribes inspection programs to ensure that the aircraft is airworthy. The term and regulations for the issuance of a standard airworthiness certificate describe two conditions that must be met for the aircraft to be considered airworthy. The first condition is that the aircraft must conform to its type design or properly altered condition. Conformity to an aircraft's type design is considered attained when the aircraft configuration and the components installed are consistent with the drawings, specifications, and other data that are part of the Type Certificate Data Sheet (TCDS). The second condition is the aircraft must be in a condition for safe operation—this refers to the state and condition of the aircraft. Paragraphs (a), (b), and (d) of § 91.409 require an annual, 100-hour or progressive inspection and are applicable to all aircraft except those that fall under the exceptions provided in paragraph (c). Paragraphs (e) through (h) of § 91.409 set forth inspection requirements for more larger aircraft and aircraft with more complex aircraft systems which are more stringent than those provided under paragraphs (a), (b), and (d). Aircraft described in paragraph (e) may only fly when all the systems work in tandem and do not fly if the systems work independently of each other.

Because paragraphs (e) through (h) apply to more complex aircraft, the FAA proposes in § 194.302(s) that these paragraphs apply to technically advanced powered-lift (TAPL), which the FAA proposes to define in this SFAR for purposes of compliance with § 91.409 as a powered-lift that is equipped with an electronically advanced system in which the pilot interfaces with a multi-computer system with increasing levels of automation in order to aviate, navigate, or communicate, only for purposes of compliance with this section.

A powered-lift that is considered a TAPL would be equipped with an electronically advanced multi-computer system that includes one or more of the following installed components: (1) an electronic Primary Flight Display (PFD) that includes, at a minimum, an airspeed indicator, turn coordinator, attitude indicator, heading indicator, altimeter, and vertical speed indicator; (2) an electronic Multifunction Display (MFD) that includes, at a minimum, a moving map using Global Positioning System (GPS) navigation with the aircraft position displayed; (3) a multi-axis autopilot integrated with the navigation and heading guidance system; and (4) an advanced fly-by-wire-flight control system that utilizes electronically operated controls with no direct mechanical link from the pilot to the control surfaces. The display elements described in (1) and (2) must be continuously visible to ensure that the essential aircraft information is displayed and available to the pilot during all phases of flight.[366] The PFD is a display that provides increased situational awareness to the pilot by replacing the traditional six instruments used for instrument flight with an easy-to-scan single display that provides the horizon, airspeed, altitude, vertical speed, trend, trim, and rate of turn among other key relevant indications. In addition, the PFD is designed specific to controlling the TAPL attitude and altitude relative to the horizon and the surface of the earth, especially when outside visibility is poor or unavailable. The MFD is a display that provides information to the pilot in numerous configurable methods. Often, an MFD will be used in concert with a PFD. The MFD has a different priority; its function is secondary to the PFD. The MFD will have an integrated multi-axis autopilot, navigation, and position awareness information, even though it may include some PFD features for redundancy. The FAA proposes requiring certain minimum display elements for both a PFD and MFD, clarifying what will be considered a PFD or MFD.

The FAA proposes that the described characteristics define TAPL because they will allow the FAA to distinguish between complex and less complex powered-lift and thereby determine which inspection program applies. The FAA will determine whether the powered-lift meets the requirements of a TAPL and it will be indicated in the operator's inspection program documents. Powered-lift that are not considered technically advanced under the definition used for compliance with § 91.409 within this SFAR must

[365] Terrain Awareness and Warning System; Final Rule, 65 FR 16735 (Mar. 29, 2000).

[366] An example of an electronically advanced system includes an integrated flight control and navigation system.

continue to comply with paragraphs (a), (b), and (d) because those provisions apply to ''aircraft''.

Section 91.411 prescribes the requirements for altimeter system and altitude reporting equipment tests and inspections. The regulation describes the inspection, authorized personnel, and standard for altimeter system equipment used in an airplane or helicopter operation in controlled airspace under IFR. Specifically, paragraph (a) prohibits a person from operating an airplane or helicopter in controlled airspace under IFR unless the static pressure system, altimeter instrument, and automatic pressure altitude reporting system have been tested, inspected, and found to comply with specific requirements outlined in appendices E and F to Part 43.[367] Paragraph (b) specifies that the testing conducted pursuant to paragraph (a) must be conducted by the manufacturer of the aircraft, a certificated repair station properly equipped to perform the testing, or a certificated mechanic with an airframe rating. Paragraph (c) states that altimeter and altitude reporting equipment approved under TSOs are considered to be tested and inspected as of the date of manufacture. Finally, paragraph (d) prohibits any person from operating an airplane or helicopter in controlled airspace under IFR above the maximum altitude at which all altimeters and the automatic altitude reporting system of that aircraft have been tested.

Currently, this section is silent on powered-lift; however, the FAA proposes in § 194.302(t) to apply this regulation to powered-lift because it currently applies to both airplanes and helicopters, without differentiation. Powered-lift are new entrant aircraft, and as a result, the FAA does not have sufficient information regarding the operations of all the different powered-lift in development to determine that § 91.411 should not apply, especially considering its current applicability to both airplanes and helicopters. Proposed application of this regulation ensures a minimum level of safety for operations and maintenance of powered-lift. Properly maintaining, testing, and inspecting powered-lift is vital to the safe operation of these aircraft.

[367] Appendix E outlines requirements for testing and inspecting the altimeter system, and appendix F outlines the requirements for testing and inspecting ATC transponders.

5. Subpart F—Large and Turbine-Powered Multiengine Airplanes and Fractional Ownership Program Aircraft

Subpart F governs the operation of U.S.-registered large airplanes, U.S.-registered turbojet-powered multiengine civil airplanes, and U.S.-registered fractional ownership program aircraft operating under subpart K and not involved in common carriage. While technically subpart F currently applies to all powered-lift that would be used in a fractional ownership program, the FAA has determined that it should also propose to apply subpart F to large powered-lift regardless of powerplant type because other types of engines may be developed and installed on powered-lift that are not necessarily internal combustion engines. The FAA further notes that certain powerplants such as electric engines may have equal or better performance in comparison to internal combustion engines and may be used on powered-lift, which could have higher performance capabilities and should be captured by subpart F regardless of their propulsion type.

The FAA anticipates that U.S.-registered large powered-lift will operate like large airplanes with respect to altitude, speed, passenger carrying capacity, passenger safety, composition of flightcrew, operating environment (*e.g.,* over water), and required safety and rescue equipment. To meet the higher level of airworthiness and operational standards and to enhance safety, the FAA proposes in § 194.302(u) to capture large powered-lift in the applicability section of § 91.501, regardless of powerplant type, system of aircraft ownership, or ownership interest. Because all powered-lift are multiengine,[368] the FAA does not propose to apply subpart F to ''multiengine powered-lift'', as that would be overly inclusive and impose the subpart F regulatory requirements on all powered-lift.

Section 91.503 describes flying equipment and operating information for airplanes under subpart F. The FAA proposes in § 194.302(v) that this section apply to powered-lift because the FAA anticipates that powered-lift will be used in passenger-carrying operations highly similar to airplanes. Flying equipment and operating information is equally important for both airplanes and powered-lift. The FAA proposes to apply the safety standards required in this section to powered-lift. However, § 91.503(a)(5) references one-engine inoperative climb performance data. The engine out performance data presented may differ depending on the aircraft configuration and should not be limited to only ''one-engine inoperative'' because some powered-lift have six or more engines and may be able to continue flight after failure of one or more engines. The FAA proposes that powered-lift have an approved aircraft flight manual at the pilot station that contains the engine or multiple engines inoperative climb performance data in accordance with § 91.503(a)(5).

Section 91.505 imposes requirements to be familiar with the emergency equipment installed on the airplane to which a crewmember is assigned and with the procedures to be followed for the use of that equipment in an emergency situation. The crewmember must also be familiar with the Airplane Flight Manual for that airplane, if one is required, and with any placards, listings, instrument markings, or any combination thereof, containing each operating limitation prescribed for that airplane by the Administrator, including those specified in § 91.9(b). The FAA proposes in § 194.302(w) that § 91.505 apply to powered-lift because, as stated previously, the FAA expects powered-lift to be used in passenger-carrying operations similar to airplanes. Familiarity with emergency equipment is equally important for both airplanes and powered-lift. Accordingly, the FAA proposes to apply the safety standards required in § 91.505 to powered-lift. In addition, the FAA proposes that references to ''Airplane Flight Manual'' apply to powered-lift to the extent that they have an Aircraft Flight Manual approved through the certification process.

Section 91.507 states that no person may operate an airplane over-the-top or at night under VFR unless that airplane is equipped with the instruments and equipment required for IFR operations under § 91.205(d) and one electric landing light for night operations. Each required instrument and item of equipment must be in operable condition. The FAA anticipates that powered-lift will conduct over-the-top and night VFR operations in a manner similar to airplanes and will need the same equipment as airplanes to conduct these operations safely. The FAA proposes in § 194.302(x) that powered-lift comply with the equipment requirements in this section.

Section 91.509(a) prescribes the requirements for overwater operations in airplanes. It provides that no person may takeoff an airplane for a flight over water more than 50 nautical miles from the nearest shore unless the airplane is equipped with a life preserver or

[368] See section VI.A of this preamble, discussing multiengine powered-lift.

approved flotation means for each occupant of the airplane. Powered-lift perform similar to airplanes during extended over-water operations, but with VTOL capability. For helicopters, the definition of extended over-water operations includes both an operation over water at a horizontal distance of more than 50 nautical miles from the nearest shoreline and more than 50 nautical miles from an off-shore heliport structure. Powered-lift have the capability to land on these off-shore heliport structures in an emergency. The FAA proposes in § 194.302(y) that powered-lift meet the requirements of § 91.509(a) requiring a life preserver or an approved flotation means for each occupant of the powered-lift according to the helicopter specific definition of extended over-water operations. Further, the FAA proposes in § 194.302(y)(1) that when applying this rule to powered-lift, the 50 nautical mile limit may be measured from either the nearest shore or the nearest off-shore heliport structure in accordance with the definition of extended over-water operations for helicopters in § 1.1.

The FAA proposes a similar approach in § 194.302(y) with the application of § 91.509(b) to powered-lift. Section 91.509(b) states that no person may take off an airplane for flight over water more than 30 minutes flying time or 100 nautical miles from the nearest shore, whichever is less, unless it has onboard specified survival equipment. As stated previously, the FAA determined that the vertical landing capability of powered-lift should be considered in evaluating the applicability of this rule. Powered-lift have the capability to land on off-shore heliport structures in an emergency. Accordingly, the FAA proposes that when applying § 91.509(b) to powered-lift, the FAA proposes in § 194.302(y)(1) to apply the limits of this paragraph as 30 minutes, or 100 nautical miles from the nearest shoreline, or 100 nautical miles from the nearest off-shore heliport structure, whichever is less, consistent with the application of the definition of extended over-water operations for helicopters discussed in the previous paragraph.

Section 91.509(b)(5) specifically requires a lifeline to be stowed in accordance with § 25.1411(g). The lifeline must be in an obvious location, directly accessible, and protected from inadvertent damage. Additionally, § 25.1411(g) imposes requirements pertaining to the location where a lifeline must be attached to an airplane and arranged to enable the airplane occupants to remain on the wing after ditching. This requirement is based on a typical large airplane configuration where standing on the wing or walking on the wing to an emergency raft would be feasible while awaiting rescue. The FAA acknowledges that powered-lift currently undergoing certification are not configured in this manner because these powered-lift do not have a configuration where standing or walking on the wing would be feasible. However, the FAA anticipates that powered-lift may be developed in the future that are capable and certified for ditching and with a wing or comparable structure suitable for evacuation. Accordingly, the FAA proposes in § 194.302(y)(2) that powered-lift subject to the requirements of subpart F will be required to comply with § 25.1411(g) or other airworthiness requirements established in accordance with § 21.17(b) that provide an equivalent level of safety for powered-lift, as reflected in the proposed regulatory text.

Section 91.511 describes requirements for communication and navigation equipment for overwater operations. Paragraph (a) states that no person may take off an airplane for a flight over water more than 30 minutes flying time or 100 nautical miles from the nearest shore unless it has at least the operable radio communication and electronic navigation equipment described in the rule. The ability to contact emergency or rescue services in the event of an offshore ditching is a critical safety requirement for all aircraft. Accordingly, the FAA proposes in § 194.302(z) to require powered-lift to comply with § 91.511 for overwater operations that are more than 30 minutes or 100 nautical miles from the nearest shore or off-shore heliport structure, whichever is less, consistent with the rationale provided in the previous paragraphs for § 91.509(a) and (b).

Section 91.513 describes requirements for emergency equipment for airplanes, such as fire extinguishers, first aid kits, and megaphones. The FAA anticipates that powered-lift will conduct passenger carrying operations where this type of equipment would be necessary in an emergency situation. The FAA considers emergency equipment to be equally important for both airplanes and powered-lift; accordingly, the FAA proposes in § 194.302(aa) to apply the safety standards required in this section to powered-lift.

Section 91.515 prescribes flight altitudes for airplanes operating under VFR. The flight altitudes are designed to ensure adequate terrain clearance from any mountain, hill, or other obstruction to flight for day and night operations. These collision avoidance mitigations are equally important for powered-lift, which the FAA expects would be conducting operations similar to the airplanes that must comply with subpart F. Therefore, the FAA proposes to apply the minimum flight altitudes in § 91.515 to powered-lift in § 194.302(bb).

Section 91.517 describes passenger information and signage displaying the use of seatbelts and non-smoking requirements. Notifying passengers and crew when smoking is prohibited and when safety belts must be fastened is important information to be conveyed to ensure that passenger carrying operations are conducted safely. The importance of conveying this information is the same for both airplanes and powered-lift. As a result, the FAA proposes in § 194.302(cc) that powered-lift comply with the information and signage display requirements in § 91.517. Similarly, § 91.519 describes passenger briefings for the use of seatbelts and non-smoking requirements. The FAA proposes in § 194.302(dd) that § 91.519 also apply to powered-lift because passenger briefings for seatbelt use and smoking are equally important for airplane and powered-lift passenger carrying operations.

The FAA proposes that § 91.521 would be applicable to large powered-lift subject to the operating requirements of subpart F. Specifically, the SFAR proposes that those powered-lift be equipped with a shoulder harness that meets the applicable requirements specified in § 25.785 or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b). The rule is designed to prevent head injuries and is necessary to provide the same level of safety for passenger-carrying operations powered-lift operations as exists in the current rules for airplanes. Therefore, the FAA proposes in § 194.302(ee) that large powered-lift comply with the safety equipment requirements for airplanes in this section. As discussed previously, the FAA is applying certain regulatory requirements applicable to transport category airplanes, such as this one, to large powered-lift in the absence of a uniform transport category standard for powered-lift.

Section 91.523 imposes requirements regarding how carry-on baggage is stored on airplanes with a seating capacity of more than 19 passengers. For baggage stowage and restraining devices, the baggage may be stored in a storage compartment as provided in § 91.525, or it may be stored under a passenger seat in such a way that it will not slide forward under crash impacts severe enough to induce the ultimate inertia forces specified in

§ 25.561(b)(3).[370] Restraining devices must also limit sideward motion of under-seat baggage and be designed to withstand crash impacts severe enough to induce sideward forces specified in § 25.561(b)(3). The FAA acknowledges that there are presently no powered-lift with more than 19 seats undergoing certification However, the SFAR proposes in § 194.302(ff) that should these aircraft be developed, they would be required to comply with § 91.523, including the safety equipment requirements specified in § 25.561(b)(3) or airworthiness criteria that the FAA may find provide an equivalent level of safety in accordance with § 21.17(b). Applying this regulation to powered-lift with a seating capacity of more than 19 seats will ensure that carry-on baggage is stored safely on powered-lift.

Section 91.525 describes the requirements for the carriage of cargo. The FAA proposes in § 194.302(gg) that this section apply to powered-lift as the FAA does not differentiate between airplanes and powered-lift as it applies to the safety standards required by this section. In the NPRM for § 91.525 (previously codified at § 91.203),[371] the FAA proposed all cargo carried in a passenger compartment be stored in bins, or cargo racks, unless stowed and secured as provided in that section. The FAA considered such requirements necessary to provide for the safety of the occupants in the event of turbulence and to insure, to the extent possible, the crashworthiness of the airplane. These considerations are also applicable to carriage of cargo on powered-lift and thus, the FAA proposes that this rule also apply to powered-lift operations.

Section 91.527 describes the requirements for operations in icing conditions. The FAA recognizes that adverse aerodynamic effects on lifting surfaces begin as soon as frost, ice, or snow begin to adhere to the surfaces.[372] Paragraph (a) addresses ground operations and states that no pilot may take off an airplane that has frost, ice, or snow adhering to any propeller, windshield, stabilizing or control surface; to a powerplant installation; or to an airspeed, altimeter, rate of climb, or flight attitude instrument system or wing, except that takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the FAA. Section 91.527 addresses airplanes where lift is generated by the wings. Powered-lift may takeoff vertically, but they may also transition to wing-borne flight after takeoff. Powered-lift rely on lifting devices such as rotors during vertical-lift flight mode and traditional airplane surfaces such as wings during wing-borne flight. The FAA recognizes that in addition to wings and control surfaces, powered-lift may have other surfaces that are negatively impacted by frost, ice, or snow adhering to those surfaces, such as rotor blades. These other surfaces are considered critical surfaces, which the manufacturer will identify during certification and which will be outlined in the Aircraft Flight Manual for each powered-lift. Any frost, ice, or snow adhering to a ''critical surface'' could have an adverse impact on the aircraft's ability to operate safely. To ensure safe operation of powered-lift, all the items listed in § 91.527(a), as well as other critical surfaces as determined by the manufacturer, must be clear from any contamination adhering to their surfaces, including the vertical-lift flight mode lifting devices. The FAA proposes in § 194.302(hh) the requirements of § 91.527(a) apply to all powered-lift, including the vertical-flight mode lifting devices.

Section 91.527(b) prescribes rules for IFR flight into known or forecast light or moderate icing conditions, or under VFR into known light or moderate icing conditions unless certain conditions are met as described below. Paragraph (b)(1) is applicable to aircraft, including powered-lift, and requires that the aircraft has functioning deicing or anti-icing equipment protecting each rotor blade, propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system. Paragraphs (b)(2) and (3) are airplane-specific and the FAA does not propose to apply those provisions to powered-lift. Instead, the FAA proposes in § 194.302(ii) that no pilot may fly a powered-lift under IFR into known or forecast light or moderate icing conditions or under VFR into known light or moderate icing conditions unless it has been type certificated and appropriately equipped for operations in icing conditions, as set forth in § 194.308(i). Section 194.308(i) requires powered-lift seeking certification to operate in known or forecast light or moderate icing conditions would be required to have procedures for the use of the ice protection equipment set forth in the Aircraft Flight Manual.

Section 91.527(c) prescribes the requirements for airplane operations into known or forecast severe icing conditions. The FAA does not have the operational data to support allowing powered-lift operations in severe icing at this time. Accordingly, the FAA does not propose to apply this regulation to powered-lift operations, and as a result, powered-lift operations into known or forecast severe icing conditions would be prohibited.

Section 91.529 addresses flight engineer requirements. The FAA does not propose application of this section to powered-lift because modern aircraft are not designed to require a flight engineer.

Section 91.531 describes SIC requirements for airplanes in subpart F. Section 91.531(a) provides that, except as provided in paragraph (b) of this section, no person may operate the following airplanes without a pilot designated as SIC: (1) any airplane that is type certificated for more than one required pilot; (2) any large airplane; and (3) any commuter category airplane. A powered-lift certificated for more than one pilot will be subject to the same safety considerations as airplanes certificated for more than one pilot. Accordingly, the same safety standards should apply and the FAA proposes in § 194.302(jj) that paragraph (a)(1) applies to powered-lift as written. Similarly, the FAA codified the requirement to have a designated SIC for large airplanes because of the need for an increased crew due to the complexity of operating such aircraft. These standards likewise apply to large powered-lift and, resultantly, the FAA proposes in § 194.302(jj) to apply paragraph (a)(2) to powered-lift as written. Lastly, the FAA proposes not to apply paragraph (a)(3) to powered-lift because there are currently no commuter category powered-lift and no new aircraft can be certificated for that category as there are no longer any certification standards for commuter category aircraft certification in the Federal Aviation Regulations. As powered-lift are new-entrant aircraft, there is no way to certificate these powered-lift as commuter aircraft.

Section 91.531(b)(1) states that an airplane certificated for operation with one pilot may be operated without a pilot designated as SIC. Applying the airplane rule to powered-lift, as proposed in § 194.302(jj), will ensure that the aircraft is operated in accordance with its type certification basis for crew complement. This provides an appropriate level of safety as it is consistent with the existing rule. Next, § 91.531(b)(2) prescribes that large airplanes or turbojet-powered multiengine airplanes that hold a special airworthiness certificate may operate without a designated SIC in certain circumstances. For the reasons

[370] For a discussion of the type certification process for powered-lift, see section IV.A of this preamble.

[371] Large and Turbine-Powered Multiengine Airplanes, 36 FR 19507, 19510 (Oct. 7, 1971).

[372] See Removal of Regulations Allowing for Polished Frost, 74 FR 62691 (Dec. 1, 2009).

stated in the applicability discussion of § 91.501, the FAA proposes in § 194.302(jj) that § 91.531(b)(2) apply to all large powered-lift that hold a special airworthiness certificate and meet the requirements of § 91.531(b)(2)(i) and (ii), regardless of powerplant type.

Section 91.531(c) states no person may designate a pilot to serve as SIC, nor may any pilot serve as SIC, of an airplane required under this section to have two pilots unless that pilot meets the qualifications for SIC prescribed in § 61.55. Consistent with the discussion in section V.D applying the SIC qualification requirements of § 61.55 to powered-lift pilots, § 91.531(c) should also apply to powered-lift to maintain the level of safety for powered-lift as provided for airplanes. The FAA proposes that paragraph (c) apply to powered-lift.

Section 91.533 describes flight attendant requirements for airplanes with more than 19 passengers. The FAA acknowledges that at this time there are no powered-lift undergoing type certification with more than 19 seats. However, the FAA recognizes that flight attendants are critical for passenger safety, especially for inflight emergency situations or where an emergency evacuation is required. The FAA proposes in § 194.302(kk) that this section apply to powered-lift with more than 19 passengers onboard if they are certificated for civil operations during the duration of the SFAR. This approach will provide the same level of safety for powered-lift as is currently provided for airplanes.

6. Subpart G—Additional Equipment and Operating Requirements for Large and Transport Category Aircraft

Subpart G, beginning with § 91.601, applies to the operation of large and transport category U.S.-registered civil aircraft and specifies additional equipment and operating requirements. The FAA anticipates that U.S.-registered large powered-lift will operate similar to airplanes when considering altitude, speed, passenger carrying capacity, passenger safety, composition of flight crew, operating environment (*e.g.,* over water), and required safety and rescue equipment. For these reasons, the FAA does not differentiate between airplanes and powered-lift when it relates to the safety standards required by this section. The FAA proposes that the airplane requirements contained in the following listed sections of this subpart apply to large powered-lift in order to meet the higher level of airworthiness and equipment standards for aircraft that will be carrying larger amounts of passengers, and for the reasons described in section IV.A of this preamble.

Subpart G also contains airplane regulations that are subject to certain airworthiness certification provisions. The FAA will determine whether to apply the specific airworthiness requirement for the equipment required by subpart G or other airworthiness criteria that provide an equivalent level of safety the type certification process under § 21.17(b), as discussed previously regarding the applicability of part 91 subpart F.

Section 91.603, Aural speed warning device, requires that a transport category airplane be equipped with an aural speed warning device that complies with § 25.1303(c)(1). The FAA proposes in § 194.302(ll) that this regulation apply to large powered-lift to provide an equivalent level of safety to currently certificated airplanes under Subchapter C airworthiness standards. Powered-lift subject to § 91.603 must be equipped with an aural speed warning device that complies with § 25.1303(c)(1) or airworthiness criteria that the FAA has determined provides an equivalent level of safety in accordance with § 21.17(b).

Section 91.605 prescribes transport category civil airplane weight limitations. Powered-lift are capable of performing both vertical takeoffs and landings, and takeoffs and landings using wing-borne lift similar to an airplane. The FAA proposes that certain provisions in § 91.605 apply to large powered-lift to ensure those aircraft can safely takeoff and land in accordance with the performance information in the Aircraft Flight Manual and taking into consideration altitude and temperature. This application of the rule provides flexibility to operators seeking to maximize the novel capabilities of powered-lift while maintaining a high level of operational safety.

Section 91.605(a) prescribes takeoff requirements for transport category airplanes (other than a turbine-engine-powered airplane certificated after September 30, 1958). This regulation applies only to non-turbine powered airplanes that were type certificated without an Airplane Flight Manual. All new entrant powered-lift type certificated under § 21.17(b) will be required to have an Aircraft Flight Manual; accordingly, the FAA does not propose to apply § 91.605(a) to powered-lift for this SFAR.

Section 91.605(b) contains references to an Airplane Flight Manual and prohibits operations contrary to the flight manual. Section 91.605(b)(1) states that no person operating a turbine-engine-powered transport category airplane may take off that airplane at a weight greater than that listed in the Airplane Flight Manual. The calculation for determining that takeoff weight must consider the elevation of the airport and the ambient temperature existing at the time of takeoff. This regulation provides an important performance criterion to ensure that operators of an aircraft consider the effects of altitude and temperature when determining the maximum allowable takeoff weight. The effects of altitude and temperature are important to consider because aircraft performance is reduced as the altitude and the temperature is increased. This is especially true for takeoff operations, where an increase in altitude and temperature causes a decrease in aircraft performance. An increase in altitude and temperature also causes an increase in takeoff distance required and a decrease in the maximum allowable takeoff weight. Adherence to the performance limitations in the Aircraft Flight Manual is critical for the safe operation of any aircraft, including powered-lift whose performance is also negatively impacted by increased altitude, temperature, and weight. Therefore, the FAA proposes in § 194.302(mm) to apply § 91.605(b)(1) to large powered-lift—regardless of whether they will takeoff vertically or using wing-borne lift similar to an airplane—and that have the takeoff performance information in the aircraft flight manual.

Section 91.605(b)(2) stipulates no person operating a turbine-engine-powered transport category airplane may take off at a weight (allowing for normal consumption of fuel and oil in flight to the destination or alternate airport) if the weight of the airplane on arrival would exceed the landing weight as contained in the Airplane Flight Manual taking in consideration the elevation of the destination or alternate airport and the ambient temperature anticipated at the time of landing. As described in the previous paragraph, these computations must include the elevation of the take-off and the ambient temperature at the time of takeoff. This regulation establishes an important pre-takeoff planning criterion that must consider the maximum landing weight to ensure that the airplane is at a weight that will allow a landing that is within the performance capabilities of that aircraft. The FAA proposes in § 194.302(nn) that paragraph (b)(2) apply to large powered-lift—regardless of whether they will land vertically or using wing-borne lift similar to an airplane—and that have the landing performance information in the aircraft

flight manual. Applying this paragraph will help ensure that large powered-lift are operated at the same level of safety required for transport category airplanes.

Section 91.605(b)(3) and (b)(4)(ii) also contain additional takeoff criteria for turbine-engine-powered transport category airplanes, such as wet runway and clearway distances. The FAA proposes in § 194.302(oo) to apply these requirements to certain large powered-lift to ensure that published flight manual limitations are not exceeded when powered-lift execute takeoff operations that utilize wing-borne lift, similar to an airplane, and have that takeoff performance information contained in the flight manual. The FAA proposes paragraphs (b)(3) and (b)(4)(ii) apply to large powered-lift that execute takeoff operations using wing-borne lift and that have takeoff performance information in the flight manual.

Section 91.605(c) sets specific requirements for takeoff distances and runway lengths for turbine-engine-powered transport category airplanes certificated after August 29, 1959. The FAA considers that these provisions are equally important and necessary for powered-lift to safely execute takeoff operations that utilize wing-borne lift. The FAA proposes (also in § 194.302(oo)) that this paragraph apply to large powered-lift executing takeoff operations that utilize wing-borne lift and have takeoff performance information in the aircraft flight manual.

Section 91.609 sets forth requirements for FDR and cockpit voice recorder (CVR) in large and transport category aircraft. Section 91.609(a) and (b) already apply to powered-lift because those paragraphs apply to ''aircraft.'' Paragraphs (f), (g), and (k) also already apply to operators of powered-lift who are otherwise required by part 194 to comply with this section. Section 91.609(c)(1) requires that a multi-engine, turbine-powered airplane or rotorcraft having a passenger seating configuration, excluding any pilot seat, of 10 or more, that has been manufactured after October 11, 1991, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. Additionally, this paragraph requires that the flight recorder must retain no less than 8 hours of aircraft operation. The FAA proposes in § 194.302(pp) that a powered-lift, regardless of the type of powerplant, that otherwise meets the threshold requirements of this paragraph be required to comply with this paragraph. However, § 91.609(c)(1) specifies that the parameters for the flight recorder that must be recorded are contained in part 91, appendix E or F, which are specific to airplanes or helicopters. As stated previously, many powered-lift will be manufactured combining the design features of an airplane and helicopter, to varying degrees. In place of appendices E and F to part 91,[373] the FAA has drafted new FDR tables for part 194,[374] which outline the FDR specifications for powered-lift under part 91, in proposed §§ 194.312 and 194.313. In developing these tables, the FAA applied the FDR requirements from the airplane and helicopter appendices to powered-lift, dependent on which operational flight mode is in use (*i.e.,* wing-borne flight mode or vertical-lift flight mode). In addition, the FAA replaced helicopter-specific nomenclature to accommodate powered-lift. For example, helicopter flight controls, as written, describe pedals and collective controls, which may not apply to powered-lift. In addition, the FAA changed the terminology that provided directional controls for ''ascent and descent''. Notwithstanding slight nomenclature changes within the parameters, the FAA did not change the other information and numbers within the tables. The FAA invites comments on these new draft tables to ensure that the FAA has adequately addressed all of the requirements for these novel aircraft.

Section 91.609(c)(3) requires that all airplanes and rotorcraft subject to § 91.609(c)(1) manufactured on or after April 7, 2010, must meet the FDR requirements of § 23.1459, § 25.1459, § 27.1459, or § 29.1459, as applicable, and retain at least the last 25 hours of recorded information using a recorder that meets the standards of TSO–C124a, or later revision. The FAA proposes in § 194.302(pp) that powered-lift comply with this requirement to provide a level of safety equivalent to airplanes and rotorcraft.

Section 91.609(d) requires that whenever a flight recorder required by § 91.609 is installed, it must be operated continuously from the instant the airplane begins the takeoff roll or the rotorcraft begins lift-off until the airplane has completed the landing roll or the rotorcraft has landed at its destination. The FAA proposes in § 194.302(pp)(3) to require powered-lift to comply with this section by requiring that the flight recorder be operated continuously from the earlier of when the powered-lift begins the takeoff roll or begins lift-off until the latter of when the powered lift has completed the landing roll or has landed at its destination. This will ensure the same level of safety is provided for powered-lift as exists in the current regulations for airplanes and rotorcraft.

Section 91.609(e) requires that unless otherwise authorized by the Administrator, after October 11, 1991, no person may operate a U.S. civil registered multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of six passengers or more and for which two pilots are required by type certification or operating rule unless it is equipped with an approved CVR. CVRs enhance safety and are required in turbine-powered airplanes and rotorcraft carrying a certain passenger count as a necessary hazard analysis tool used during an accident investigation. As early as 1978, the FAA has noted that consideration should be given to requiring Ground Proximity Warning Systems (GPWS), CVR, and FDR equipment on turbojet-powered airplanes with 10 or more passenger seats due to the complexity and high-performance characteristics of those airplanes.[375] These sources of information aid in determining causal and contributing factors in accident and incident investigation. Amendments issued in response to NTSB recommendations as well as congressional mandates identify the FAA's broader responsibility to apply these appropriately to all aircraft with certain seating capacities.[376] The CVR provides accident investigation information that is unattainable from any other source with valuable auditory information such as sounds captured in the cockpit. Accordingly, the FAA proposes in § 194.302(pp), regardless of the type of powerplant, that powered-lift which have a passenger seating configuration of six or more and for which two pilots are required by type certification or operating rules, will be required to comply with all the paragraphs of paragraph (e). This will ensure that powered lift operate as safely as airplanes and rotorcraft.

Section 91.609(h) is applicable to legacy airplanes certificated before April 7, 2010. It cannot apply to new entrant aircraft and is accordingly not applicable to powered-lift.

[373] See appendix E to part 91, Airplane Flight Recorder Specifications, and appendix F to part 91, Helicopter Flight Recorder Specifications, 14 CFR part 91.

[374] The SFAR tables are found in the regulatory text within the SFAR amendment.

[375] See Regulatory Review Program; Air Taxi Operators and Commercial Operators, 43 FR 46742, 46768 (Oct. 10, 1978).

[376] Id. at 46742.

Section 91.609(i) and (j) apply to both airplanes and rotorcraft. The FAA considers CVRs and FDRs to be necessary safety equipment on airplanes and rotorcraft and proposes in § 194.302(pp) that these requirements also be applicable to powered-lift. The same concerns regarding ensuring data is recorded from the cockpit or flight in the event of an accident or incident are true for powered lift as they are for airplanes and helicopters.

Section 91.611 authorizes ferry flights with one engine inoperative for airplanes with three or four engines. The rule was written specifically for airplanes and is based on airplane performance characteristics. The FAA acknowledges that some powered-lift may operate as an airplane during takeoff but determined this section should not be applicable to large powered-lift under the SFAR due to the lack of data to support safe powered-lift operations with an inoperative engine. The FAA expects to obtain more data during the term of this SFAR to determine if powered-lift can safely operate with an inoperative engine.

Section 91.613 requires airplane compartment interiors to meet the flame propagation requirements set forth in § 25.853 or § 25.856. The part 25 certification standard for flame propagation materials reduces the spread of fire within the aircraft and in the event of a post-crash fire, as well as reducing the penetration of fire for an external source such as an engine firewall. Section 91.613(b)(2) is applicable to transport category airplanes manufactured after September 2, 2005 and the FAA proposes in § 194.302(qq) that it be applied to powered-lift of similar size and capacity under the SFAR due to the safety mitigations this rule provides. For large powered-lift, the FAA proposes that the thermal/acoustic installation materials required by § 91.613(b)(2) meet the requirements of § 25.856 or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b). Section 91.613(a) does not apply to powered-lift because SFAR 41 terminated in September 1983 and is limited to type design changes for airplanes issued prior to October 1979.

7. Subpart K—Fractional Ownership Operations

Subpart K was added to part 91 in 2003 to establish criteria for fractional ownership programs. It allows fractional owners and the management company to share operational control of the aircraft and delineates operational control responsibilities. It also contains regulatory safety standards for operations under fractional ownership programs, including management operations, maintenance, training, and crewmember flight and duty requirements. Subpart K currently has two powered-lift references in §§ 91.1001(b)(10) and 91.1053(a)(2). These references were included when part 91 subpart K was codified to prescribe specific applicability and crew training requirements for fractional ownership operations. Pilot training and qualification requirements under this subpart are discussed in section V of this preamble. In addition to the specific powered-lift references, many subpart K sections impose requirements on aircraft, which include powered-lift.

As stated in section V.L of this preamble, the following sections of subpart K will apply to large powered-lift without regard to type of powerplant.

Section 91.1025 prescribes program operating manual contents. The manual must set forth the program's procedures and policies to ensure the safe operation of the aircraft they use. The manual content requirements of a Destination Airport Analysis specified in § 91.1025(o) are only required if the aircraft meets the thresholds set forth § 91.1037, Large transport category airplanes: Turbine engine powered; Limitations; Destination and alternate airports. The FAA anticipates some powered-lift will be manufactured in a way that would trigger the safety requirements of § 91.1037. This section is already applicable to powered-lift that operate under subpart K; however, the FAA also clarifies that if a specific powered-lift meets the requirements of § 91.1037, then all of the requirements of § 91.1025(o), including § 91.1025(o)(7) which currently only applies to airplanes, would be applicable as well, as set forth in § 194.302(rr). This proposal will ensure that an adequate level of safety is maintained for powered-lift that meet the performance requirements of § 91.1037, and that any inoperative equipment is considered when Destination Airport Analysis is performed.

Section 91.1037 addresses large transport category airplanes and should apply to large powered-lift. The FAA perceives that large powered-lift will operate similar to large transport-category airplanes when considering altitude, distance, speed, passenger carrying capacity, passenger safety, composition of flight crew, operating environment (*e.g.,* over water), and required safety and rescue equipment. Specifically, § 91.1037(e) requires that, unless based on a showing of actual operating landing techniques on wet runways, a shorter landing distance (but never less than that required by paragraph (b) or (c)) has been approved for a specific type and model airplane and included in the Airplane Flight Manual, no person may take off a turbojet airplane when the appropriate weather reports or forecasts, or any combination of them, indicate that the runways at the destination or alternate airport may be wet or slippery at the estimated time of arrival unless the effective runway length at the destination airport is at least 115 percent of the runway length required under paragraph (b) or (c). The FAA anticipates that due to the VTOL capabilities of powered-lift, many of these aircraft may not need to compute a landing distance as required by this section. However, certain powered-lift may conduct landing operations similar to an airplane. Accordingly, the FAA proposes in § 194.302(rr) this entire section be applicable to large powered-lift that are certificated to conduct landing operations in wing-borne flight mode as indicated in the aircraft flight manual.

Section 91.1039(c) prohibits a pilot on a program aircraft operating a program flight from beginning an instrument approach procedure to an airport unless the MDA or Decision Altitude (DA) and visibility landing minimums prescribed in part 97 or in the program manager's management specifications are increased by 100 feet and 1–2 mile respectively, but not to exceed the ceiling and visibility minimums for that airport when used as an alternate airport, for each PIC of a turbine-powered aircraft who has not served at least 100 hours as PIC in that type of aircraft. This regulation is based on § 135.225(e), and was incorporated into the subpart K rules for Fractional Ownership operations because the FAA considered that the safe execution of an instrument approach to the lowest minimums requires the highest degree of pilot familiarity with the airplane, its controls, instruments, and performance characteristics, and that 100 hours of experience in a new type of airplane as PIC in air carrier or commercial operations is necessary in order to achieve this degree of familiarity. This familiarity requirement is still relevant to operations conducted in airplanes today and pilots of all powered-lift should also possess the highest degree of familiarity with their aircraft, its controls, instruments, and performance requirements, not only those operating turbine-powered powered-lift. The FAA

also anticipates the pilots of any powered-lift will experience an additional workload as the aircraft transitions from wing-borne to vertical-lift flight, during the landing phase while in reduced visibility. The FAA is proposing that the PIC of all powered lift operating under subpart K increase the MDA or DA and visibility landing minimums as required by § 91.1039(c), as set forth in proposed § 194.304.

Section 91.1041 addresses aircraft proving and validation tests. Section 91.1041 sets out the parameters and the requirements for when Proving and Validation Tests must be accomplished by a fractional ownership program. Proving tests are necessary to evaluate each fractional ownership program's ability to conduct operations safely and in accordance with the applicable regulations. Proving tests, under § 91.1041, consist of a demonstration of the fractional ownership program's ability to operate and maintain certain aircraft new to the operator's fleet or the certificate holder's ability to conduct a particular kind of operation. Additionally, it is each fractional ownership program manager's responsibility to show that each aircraft can be operated safely and in compliance with the regulations and their procedures.

Section 91.1041(b) requires a fractional ownership program manager to conduct proving tests in a turbojet airplane if they have not previously proved a turbojet airplane. The FAA expects powered-lift, regardless of the powerplant, to have additional complexity due to their design and operation, and that these features have not been available and experienced by the civilian market to date. To ensure a high level of safety is maintained when these aircraft are operated, the FAA is proposing in § 194.302(ss) that a fractional ownership program manager that has not previously proven a powered-lift in operations under subpart K, be required to conduct at least 25 hours of proving tests acceptable to the Administrator as detailed in § 91.1041(b)(1) through (3).

The FAA requires validation testing for certain authorizations, and for the addition of certain aircraft that were previously proved or validated but are not of the same make or model, or of similar design. These tests are required for aircraft that require two pilots for flight in VFR conditions, or turbojet airplanes. For the same reasons cited above for proving tests, validation testing required by § 91.1041(d) should be applicable to all powered-lift. The FAA proposes in § 194.302(ss) that validation testing be required when a program manager requests authorization to use a powered-lift, unless a powered-lift of the same make or similar design has been previously proved or validated by that program manager in operations under subpart K.

Section 91.1045 contains additional safety equipment requirements for program aircraft. The FAA is proposing that this rule apply to powered-lift in proposed § 194.302(tt). For powered-lift with more than 30 seats or a payload capacity of more than 7,500 pounds, the FAA proposes that § 91.1045(a) applies; and for powered-lift with 30 seats or fewer and a payload capacity of 7,500 pounds or less, § 91.1045(b) applies.

Section 91.1045(a)(3) and (b)(3) specify TAWS as the required terrain awareness and warning system requirement. The FAA considered both TAWS and HTAWS because of powered-lift's ability to operate similar to both airplanes and helicopters. The FAA determined that the current HTAWS specification would provide the best level of safety without an undue number of nuisance warnings. The FAA proposes that § 91.1045(a)(3) and (b)(3) apply to powered-lift, and that powered-lift comply with the requirements in § 194.307(q) of this SFAR. For further discussion of the FAA's proposal regarding TAWS vs. HTAWS, please see VI.B.

Section 91.1045(b)(5) refers to airborne thunderstorm detection equipment required by § 135.173 or airborne weather radar required by § 135.175, as applicable to the aircraft specified in each section. This section is applicable to airplanes having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember, and a payload capacity of 7,500 pounds or less, and any rotorcraft (as applicable). The use of airborne thunderstorm detection equipment or airborne weather radar contributes to greater safety in operations because it enables the pilot to detect and locate severe adverse weather areas early. The equipment also enables the pilot to avoid these areas or take other action necessary for safety of flight. Therefore, the FAA proposes in § 194.302(uu) that § 91.1045(b)(5) apply to powered-lift. As an additional note, the requirements of §§ 135.173 and 135.175 apply as-written to powered-lift because they apply to aircraft and the FAA is not proposing to apply the helicopter provisions of those sections to powered-lift.

The provisions in § 91.1109, with the exception of § 91.1109(b)(4), are applicable to powered-lift because they apply to aircraft. Section 91.1109(b) requires each person desiring to establish or change an approved inspection program under this section to submit the inspection program for approval to the Flight Standards office that issued the program manager's management specifications. Under § 91.1109(b)(4), the inspection program may be derived from an airplane inspection program approved under § 125.247 and currently in use under part 125. The FAA has recently proposed to amend the applicability of part 119 and allow powered-lift operations in part 125 in the Update to Air Carrier Definitions NPRM. However, the FAA is not including part 125 in this SFAR because there are no powered-lift currently in the certification process (or expected in the foreseeable future) that meet the applicability requirements of part 125. Although § 91.1109(b)(4) is not applicable to powered-lift, the remaining provisions in § 91.1109 apply to powered-lift because they apply to all aircraft.

Additionally, the FAA noted that § 91.1115(b)(1) uses the word ''airplane'' and the rest of paragraph (b) uses the word aircraft. In examining the NPRM and the final rule promulgating subpart K, the FAA expressed no intent to call out paragraph (b)(1) for airplanes only. The NPRM and final rule expressed intent to hold operations under subpart K to the same safety standards as other operations. Section 91.213, the other inoperative instruments and equipment regulation within part 91, uses the word aircraft throughout and was the model language used for § 91.1115. The word airplane was substituted for the word aircraft in § 91.1115(b)(1) in error. The FAA proposes a technical amendment to § 91.1115(b)(1) to change the word ''airplane'' to ''aircraft.'' Changing this reference will not adversely affect any other category of aircraft. As changed, this section would then apply to powered-lift.

The Continuous Airworthiness Maintenance Program (CAMP) program manager is primarily responsible for maintaining the airworthiness of the program aircraft, including airframes, aircraft engines, propellers, rotors, appliances, and parts, including for powered-lift. There are also other obligations, such as preparing mechanical reliability reports and mechanical interruptions summaries. The CAMP manager is also responsible for maintaining the operations manual and maintaining the records required by § 91.1427 for the specified amount of time. Fractional ownership CAMP requirements apply to powered-lift because, similar to the fractional ownership program discussed above, the CAMP Manager's obligations are

applicable to all aircraft in the program, including powered-lift. As discussed in section VII.A.2, the FAA reiterates that the term ''engine'' includes electric engines and any other powerplants.

C. Part 97 Rules for Powered-Lift

Part 97 of title 14 prescribes standard instrument approach procedures, obstacle departure procedures, and weather minimums that apply to IFR takeoffs and landings at civil airports in the U.S.[377] Section 97.3 defines Copter Procedures as helicopter procedures, with applicable minimums as prescribed in § 97.35.[378] The definition is limited to helicopters because when part 97 was promulgated, the FAA did not envision that aircraft would have hybrid airplane and helicopter characteristics. Consequently, powered-lift are currently excluded from using Copter Procedures even if they are able to perform the operations safely. The purpose of this section of the SFAR is to propose a regulatory pathway that allows powered-lift to utilize the Copter Procedures specified in § 97.3.

Part 97 was established because the FAA recognized the technological advances that supported the ability to take-off and land safely at airports while operating under IFR. It was originally codified in 1963 without reference to Copter Procedures, but the term was added in 1972 [379] and defined as: helicopter procedures, with applicable minimums as prescribed in § 97.35. Helicopters may also use other procedures prescribed in Subchapter C of this part and may use the Category A minimum descent altitude (MDA), or decision height (DH). The required visibility minimum may be reduced to one-half the published visibility minimum for Category A aircraft, but in no case may it be reduced to less than one-quarter mile or 1,200 feet runway visual range (RVR). HAL means height above a designated helicopter landing area used for helicopter instrument approach procedures. Point in space means a helicopter instrument approach procedure to a point in space to a missed approach point that is more than 2,600 feet from an associated helicopter landing area.[380]

Part 97 was further amended in 2002 to allow for technological advances that support area navigation (RNAV), such as GPS, while retaining the current ground-based systems.[381] The amendments also changed the Standard Instrument Approach Procedures name to Standard Instrument Procedures to reflect that part 97 refers to both takeoffs and approaches, and incorporated the term helipoint, defining it as the aiming point for the final approach course for heliports. Later amendments clarified terminology and updated certain terms for ICAO consistency.

The FAA proposes in § 194.305 that powered-lift operators seeking to use Copter Procedures must use a powered-lift that has a standard airworthiness certificate for IFR operations and meet equivalent system design and stability as helicopters currently type certificated for instrument flight under the airworthiness standards in appendix B to parts 27 and 29. If a powered-lift does not meet that equivalency, it would contain a limitation in its aircraft flight manual prohibiting use of copter procedures. The specific airworthiness standards will be established during the type certification process. The criteria the FAA considers necessary for powered-lift to conduct Copter Procedures under part 97 are explained below.

1. Copter Instrument Procedures

Copter instrument procedures (IP) provide an instrument procedure along a predetermined course to safely allow helicopter traffic to transition between VFR and IFR for approaches and departures. The criteria for these approaches or departures are defined in the FAA Orders Standard for Terminal Instrument Procedures (TERPS) Manuals and presume a certain level of vehicle performance and stability. For example, copter instrument approach procedures (IAPs) are designed presuming nominal descent rates and gradients over a range of given airspeeds. Those approaches also presume the maximum and minimum descent glideslope and gradient that may be encountered while maintaining vertical navigation accuracy. In addition, the design of the IAPs allow for the aircraft to descend to the minimum descent altitude (MDA) or decision altitude (DA) prior to or upon arriving at the missed approach point (MAP). At the MAP, the pilot must assess whether the flight can safely and legally proceed to the destination in the meteorological conditions present. Continuation of the flight beyond the MAP must be accomplished via a visual transition segment in accordance with the design of the IAP. The MAP is located such that the aircraft can execute the missed approach procedure or visually transition to a safe landing by using a nominal deceleration rate. Both the missed approach procedures and departure procedures are designed with the underlying minimum assumption of aircraft performance as defined in the TERPS manual.

Powered-lift IFR certification and compatibility with instrument approaches will be assessed during the aircraft type certification process. The aircraft's ability to conduct these types of operations will be contained in the approved aircraft flight manual as part of the operation limitations and the types of operation in accordance with §§ 23.2620, 25.1583, 27.1583, and 29.1583, 14 CFR part 27 or 29, appendix B, section IX, or airworthiness criteria developed in accordance with § 21.17(b) that establish an equivalent level of safety.

2. Airworthiness Evaluation of Eligibility for Copter Procedures

For powered-lift seeking approval to fly IFR and to use Copter Procedures, the FAA will assess the aircraft's stability, system, and equipage for IFR operations as compared to helicopters. This assessment will occur during the type certification process. A powered-lift design that meets standards that provide an equivalent level of safety to the relevant standards in parts 27 and 29 can be certificated for IFR flight and authorized to execute Copter Procedures. A powered-lift that does not possess these characteristics may still be certificated for IFR but will be prohibited from performing Copter Procedures and have a limitation in the Aircraft Flight Manual to that effect.

For helicopters, appendix B to parts 27 and 29 (''Airworthiness Criteria for Helicopter Instrument Flight'') is based on the traditional operating profile of a classically designed helicopter and flight control system. The safety objectives contained within appendix B for IFR approval focus on an increase in

[377] Instrument means a device using an internal mechanism to show visually or aurally the attitude, altitude, or operation of an aircraft or aircraft part. It includes electronic devices for automatically controlling an aircraft in flight. See, 14 CFR 1.1. The IFR are applicable to an aircraft, pilot, and operation when operating in IMC as opposed to VMC.

[378] The minimums prescribed in §§ 97.21 through 97.37, including § 97.35, are not published in the Code of Federal Regulations. **Federal Register** citations affecting these procedures can be found in the List of CFR Sections Affected (LSA), April 2020 at *https://www.govinfo.gov/content/pkg/LSA-2020-04/html/LSA-2020-04-title14.htm.* Section 97.20 prescribes the Standard for Terminal Instrument Procedures (TERPs), which is documented on FAA Forms 8260–3, 8260–4, 8260–5, and 8260–15A, and depicted on aeronautical charts published by the FAA at *https://www.faa.gov/air_traffic/flight_info/aeronav/digital_products/.* They are incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51.

[379] General Operating and Flight Rules, 37 FR 6286 (Mar. 28, 1972).

[380] Designation of Federal Airways, Controlled Airspace and Reporting Points, 37 FR 6286 (Mar. 28, 1972).

[381] Area Navigation (RNAV) and Miscellaneous Amendments, 72FR 31661 (Jun. 7, 2007).

stability, system design, and system safety over a part 27 or 29 Helicopter only approved to operate under VFR. The FAA does acknowledge that for powered-lift, the appendix B assumptions are not directly compatible due to the aircraft's hybrid capability and flight controls. For powered-lift, safety objectives equivalent to appendix B will be incorporated as part of the type design requirements, specifically focusing on (1) adequate static stability, (2) adequate dynamic stability, and (3) system safety.

Static stability is the aircraft's ability to maintain or return to its original flight path, and dynamic stability is the aircraft's ability to return to a stabilized condition after being disturbed. The ability to maintain uniform flight conditions and recover from disturbances without requiring exceptional pilot skill and ability is critical when assessing an aircraft for IFR approval. System safety is a design process that ensures adequate robustness of the aircraft systems based on the failure hazard analysis developed during the type certification process. It involves identifying risks to the entire system and developing mitigations based on how the aircraft responds to system failures. Under the FAA's proposal, powered-lift designs may include additional design redundancy compared to a classically designed helicopter to ensure that the crew could safely manage any failures.

The FAA proposes that powered-lift seeking approval for IFR operations meet equivalent standards in appendix B regarding system safety and stability during the type certification process. The specific requirements will be established during the type certification process when the FAA evaluates the types of operations that the applicant intends to conduct. The FAA will assess those operations, which may include IFR and Copter Procedures, as part of the type design approval process to ensure that they can be conducted safely. Those operations will be identified in the limitations of the aircraft flight manual along with any other specific limitations and procedures necessary for safe operation.

Upon termination of the SFAR and in accordance with any changes made permanent after the expiration of the SFAR, the FAA expects to update guidance material, such as the TERPS Manual, certain Advisory Circulars,[382] the Airman Information Manual (AIM), and the Aeronautical Information Publication (AIP).

Navigation Specification (NavSpec) RNP 0.3 currently applies only to rotorcraft operations. The FAA will assess the navigational system for powered-lift to determine if they will be allowed to use this NavSpec. The NavSpec will be amended as required following these determinations.

D. Part 135 Rules for Powered-Lift

The FAA expects there will be a demand to use powered-lift in commercial operations requiring a part 119 certificate. Therefore, to safely integrate these aircraft into part 135 operations, the FAA completed a review of the current part 135 regulations to determine any necessary additional applicability to powered-lift.

Part 135 applies to two kinds of operations: on-demand and commuter. These operations are defined in § 110.2. On-demand operations are those either conducted as a public charter under part 380 or any operations in which the departure time and location and arrival location are specifically negotiated with the customer and are: in rotorcraft; common carriage operations with airplanes (including turbojet-powered airplanes) that have a passenger-seat configuration of 30 seats or fewer and a payload capacity of 7,500 pounds or less; or noncommon or private carriage operations conducted with airplanes having a passenger-seat configuration of less than 20 seats and a payload capacity of less than 6,000 pounds.

On-demand operations also include scheduled passenger-carrying operations that consist of less than five round-trips per week on at least one route between two or more points according to its published flight schedules in airplanes (other than turbojet-powered airplanes) that have a maximum passenger-seat configuration of 9 seats or less and a maximum payload capacity of 7,500 pounds or less, or in any rotorcraft. Finally, on-demand operations also include all-cargo operations conducted with airplanes having a payload capacity of 7,500 pounds or less, or with rotorcraft.

Commuter operations are scheduled operations conducted by any person operating airplanes (other than turbojet-powered airplanes) that have a maximum passenger-seat configuration of 9 seats or less and a maximum payload capacity of 7,500 pounds or less, as well as all rotorcraft, when such operations conduct at least five round trips per week on at least one route between two or more points according to its published flight schedules. As described in Section III. of this preamble, the Update to Air Carrier Definitions NPRM proposes to revise the definitions of commuter and on-demand to add powered-lift to part 110 so that operations can be conducted with those aircraft under part 135.

Part 135 includes references to airplanes, helicopters, rotorcraft, and powered-lift; however, part 135 only references powered-lift once. That reference is in the flight experience requirements of § 135.4. Although the term powered-lift was introduced when § 135.4 was added to part 135, it was not necessary to review and revise any other sections of part 135 to incorporate powered-lift because powered-lift were not available for civil operations at that time.

As previously stated in section VI.A, all regulatory requirements imposed on ''aircraft'' apply to powered-lift. Accordingly, any portions of part 135 which are silent to aircraft category are applicable to all part 135 operations conducted with powered-lift. Part 135 training and qualification requirements for pilots of powered-lift are discussed in section V.G of this preamble.

1. Part 135 Helicopter Rules Addressed in this SFAR

The FAA analyzed the part 135 regulations and identified helicopter rules that it determined should apply to powered-lift, either because the rules are more conservative or appropriate considering the VTOL capabilities of powered-lift. The FAA considered the similarities between helicopter and powered-lift in areas such as performance characteristics, vertical take-off and landing capabilities, maneuverability, range and operating environment. The FAA also considered those part 135 operations for which powered-lift could be used in lieu of a helicopter due to the capabilities of powered-lift such as those pertaining to air ambulance operations and off-shore passenger carrying operations that are currently unique to helicopters.

i. Subpart B: Flight Operations

Section 135.117(a) requires each PIC of an aircraft carrying passengers to ensure that passengers have been orally briefed on certain specific items. Specifically, § 135.117(a)(6) requires that, for flights involving extended overwater operations, passengers must be orally briefed on ditching procedures and the use of required flotation

[382] *E.g.,* AC 90–80C Approval of Offshore Standard Approach Procedures, Airborne Radar Approaches, and Helicopter En Route Descent Areas; AC 90–101A—Approval Guidance for Required Navigation Performance (RNP) Procedures with Authorization Required (AR); AC 90–105A—Approval Guidance for RNP Operations and Barometric Vertical Navigation in the U.S. National Airspace System and in Oceanic and Remote Continental Airspace; and AC 90–119 Performance Based Navigation Operations.

equipment. An extended over water operation means, with respect to helicopters, an operation over water at a horizontal distance of more than 50 nautical miles from the nearest shoreline and more than 50 nautical miles from an off-shore heliport structure.[383] In addition, § 135.117(a)(9) requires that, before each takeoff, the PIC of a rotorcraft that involves flight beyond the autorotational distance from the shoreline ensure that all passengers have been orally briefed on the use of life preservers, ditching procedures, and emergency exit from the rotorcraft in the event of a ditching. This briefing must include the location and use of life rafts and other life preserver devices as applicable.[384]

In the preamble promulgating § 135.117, the FAA explained that the safety equipment requirements for helicopters are different from those of airplanes.[385] This differentiation is made for two reasons. First, helicopters generally operate at lower altitudes than airplanes—usually below 10,000 feet. These lower altitudes reduce the autorotational distance and less time is available to prepare for an unplanned landing due to an unexpected event. Second, airplanes are designed with certain features that can enable them to float for a period of time after ditching such as doors above the waterline and, in some airplanes with pressurized cabins, closeable outflow valve(s). Helicopters do not incorporate these design features and may not be able to float on the surface like an airplane after ditching. Additionally, helicopters, by design, generally have a higher center of gravity and, when ditched, can roll over and then rapidly fill with water causing them to sink. Based on these two considerations, helicopter passengers must have additional protections for survival in water if they need to exit the helicopter after ditching as reflected by the requirements in § 135.117(a)(9).[386]

Powered-lift may have a wide variety of design features that may influence buoyancy after ditching and the ability to evacuate in case of an emergency. For example, some aircraft with pressurized cabins are likely to be more buoyant and water resistant than other aircraft without a pressurized cabin. In addition, different aircraft designs, including a lower center of gravity and passenger doors above the waterline, may increase the ability to not take on water and float for a longer period of time. With regard to features that may influence buoyancy and whether the powered-lift will take on water or float for a longer period of time after ditching is unknown. The FAA does not have the historical data on these new aircraft designs to assert that the positive buoyancy characteristics and the potential to float for a longer period of time—characteristics of airplane designs—will exist in powered-lift. Therefore, the FAA proposes to address powered-lift as helicopters for the purpose of over water operations.

Further because some-powered lift may be capable of operations beyond 50 NM of the shoreline or an off-shore heliport structure and are able to conduct takeoff and landing operations similar to helicopters, the FAA proposes to apply to powered-lift, the helicopter-specific definition in § 1.1 of extended over-water operations. This means if a powered-lift conducts an operation beyond 50 NM of the shoreline or an off-shore heliport structure, then it would be conducting an extended overwater operation and would be required to conduct the briefing required by § 135.117(a)(6).

Additionally, the FAA anticipates powered-lift may be designed to auto-rotate or glide to a landing. Accordingly, the FAA proposes in § 194.308(b) to apply the briefing requirement of § 135.117(a)(9) to powered-lift that are conducting operations beyond the auto-rotational distance or gliding distance from the shoreline. This will ensure the use of life preservers, ditching procedures and emergency exits, and if applicable, the location and use of life rafts and other life preserver devices have been briefed if a powered-lift ditches.

ii. Subpart C: Aircraft and Equipment

Section 135.160 requires radio altimeters for all rotorcraft operations conducted under part 135. The FAA determined that radio altimeters are an important safety device designed to inform the pilot of the aircraft's actual height above the surface.[387] Radio altimeters are valuable safety tools. For example, they provide additional situational awareness during an inadvertent encounter with IMC as well as additional situational awareness after encounters with brownout,[388] whiteout,[389] or other situations where vision is suddenly limited, and pilots lose their reference to the horizon and the ground. Additionally, radio altimeters can greatly improve a pilot's awareness of height above the ground during hover, landing in unimproved landing zones, and landings in confined areas where a more vertical approach may be required.[390]

The FAA foresees powered-lift being utilized in similar operational locations to rotorcraft, such as takeoff and landing operations to and from unimproved landing zones, including off-airport operations. This means that these aircraft could encounter many of the same hazardous issues, such as flat light,[391] whiteout, and brownout, which helicopters conducting part 135 operations can encounter. In addition, during inadvertent encounters with IMC, a radio altimeter can also provide additional situational awareness to the pilot. In order to establish a level of safety comparable to current rotorcraft operations under part 135, the FAA proposes in § 194.308(c) to require persons operating powered-lift to comply with the radio altimeter requirements of § 135.160.[392] As permitted for rotorcraft that must comply with § 135.160(a), the FAA also proposes to allow persons operating powered-lift with a maximum takeoff weight no greater than 2,950 pounds, the ability to apply for a deviation from the radio altimeter requirements in accordance with § 135.160(b).

Section 135.163 outlines the equipment requirements for all aircraft carrying passengers under IFR. The intent of § 135.163(g) is to ensure an adequate level of safety for multi-engine aircraft carrying passengers under IFR in the event that an engine fails resulting in an accompanying loss of electrical generation on that engine. By requiring the second power source to be on a

[383] 14 CFR 1.1.

[384] ''As applicable'' means if the aircraft is carrying rafts or other life preserver devices onboard, passengers must be briefed on the location and use of these items.

[385] Air Ambulance and Commercial Helicopter Operations, Part 91 Helicopter Operations, and Part 135 Aircraft Operations; Safety Initiatives and Miscellaneous Amendments, 75 FR 62639 (Oct. 12, 2010).

[386] If the aircraft is carrying rafts or other life preserver devices onboard, passengers must be briefed on the location and use of these items.

[387] Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations, 79 FR 9938 (Feb. 21, 2014).

[388] The Aeronautical Information Manual describes brownout as an in-flight visibility restriction due to dust or sand in the air. In a brownout, the pilot cannot see nearby objects which provide the outside visual references necessary to control the aircraft near the ground.

[389] The Aeronautical Information Manual describes white out as occurring when a person becomes engulfed in a uniformly white glow. The glow is a result of being surrounded by blowing snow, dust, sand, mud or water.

[390] Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations, 79 FR 9931 (Feb. 21, 2014).

[391] The Aeronautical Information Manual describes Flat Light as an optical illusion that causes pilots to lose their depth of field and contrast in vision.

[392] A–02–35 NTSB recommendation to incorporate radio altimeters for passenger carrying operations.

separate engine, an engine failure during IMC does not become a compound emergency of engine failure and electrical failure simultaneously. Section 135.163(g) contains an exception for multi-engine helicopters that states the two required generators may be mounted on the main rotor drive train and a loss of one powerplant will not affect both generators since they are on a common drive train. Section 135.163 currently applies to powered-lift as written. The FAA proposes in § 194.308(d) to allow powered-lift to utilize the exception for helicopters contained in § 135.163(g) when that powered-lift is equipped with a rotor system drivetrain that is driven by two separate powerplants and able to run the two required generators because, just as for rotorcraft, the loss of one powerplant would not affect both generators.

Part 135 contains requirements for emergency equipment for both extended overwater and rotorcraft overwater operations. Specifically, § 135.167 details the requirements for all aircraft conducting extended overwater operations, and § 135.168 details the requirements for rotorcraft overwater operations. Section 135.167 requires life preservers be easily accessible to each seated occupant in an aircraft, subject to a limited exception during an air ambulance operation. Section 135.168 requires life preservers be worn by occupants in rotorcraft in overwater operations. In § 135.167, an emergency locator transmitter (ELT) must be attached to a required life raft, while § 135.168 requires the aircraft to carry an approved and installed ELT because there is no requirement to carry a life raft.

Airplanes are designed with certain features that enable them to float for a period of time after ditching, such as doors above the waterline, partially empty fuel tanks, and in some airplanes, pressurized cabins with closeable outflow valves. Due to powered-lift being a new entrant into the civilian marketplace, the FAA does not have the historical data to assert that these positive buoyancy characteristics of airplanes will exist in powered-lift. Accordingly, the FAA proposes to apply § 194.308(e) to § 135.168 (that pertains to rotorcraft) to powered-lift. If the powered-lift is operating overwater beyond the gliding or autorotational distance of the shoreline then life preservers must be provided and worn by each occupant.

In developing this proposal, the FAA considered the 2010 notice of proposed rulemaking (NPRM),[393] which proposed the requirement for helicopters operated beyond the autorotational distance from shore to be equipped with electronically deployable or externally mounted life rafts. In the 2014 final rule,[394] the FAA removed that proposed life raft requirement, reasoning that the cost of equipping helicopters with life rafts would not be justified by an increase in the survivability of accidents. The FAA stated that there are relatively few accidents beyond autorotational distance from the shoreline. Among the accidents identified, few qualify as survivable, and of the survivable accidents, the requirement to wear life preservers would generate the greatest likelihood of surviving in the water.[395]

The FAA anticipates powered-lift operated overwater will have a survivability sequence (sequence of events which occur upon impact with the water) more similar to rotorcraft than airplanes and that the donning of life preservers would provide for the greatest likelihood of surviving in the water versus requiring the carriage of a life raft whenever powered-lift are conducting overwater operations beyond gliding and/or autorotational distance from the shoreline. Additionally, the ELT requirements of § 135.168 are appropriate for powered-lift because there is no life raft requirement except during extended overwater operations. This will ensure that all powered-lift that conduct operations beyond the gliding distance or the autorotational distance from the shoreline will have the added safety benefit of rescue locating by the signaling device.

Section 135.181 details performance requirements for all aircraft operated over-the-top [396] or in IFR conditions. This section also contains a provision, in § 135.181(b), that is specific to multiengine helicopters carrying passengers in the offshore environment and that allows these helicopters to conduct certain operations over-the-top or in IFR conditions. The FAA asserted that the provision contained in § 135.181(b) was in the public interest to allow this specific performance requirement for multiengine helicopters conducting passenger carrying operations offshore as such operations support exploration and development of energy supplies, and provided economic relief to those operators by allowing better utilization of the existing fleet without compromising safety.[397] The FAA anticipates that powered-lift could also be used in conducting offshore passenger operations that are currently provided by multiengine helicopters. The FAA notes that all powered-lift with the possibility of being operated in civil operations will be multi-engine; accordingly, the FAA proposes in § 194.308(f) to apply § 135.181(b) to all powered-lift. The FAA anticipates a powered-lift that is able to meet the performance requirements of § 135.181(b) would be providing the same level of safety established for helicopters using the same rationale that helicopters were afforded with this exception when operating in the offshore environment. This exception would provide the same economic relief to powered-lift operators as that experienced by helicopter operators.

Section 135.183 provides the performance requirements for land aircraft to operate over water. The basic premise for this regulation is that a land aircraft must be operated in such a way as to keep the aircraft out of the water. Paragraph (a) requires that any aircraft operate at an altitude that allows it to reach land in the event of an engine failure. Paragraph (b) allows overwater operations strictly limited to only takeoff and landing operations. Paragraph (c) requires a multiengine aircraft to be able to climb with its critical engine inoperative at least 50 feet a minute at 1000 feet above the surface. Paragraph (d) allows helicopters the option of installing floats if they are unable to meet the requirements of paragraph (a) or (c). With the exception of paragraph (d), powered-lift operations over water must comply with the provisions of § 135.183, because it references aircraft. In 1973, the FAA added paragraph (d) for helicopters equipped with flotation devices.[398] The FAA determined that helicopters could be operated safely beyond land in the case of an engine failure as long as the helicopter was equipped with flotation devices, even if they did not meet the requirements in paragraph (a) or (c).[399] The FAA anticipates that powered-lift may be utilized in the same fashion as helicopters carrying passengers over

[393] Air Ambulance and Commercial Helicopter Operations, Part 91 Helicopter Operations, and Part 135 Aircraft Operations; Safety Initiatives and Miscellaneous Amendments, 75 FR 62639 (Oct. 12, 2010).

[394] Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations, 79 FR 9931 (Feb. 21, 2014).

[395] Id. at 9973.

[396] Over-the-top means above the layer of clouds or other obscuring phenomena forming the ceiling.

[397] Rotorcraft Regulatory Review Program Notice No. 5, 50 FR 10165 (Mar. 13, 1985).

[398] Helicopter Use Over Water, 38 FR 12906 (May 17, 1973) (amending § 135.147, which contained the requirements in § 135.183 prior to the recodification in 1978).

[399] Id.

water. The FAA is uncertain if powered-lift will be equipped with floats; however, the FAA expects that a powered-lift that is equipped with floatation devices through an FAA certification process will provide the same level of safety that is currently extended to helicopters because the FAA anticipates that a powered-lift with floats would land similarly to a float-equipped helicopter. Accordingly, the FAA proposes in § 194.308(g) to allow powered-lift to utilize the exception contained in paragraph (d) if the powered-lift is unable to meet the requirements of paragraph (a) or (c).

iii. Subpart D: VFR/IFR Operating Limitations and Weather Requirements

Section 135.207, which outlines helicopter surface reference requirements under VFR, was originally promulgated in 1958 and at a time when helicopters were not widely equipped with gyroscopic flight instruments.[400] This rule has remained unchanged throughout the years leaving its application, in this case, to be somewhat inappropriate due to the advances in technology of many aircraft since its inception. Much research has also occurred in the science of human factors associated with flying at night in reference to objects on the surface or on the horizon. This section specifically omitted airplanes at the time of publication because airplanes were more widely equipped with the adequate instrumentation needed to maintain a pilot's situational awareness.[401] The FAA anticipates that powered-lift will be equipped with advanced technologies and flight instrumentation that would provide adequate situational awareness as well as an ability to maintain positive control of an aircraft in lower light and visibility situations. However, some powered-lift could be manufactured without gyroscopic flight instruments. To ensure the pilot can safely control the aircraft, the FAA proposes in § 194.308(h) that this section only apply to powered-lift that do not have the flight instrumentation listed in § 135.159 installed and operable.

Section 135.227(d) prohibits helicopters from flying under IFR into known or forecast icing conditions or under VFR into known icing conditions unless the helicopter is type certificated and appropriately equipped for operations in icing conditions. A powered-lift should also be prohibited from operating in certain icing conditions unless it is type certificated and appropriately equipped for operations in such conditions. This requirement will ensure those aircraft can safely operate in icing conditions because they are appropriately certificated and equipped with the proper equipment. Section 135.227(c)(2) and (3), which are applicable to airplanes, are similar to § 135.227(d) in that those provisions require the aircraft to meet certain airworthiness standards in order to operate in certain icing conditions. However, § 135.227(d) is appropriate to apply to powered-lift because the airworthiness requirements are less specific, which makes this paragraph more suited to the § 21.17(b) certification process that powered-lift comply with, which is appropriate as the FAA gathers more information about powered-lift operations in icing conditions. Therefore, the FAA proposes in § 194.308(i) to apply § 135.227(d) to powered-lift that are type certificated and appropriately equipped for operations in icing conditions. Operations in icing conditions are discussed more extensively in VI.D.2.v regarding airplane rules and weather requirements.

Section 135.229 provides the airport requirements that apply to all aircraft with the exception of paragraph (b)(2)(ii) in which helicopters are also allowed to use reflective material.[402] The landing lights on helicopters are generally oriented so that they shine at an angle approximate to a normal approach angle used by helicopters. This negates the need for the landing area to be lit up with runway lights and permits the helicopter pilot to easily pick out and maintain a safe approach angle to an area marked by reflective material. The FAA expects that, since powered-lift are capable of a vertical takeoff or landing, they could be equipped with landing lights oriented in a direction that enables the pilot to see a landing area marked by reflective material. Accordingly, the FAA determined that for powered-lift that are conducting a vertical takeoff or landing and that are equipped with landing lights oriented in a direction that enables the pilot to see the takeoff or landing area marked by reflective material, then powered-lift may use that reflective material that a helicopter is permitted by § 135.229(b)(2)(ii). If conducting a takeoff or landing roll using wing-born lift, a powered-lift must takeoff or land at an airport with boundary or runway marker lights, as set forth in § 135.229(b)(2)(i). The FAA proposes in § 194.308(j) to allow powered-lift to takeoff from or land at an airport that uses reflective material when conducting a takeoff or landing in the vertical-lift flight mode and is equipped with landing lights oriented in a direction that enables the pilot to see the takeoff or landing area marked by reflective material.

iv. Subpart F: Crewmember Flight Time and Duty Period Limitations and Rest Requirements

Subpart F details crewmember flight time, duty period limitations, and rest requirements. These sections are applicable to scheduled and unscheduled operations regardless of the type of aircraft with the exception of § 135.271, Helicopter Hospital Emergency Medical Evacuation Services (HEMES). The FAA has noted previously that it uses the terms helicopter air ambulance (HAA) and HEMES interchangeably.[403] Section 135.271 requires different rest and duty requirements for HAA operations conducted from a hospital, and in order to assure that a helicopter pilot is adequately rested, there is a requirement to have an approved place of rest at or in close proximity to the hospital where the helicopter is based. The FAA stated in the NPRM for § 135.271 that air ambulance operations are of undoubted social benefit and proven safety, and that the FAA has been issuing exemptions for these operations for several years and is satisfied that they are safe.[404]

Since powered-lift are able to conduct vertical takeoffs and landings, they could be based at a hospital heliport. Therefore, the FAA anticipates powered-lift operators will be able to conduct HAA operations that are subject to the requirements of § 135.271. Operators that have a powered-lift based at a hospital should be allowed to use the rest and duty rules permitted by this section, just as current helicopter operators are permitted. The FAA applies this provision to all HAA instead of using the term HEMES for maximum clarity going forward with respect to which operations these limitations are applicable to. This determination is consistent with the preamble accompanying

[400] Part 46—Scheduled Air Carrier Helicopter Certification and Operation Rules, 23 FR 2265 (Apr. 8, 1958).

[401] Part 46—Scheduled Air Carrier Helicopter Certification and Operation Rules, 23 FR 2264 (Apr. 8, 1958).

[402] Miscellaneous Amendments, 29 FR 2988 (Mar. 5, 1964).

[403] National Policy regarding Helicopter Air Ambulance Operations, available at *https://www.faa.gov/documentLibrary/media/Notice/N_8900.509.pdf.*

[404] Flight Time Limitations and Rest Requirements for Flight Crewmembers, 49 FR 12136, 12141 (Mar. 28, 1984).

implementation of this provision, which indicates it was intended to apply to all HAA.[405] Therefore, the FAA proposes in § 194.308(k) that § 135.271 apply to powered-lift conducting HAA operations in accordance with subpart L of part 135.

v. Subpart J: Maintenance, Preventative Maintenance, and Alterations

Section 135.429 applies to all aircraft, except for paragraph (d) which states that the FAA may approve procedures for the performance of required inspection items by a pilot of a rotorcraft that operates in remote areas or sites. The pilot may perform the inspection items, with certain limitations, when no other qualified personnel are available and a mechanical interruption occurs. The FAA expects a pilot who is trained under the requirements of § 135.429(d) would provide the same level of competency as a certificated mechanic.[406] The rule is intended to allow a certificate holder the opportunity to establish a preventive maintenance process for when a mechanical interruption occurs in a remote area or site. The inspection must be accomplished under the direct control of the certificate holder's maintenance program. Because powered-lift may take off and land like a rotorcraft, some powered-lift may operate in remote areas or sites. Consequently powered-lift used in such operations experience the same challenges that exist for rotorcraft when an unscheduled mechanical interruption occurs. Therefore, the FAA proposes in § 194.308(l) to apply § 135.429(d) to powered-lift that operate in remote areas or sites.

vi. Subpart L: Helicopter Air Ambulance Equipment, Operations, and Training Requirements

Helicopter air ambulance operations must comply with subpart L of part 135 in addition to other requirements of this part. Since subpart L became effective, significant decreases in HAA fatalities have occurred, further justifying the positive impact on the safety benefit of these requirements. Since powered-lift can operate similar to a helicopter during the critical phases of flight of takeoff and landing, and to ensure the higher level of safety that is afforded to medical personnel aboard those aircraft, the FAA proposes powered-lift conducting air ambulance operations will be required to comply with subpart L. Moreover, § 135.1 outlines the applicability of part 135, and § 135.1(a)(9) lists HAA operations as defined in § 135.601(b)(1). Because the FAA proposes that subpart L apply to powered-lift, it also proposes in § 194.308(a) that § 135.1(a)(9) apply to powered-lift conducting air ambulance operations.

The FAA anticipates that operators utilizing powered-lift for air ambulance activities will present a new dynamic because these aircraft can be operated like an airplane and a helicopter. The FAA currently differentiates between airplane air ambulance operations and HAA operations including the required equipment, weather minimums, required risk analysis, flight monitoring, and the authorizing document issued to the operator.[407] As provided in the preamble to the final rule implementing subpart L, helicopter air ambulance operations are conducted under unique conditions.[408] Such flights are often time sensitive and operate at low altitudes and under varied weather conditions. They must often land at unfamiliar, remote, or unimproved sites with hazards like trees, buildings, towers, wires, and uneven terrain. Patients being transported often do not have a choice between operator or mode of transportation. For these reasons, the FAA established more stringent safety regulations applicable to HAA operations which include weather minimums and visibility requirements, as well as mandating flight planning, preflight risk analyses, safety briefings for medical personnel, and the establishment of operations control centers (OCC) for certain operators to help with risk management and flight monitoring. The rule also includes provisions to encourage instrument flight rules (IFR) operations. It requires helicopter air ambulances to be equipped with both helicopter terrain awareness and warning systems (HTAWS) (the HTAWS will warn pilots about obstacles in their flight path), and flight data monitoring systems. Finally, helicopter air ambulance pilots are required to hold instrument ratings.[409]

The FAA anticipates that powered-lift be used in air ambulance operations would likely complete operations similar to those currently conducted by helicopters and thus also be likely to encounter circumstances similar to helicopters in air ambulance operations. Powered-lift conducting air ambulance operations should be afforded the same level of safety as HAA operations, and the rules contained in subpart L will provide this level of safety. Accordingly, the FAA proposes in § 194.308(m) that the applicability and definitions section of subpart L also apply to powered-lift.

The FAA conducted an analysis of the sections in subpart L versus those contained throughout subparts A through J to determine if any changes in subpart L were required for continuity with the proposed powered-lift SFAR, and to ensure there was no conflict in applying these rules when air ambulance operations are conducted in a powered-lift. This analysis and applicability of subpart L are described in the following paragraphs.

Section 135.154 requires terrain awareness and warning systems (TAWS) in airplanes with a passenger seat configuration of 6 to 9 passengers, while § 135.605 requires helicopter terrain awareness and warning system (HTAWS) equipment for all helicopters used in HAA operations, regardless of passenger seat configuration. This difference in requirements is based upon the different flight characteristics and the operating environment in which these aircraft operate, such as speed, maneuverability, and the altitudes at which they normally operate.

As previously discussed, powered-lift are capable of flight similar to both airplanes and helicopters. Consequently, individually the current TAWS and HTAWS are not a complete solution for powered-lift due to each equipment's capabilities and limitations. In the subsequent preamble discussion regarding the applicability of TAWS to airplanes, the FAA explains its determination that HTAWs or an FAA approved TAWS A/HTAWS hybrid system rather than an airplane-specific TAWS, is appropriate for powered-lift having a passenger seating configuration, excluding any pilot seat, of 6 or more. See proposed § 194.307(q). Consistent with proposed § 194.307(q), for powered-lift operating under subpart

[405] See, *e.g.,* Helicopter Air AMBULANCE, commercial Helicopter, and Part 91 Helicopter Operations, 79 FR 9944 (Feb. 21, 2014), which states: ''As established by this rule, all helicopter air ambulance operations with medical personnel or patients on board must be conducted under part 135. The provisions of §§ 135.267 and 135.271 would therefore apply to the helicopter air ambulance operations previously conducted under part 91''.

[406] See Rotorcraft Regulatory Review Program Amendment No. 5; Operations and Maintenance; Final Rule, 51 FR 40692 (Nov. 7, 1986).

[407] Air ambulance operations conducted in an airplane are approved through issuance of Operations Specification A024, while air ambulance conducted in a helicopter are approved through issuance of A021. When the type of operation is proposed in powered-lift, the FAA will issue the appropriate operations specification.

[408] Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations, 79 FR 9931 (Feb. 21, 2014).

[409] Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations, 79 FR 9931 (Feb. 21, 2014).

L, the FAA is proposing to allow a hybrid system in a powered-lift that utilizes the features of a TAWS A system for wing-borne flight and HTAWS for vertical flight modes of operation for compliance with § 135.605. Without a TAWS A/HTAWS hybrid system, the FAA determined that the current HTAWS specification would provide the best level of safety without an undue number of nuisance warnings. The FAA proposes in § 194.308(o) that any powered-lift that is used in air ambulance operations as defined § 135.601, modified by the proposed SFAR, be equipped with HTAWS, unless equipped with an FAA approved TAWS A/HTAWS hybrid system, in accordance with § 135.605.

Section 135.603 requires the PIC of a helicopter air ambulance operation to meet the requirements of § 135.243 and to hold either a helicopter instrument rating or an ATP certificate with a category and class rating for that aircraft, not limited to VFR. It is equally important for PICs of powered-lift air ambulance operations to meet the requirements set forth in this section. In the NPRM implementing updated requirements for helicopter air ambulance operations, the FAA explained that inadvertent flight into IMC is a common factor in helicopter air ambulance accidents. In general, many accidents result when pilots who lack the necessary skills or equipment to fly in marginal VMC or IMC attempt flight without outside references. The proposal was intended to ensure that helicopter air ambulance pilots are equipped to handle these situations and extract themselves from these dangerous situations. A pilot who receives the more extensive training on navigating a helicopter solely by reference to instruments provided by obtaining an instrument rating is better able to maintain situational awareness and maneuver the helicopter into a safe environment than a pilot without an instrument rating.[410]

These concerns regarding inadvertent flight into IMC would be equally applicable for PICs of powered-lift. Accordingly, the FAA proposes in § 194.308(n) that these requirements also apply for powered-lift operations occurring under subpart L. For further discussion of proposed amendments to § 135.243, please see section I.5.i. of this preamble.

The FAA also determined that it would be appropriate to apply the requirement set forth in § 135.607 for a helicopter to have for flight data monitoring system capable of recording flight performance data to powered-lift conducting air ambulance operations. The FAA has not identified any reason to differentiate between helicopters and powered-lift conducting air ambulance operations for purposes of compliance with this requirement, as it would be equally important for powered-lift to record flight performance data in the dynamic environment contemplated by subpart L. Accordingly, the FAA proposes this requirement be applicable to powered-lift in § 194.308(p).

Section 135.609(a) specifies the minimum ceiling and visibility requirements for conducting VFR helicopter air ambulance operations in Class G airspace. Those requirements are broken down into day or night, mountainous or non-mountainous, and local or non-local flying areas. Section 135.601(b)(3) defines mountainous areas as those designated under part 95 of chapter I. Part 95 contains maps and the latitude and longitude coordinates depicting the mountainous areas of the eastern and western United States as well as Alaska, Hawaii, and Puerto Rico. Section 135.601(b)(4) defines non-mountainous areas as areas other than the mountainous areas listed in part 95. In addition, § 135.609(b) explains that a certificate holder may designate local flying areas in a manner acceptable to the Administrator that must (1) not exceed 50 NM in any direction from each designated location; (2) take into account obstacles and terrain features that are easily identifiable by the pilot in command (PIC) and from which the PIC may visually determine a position; and (3) take into account the operating environment and capabilities of the certificate holder's helicopters.

The FAA established the minimums under § 135.609(a), which are more stringent than the VFR visibility requirements of § 135.205 for helicopters, because the FAA believed that all flight operations conducted under VFR in helicopter air ambulance operations should comply with more stringent weather requirements. They also asserted these ceiling and visibility requirements would be an effective method of increasing safety in helicopter air ambulance operations.[411] For powered-lift, the FAA evaluated the VFR minimum altitudes, required visibility, and distance from cloud requirements for airplanes as contained in §§ 135.203 (VFR minimum altitudes), 135.205 (VFR visibility requirements), and 91.155 (distance from cloud requirements) and applied these airplane minimums to the table contained in § 135.609(a) which resulted in minimums that are most closely aligned with the FAA's intent of applying the ceiling and visibility requirements of airplanes to powered-lift.

A powered-lift may takeoff and land vertically and can therefore access the same locations that a HAA aircraft can, thus making it suitable to conduct these kinds of operations; however, the powered-lift can be much different than a helicopter in cruise flight, where the powered-lift—during wing-born flight mode—is anticipated to operate more like an airplane. These operating differences include higher airspeeds, which require more distance to see and avoid obstacles and terrain, and more airspace to conduct maneuvering. Speed and maneuverability also play a role in the ability of a powered-lift operating with a cloud layer to avoid objects, including other aircraft, that come out of the clouds. Additionally, these characteristics may limit the ability of a powered-lift to conduct an emergency landing into the same areas a helicopter might use. This can be predicated on the time it takes the powered-lift to transition to VTOL or even its inability to use VTOL with certain failures, causing it to operate more like an airplane in this respect.

As a result of the foregoing, the FAA determined powered-lift should be operated at a higher minimum when operating at night than what is currently required under § 135.609 for helicopters. The proposed requirements for powered-lift are identical to the helicopter requirements in the § 135.609(a) table for daytime operations, but the ceiling increases for nighttime operations to help create a safer operating environment for powered-lift. Finally, the FAA notes that the table in § 135.609(a) contains two columns for night operations: one column for ''night'' operations and another column for ''night using an approved NVIS or HTAWS'' operations. Because HTAWS are now required, the ''night'' column requirements are no longer relevant and have been phased out. The FAA proposes in § 194.308(q) that powered-lift comply with the minimum ceiling and visibility requirements for VFR air ambulance

[410] Air Ambulance and Commercial Helicopter Operations, Part 91 Helicopter Operations, and Part 135 Aircraft Operations; Safety Initiatives and Miscellaneous Amendments, 75 FR 62639 (October 12, 2010).

[411] Air Ambulance and Commercial Helicopter Operations, Part 91 Helicopter Operations, and Part 135 Aircraft Operations; Safety Initiatives and Miscellaneous Amendments, NPRM, 75 FR 62649 (Oct. 12, 2010).

operations in Class G airspace as described in the following table (Table 10):

TABLE 10—PROPOSED VFR AIR AMBULANCE MINIMUMS IN CLASS G AIRSPACE

Location	Day		Night	
	Ceiling	Visibility	Ceiling	Visibility
Non-mountainous Local Flying Areas	800 FT	2 SM	1,500 FT	3 SM
Non-mountainous Non-Local Flying Areas	800 FT	3 SM	1,500 FT	3 SM
Mountainous Local Flying Areas	800 FT	3 SM	2,500 FT	3 SM
Mountainous Non-Local Flying Areas	1,000 FT	3 SM	2,500 FT	5 SM

In addition, the FAA proposes § 135.609(b) apply to certificate holders operating powered-lift in air ambulance operations so that they may designate local flying areas that meet the requirements of paragraphs (b)(1) through (3). Weather minimums are less stringent in local flying areas because of pilots' increased familiarity with obstacles and the operating environment.[412] The FAA expects that powered-lift pilots conducting air ambulance operations will have the same familiarity with local obstacles and the operating environment.

Section 135.611 sets forth requirements for HAA IFR operations at locations without weather reporting. The FAA evaluated the provisions of this section and determined that it would be appropriate to provide the ability for authorization for IFR operations of powered-lift at airports with an instrument approach procedure and where a weather report is not available. This provision would only be able to be utilized by powered-lift operating under subpart L that are certified for IFR operations and that receive an additional authorization from the Administrator. The FAA proposes the applicability of this section in § 194.308(r).

Section 135.613 details the ceiling and visibility requirements for approach and departure IFR transitions for HAA operations. This rule was codified to establish weather minimums for HAA that are using an instrument approach and are now transitioning to visual flight for landing. It also permits VFR to IFR transitions for departures if the pilot has filed an IFR flight plan and will obtain an IFR clearance within 3 NM of the departure location and the pilot departs following an FAA-approved obstacle departure procedure. This section is intended to encourage IFR operations because of the safety benefits associated with flights conducted under IFR. Section 135.613(a) establishes the requirements when conducting an authorized instrument approach and transitioning from IFR to VFR flight.

Section 135.613(a)(1) requires a flight visibility of 1 statute mile (SM) and a ceiling based upon the minimums published on the approach chart. This is applicable for Point-in-Space (PinS) Copter Instrument approaches that are annotated with a ''Proceed VFR'' segment, and the distance from the missed approach point to the landing area is 1 NM or less. The FAA proposes in § 194.308(s)(1) that § 135.613(a)(1) only apply to powered-lift that are equipped and certified to conduct these PinS approaches.

Section 135.613(a)(2) specifies the minimum ceiling and visibility requirements for all instrument approaches if the missed approach point to the landing area is 3 NM or less. These minimum ceiling and visibility requirements are also applicable to PinS approaches which contain a ''Proceed VFR'' segment where the missed approach point to the landing area is greater than 1 NM but no greater than 3 NM. The FAA noted in the Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations final rule that in most cases the rule permits flight under less restrictive weather minimums than are currently allowed for cruise flight in uncontrolled airspace.[413] The ceiling requirement of § 135.613(a)(2) is less restrictive than that required by § 135.609(a), and the visibility requirement is generally less restrictive than § 135.609(a) as well. In the Helicopter Air Ambulance final rule, when discussing permitting less restrictive ceilings and visibilities, the FAA stated that obstacles in the vicinity of an instrument approach are flight-checked and marked on instrument approach charts. It is less likely that pilots would encounter unexpected obstacles when following an instrument approach chart.[414]

The minimums currently prescribed for helicopters in § 135.613(a)(2)(i) and (ii) would not allow a powered-lift to maintain an acceptable level of obstacle and cloud clearances when conducting VFR transitions to landing areas because of the anticipated time it will take to transition from cruise flight to VTOL landing, as well as speed, distance required to maneuver, and autopilot usage. Airplanes are not able to use reduced VFR weather minimums when conducting these types of maneuvers and applying these minimums is consistent with the FAA's previous determination to require powered-lift to use airplane weather minimums under part 91 as previously discussed in this NPRM. Therefore, the FAA proposes in § 194.308(s)(2) that a 1,000-foot ceiling and 2 SM visibility for powered-lift day operations and a 1,500-foot ceiling and 3 SM visibility for powered-lift night operations.

Section 135.613(b) addresses the departure minimums required for transitions from VFR to IFR. Since the FAA proposes that powered-lift will be required to use alternate powered-lift minimums for § 135.613(a), the FAA proposes in § 194.308(s)(3) powered-lift use those same minimums for § 135.613(b)(1) as well.

Section 135.615(a) requires helicopter air ambulance pilots to perform pre-flight planning to determine the minimum safe cruise altitude and to identify and document the highest obstacle along the planned en route phase of flight prior to conducting VFR operations. The pilot would use this minimum safe cruise altitude when determining the minimum required ceiling and visibility for the planned flight. This rule is intended to prevent obstacle collisions by requiring pilots to be aware of the terrain and highest obstacles along a planned route.[415]

[412] Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations, 79 FR 9931 (Feb. 21, 2014).

[413] Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations, Final Rule, 79 FR 9946 (Feb. 21, 2014).

[414] Id.

[415] Air Ambulance and Commercial Helicopter Operations, Part 91 Helicopter Operations, and Part 135 Aircraft Operations, Safety Initiatives and Miscellaneous Amendments, 75 FR 62640, 62651 (Oct. 12, 2010).

The FAA anticipates many powered-lift, other than necessary for takeoff and landing, in order to gain efficiencies in speed and range, will prefer to utilize wing-borne flight as long as practical. Since powered-lift will likely operate similar to an airplane in cruise flight, they will require more time and distance to make corrections to their flightpath to avoid other aircraft and obstacles. As a result, the FAA analyzed whether applying the minimums under § 135.203(a) would be more appropriate for powered-lift conducting HAA operations than the minimums outlined under § 135.615. Section 135.203(a) specifies the VFR minimum altitudes for airplane operations. Specifically, § 135.203(a)(1) requires an airplane be operated during the day, at least 500 feet above the surface or no less than 500 feet horizontally from any obstacle. Additionally, § 135.203(a)(2) requires an airplane be operated at night at an altitude at least 1,000 feet above the highest obstacle within a horizontal distance of 5 miles from the course intended to be flown or, in designated mountainous terrain, at least 2,000 feet above the highest obstacle within a horizontal distance of 5 miles from the course intended to be flown. The FAA considered the similarities between airplanes and powered-lift using wing-borne lift during the cruise portions of flight and asserts that the airplane requirements contained in § 135.203(a)(1) and (2) are more suited for powered-lift than the helicopter minimums in § 135.203(b). Accordingly, the FAA proposes minimums for powered-lift operating under subpart L in § 194.308(t)(1).

Whereas § 135.203(b) requires no minimum VFR altitude for helicopters, except over congested areas where 300 feet above the surface is required, helicopters used in air ambulance operations are required to maintain higher minimum VFR altitudes as stipulated in § 135.615(b)(1) and (2). Section 135.615(b)(1) and (2) require the pilot in command of a helicopter to ensure all terrain and obstacles along the route of flight are cleared vertically by no less than 300 feet during the day and 500 feet at night when conducting a VFR air ambulance operation.

A minimum altitude that clears all terrain and obstacles along the route of flight vertically by no less than the 500 feet during the day, and at night 1,000 feet, except in mountainous terrain where 2,000 feet will provide a sufficient distance from terrain and obstacles to ensure the safe operation of powered-lift conducting air ambulance operations. The FAA proposes in § 194.308(t)(2) that to comply with the en route altitude requirements of § 135.615(b)(1) and (2), a powered-lift conducting a VFR air ambulance operation clear all terrain and obstacles along the route of flight vertically by the minimum altitudes and horizontal distances specified in § 135.203(a)(1) and (2). Similarly, the FAA proposes the pilot in command of a powered-lift use the minimum altitudes specified in § 135.203(a)(1) and (2) when making the determinations required by § 135.615(a)(3).

The FAA also proposes in § 194.308(u) that the pre-flight risk analysis requirements contained in § 135.617 apply to powered-lift. This section details several items that must be documented in the certificate holder's manual regarding pre-flight considerations, such as human factors, weathers, and other critical considerations. The FAA imposed these requirements for HAA because ''the FAA and the NTSB . . . identified several accidents which may have been prevented had a preflight risk analysis been completed. The NTSB concluded that ''implementation of flight risk evaluation before each mission would enhance the safety of emergency medical services operations.'' [416] The considerations that a certificate holder is required to take into account for helicopter operations are equally important for operations of powered-lift under subpart L.

Section 135.619 sets out the requirements for an operations control center. This regulation requires a certificate holder who is authorized to conduct HAA with 10 or more helicopter air ambulances assigned to the certificate holder's operations specifications to have an operations control center. The FAA added the requirement for operations control centers with the initial codification of Subpart L, stating the level of operational complexity and management detail required for safe operations is greater for certificate holders with 10 or more helicopter air ambulances.[417] The FAA determined that operational complexity and management detail required for safe operations in the dynamic environment envisaged by the air ambulance operations conducted under Subpart L is not limited to only helicopters, but rather is dependent on the number of aircraft authorized. Therefore, the FAA proposes in § 194.308(v) that any operator utilizing helicopters, powered-lift, or any combination thereof, that total 10 or more of these aircraft utilized in air ambulance operations would trigger the requirements to have an operations control center as detailed in § 135.619.

The FAA also determined, as proposed in § 194.308(w), that it would be appropriate to apply the briefing requirements contained in § 135.621 for medical personnel to air ambulance operations that occur in powered-lift. The FAA determined that it would not be appropriate to relieve powered-lift operators from the briefing requirements for medical personnel currently required for helicopter operators, as powered-lift will be operating in the dynamic requirement envisaged by subpart L.

2. Part 135 Airplane Rules Addressed in This SFAR

The FAA analyzed the part 135 regulations and identified airplane rules appropriate to powered-lift operations. The FAA based this determination on the ability of a powered-lift to operate in a manner similar to airplanes. Additionally, the FAA considered the safety aspects of the rule, whether or not powered-lift have similar operating and performance characteristics to airplanes, such as wing-borne flight, higher cruise speeds and operational altitudes. The FAA also considered the similarities between airplanes and powered-lift in areas such as takeoff and landing capabilities using wing-borne lift, maneuverability, range and operating environment. In light of the proposed changes to air carrier definitions in the Update to Air Carrier Definitions NPRM, which will affect the applicability of this part, the FAA assumes, in this rule, that all part 135 requirements applicable to aircraft, generally, apply to powered-lift.

i. Subpart A: General

Subpart A prescribes requirements regarding the applicability, manual requirements, aircraft requirements, and crewmember certificate requirements for part 135. For those operators required to have a manual, § 135.23 specifies the required content for that manual. It is essential for certificate holders of a certain size to have a manual which sets forth their procedures and policies to ensure the safe operation of the aircraft they use. The manual content requirements of a Destination Airport Analysis as specified in § 135.23(r) are only required if the aircraft meets the thresholds set forth by § 135.385, Large Transport Category Airplanes: Turbine

[416] Helicopter Air Ambulance, Commercial Helicopter, and Part 91 Helicopter Operations, Final Rule, 79 FR 9946 (Feb. 21, 2014), citing NTSB, Special Investigation Report on Emergency Medical Services Operations (NTSB/SIR–06/01) 4 (Jan. 25, 2006).

[417] Id. at 62647.

Engine Powered: Landing limitations: Destination Airports, as specified for large powered-lift in § 194.307(qq) and (rr).

The FAA proposes in § 194.307(a) that if the requirements of § 135.385 are applicable to a specific powered-lift, then all of the requirements of § 135.23(r), and in particular, § 135.23(r)(7) which currently only applies to airplanes, would be applicable as well. This proposal will ensure that evaluation of any inoperative equipment are included in the Destination Airport Analysis, which is equally important for powered-lift as it would be for airplanes required to comply with the performance requirements of § 135.385. The FAA expects that powered-lift inoperative equipment would affect the analysis of runway safety margins at destination airports.

ii. Subpart B: Flight Operations

Subpart B prescribes requirements for flight operations under part 135. Section 135.93 details minimum altitudes for use of an autopilot. This section is applicable to all aircraft but contains many references to an Airplane Flight Manual (AFM) in multiple paragraphs and, in paragraph (g) excepts rotorcraft operations. The altitude requirements of this section are in place to provide pilots with sufficient altitude for obstacle clearance taking into consideration the reaction time needed to disengage the autopilot and apply a corrective action should an autopilot malfunction occur.

An example of a particularly critical autopilot malfunction is a hard-over, which is when the autopilot pitch control channel commands a full nose-down deflection of the pitch control surfaces of the airplane. The FAA anticipates that powered-lift will conduct a majority of their autopilot-controlled flight operations much like an airplane (in wing-borne flight mode), with the lift being primarily produced by the wings providing a greater forward velocity than a helicopter. The safety measures of this rule, including any autopilot related limitations contained in the powered-lift's flight manual, and not the rotorcraft exception, should continue to apply to powered-lift to ensure the pilot has sufficient altitude to recognize, react, and recover from an autopilot induced malfunction. As a result, the aircraft-generic autopilot requirements in § 135.93(a) through (f) apply to powered-lift, and the FAA proposes in § 194.307(b) to apply the requirements referencing the ''Airplane'' flight manual to powered-lift, as reflected in a powered-lift's aircraft flight manual.

Section 135.100 details flightcrew member duties in relation to critical phases of flight including all ground operations involving taxi, takeoff and landing, and all other flight operations conducted below 10,000 feet, except cruise flight. This rule was codified in 1981 for both parts 121 and 135 operations to improve safety by reducing flightcrew member distractions caused by non-safety related duties and activities being conducted during critical phases of flight.[418] Regardless of the type of aircraft and the type of taxiing they do (*i.e.,* ground taxi, hover taxi), in order to maintain an equivalent level of safety for all aircraft, including powered-lift, conducting operations at an airport, all movement of any aircraft under its own power at an airport must be done free of distraction from non-safety related duties and activities.

In § 135.100, a note states that taxi is defined as ''movement of an airplane under its own power on the surface of an airport.'' FAA ATC defines two means of taxiing for helicopters as hover taxi and air taxi.[419] Upon review of this regulation, the FAA determined that the term taxi should not be limited to airplanes and should be applicable to all aircraft conducting taxi maneuvers at an airport. The note at the time of this rule did not conceptualize helicopters taxiing on wheels on a taxiway as well as a potential for powered-lift that might also be able to taxi in this manner. Powered-lift may have the design and capability to taxi in a manner similar to airplanes, helicopters, or both. The intent of the rule is to provide for a sterile cockpit during critical phases of flight to improve safety by reducing distractions, which is also applicable to powered-lift operations. As a result, the FAA proposes amending the definition as a permanent change in § 135.100 to replace the word ''airplane'' with ''aircraft,'' making the section applicable to not only airplanes, but also helicopters and powered-lift.

Section 135.128 regulates the use of safety belts and child restraint systems. This section requires that each person onboard an aircraft operated under part 135 occupy an approved seat or berth with a separate safety belt properly secured about him or her during movement on the surface, takeoff, and landing. For seaplane and float equipped rotorcraft operations during movement on the surface, the person pushing off the seaplane or rotorcraft from the dock and the person mooring the seaplane or rotorcraft at the dock are excepted from the seating and safety belt requirements.

In 1992 when the FAA published a final rule[420] that revised § 135.128, it indicated that it agreed with a comment received regarding seaplane operations, in that a pilot would be unable to moor or launch a seaplane or a float equipped rotorcraft, unless a pilot or passenger has their safety belt or shoulder harness unfastened so that they can vacate their seat for the purpose of launching or mooring the seaplane or float equipped rotorcraft. The same exception should also apply to a powered-lift that is properly equipped to conduct operations on water. The FAA proposes in § 194.307(c) to apply the exception delineated in § 135.128(a) to powered-lift pilots or passengers when the powered-lift is operating like a seaplane or a float equipped rotorcraft.

iii. Subpart C: Aircraft and Equipment

Subpart C prescribes requirements for aircraft and associated equipment for operations under part 135. Section 135.145 sets out the parameters and the requirements for the Proving and Validation Tests that must be accomplished by a certificate holder. Proving tests are necessary to evaluate each certificate holder's ability to conduct operations safely and in accordance with the applicable regulations. Proving tests under § 135.145 consist of a demonstration of the certificate holder's ability to operate and maintain certain aircraft new to the operator's fleet or the certificate holder's ability to conduct a particular kind of operation. Additionally, it is each certificate holder's responsibility to show that they can operate each of their aircraft safely and in compliance with the requirements of the regulations and their procedures. Section 135.145(b) requires that a certificate holder conduct proving tests in a turbojet airplane if they have not previously proved a turbojet airplane. Powered-lift, regardless of the powerplant, have additional complexity due to their design and operation and that these features have not been available and experienced by the civilian market to date. To ensure powered-lift operate to the highest level of safety in part 135, the FAA is proposing in § 194.307(d) that if a certificate holder has not previously proven a powered-lift in operations under part 135, they be

[418] Elimination of Duties and Activities of Flight Crewmembers Not Required for the Safe Operation of Aircraft, 46 FR 5502 (Jan. 19, 1981).

[419] FAA Order 7110.65W (Dec. 10, 2015) Chapter 3, Section 11.

[420] Miscellaneous Operational Amendments, 57 FR 42662 (Sep. 15, 1992).

required to conduct at least 25 hours of proving tests acceptable to the FAA as detailed in § 135.145(b)(1) through (3).

The FAA requires validation testing for certain authorizations, and for the addition of certain aircraft that were previously proved or validated but are not of the same make or model, or of similar design. The requirements of § 135.145(d)(2) through (4) are not aircraft specific and would apply to an operator utilizing powered-lift and requesting authorization to conduct these types of operations. Section 135.145(d)(1) requires validation tests for the addition of an aircraft that requires two pilots for flight in VFR conditions, or turbojet airplanes. The FAA proposes in § 194.307(e) that, for the same reasons cited above for proving tests, validation testing required by § 135.145(d)(1) apply to all powered-lift. Therefore, the FAA proposes validation testing be required when an operator requests authorization to use a powered-lift, unless a powered-lift of the same make or similar design has been previously proved or validated by that operator in operations under part 135.

In 1989, the FAA revised the equipment requirements and moved them into a new section, § 135.150, which requires a public address and crewmember interphone systems for aircraft that have a passenger seating configuration of more than 19, excluding any pilot seat.[421] The public address system required by § 135.150(a) is generic to all aircraft; however, under paragraph (a)(7), transport category airplanes manufactured on or after November 27, 1990, must meet the requirements of § 25.1423. The crewmember interphone system required by § 135.150(b) is also generic to aircraft; however, for large turbojet-powered airplanes, they must meet the additional requirements contained in paragraph (b)(7). This section increases airplane safety by facilitating the rapid evacuation of passengers during emergency conditions. Section 135.150 works in conjunction with § 25.1423, which requires any public address (PA) system that is required for use in air carrier service to be powered by a source that remains powered when the aircraft is in flight or stopped on the ground, after the shutdown or failure of all engines and auxiliary power units, or the disconnection or failure of all power sources dependent on their continued operation. Additionally, the PA system must incorporate specific design features, accessibility requirements, and be able to operate for a specified period of time. The crewmember interphone system requirement established in § 135.150(b) was originally promulgated to ensure the safety and security of passengers.[422] The FAA noted that an aircraft of more than 19 passenger seats was of the size that would benefit from the safety advantages of having a crewmember interphone and public address system installed.[423] A powered-lift with more than 19 passenger seats will also benefit from a crewmember interphone and PA system. Additionally, due to the design features of some powered-lift, such as multiple rotating blade assemblies, it will be essential for the flightcrew to be able to communicate with the cabin crew and passengers during an emergency evacuation. This will promote safe, effective evacuations of these aircraft. The FAA proposes in § 194.307(f) that for large powered-lift, the public address system required by § 135.150(a)(7) comply with § 25.1423 or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b). Additionally, the FAA proposes in § 194.307(g) that for large powered-lift that have more than 19 passenger seats, regardless of the type of powerplant, the crewmember interphone system comply with the requirements of § 135.150(b)(7) or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b). The FAA acknowledges that while no powered-lift that have more than 19 passenger seats are currently undergoing type certification such aircraft may be developed in the future.

Section 135.151 requires cockpit voice recorders (CVRs) on certain turbine-powered airplanes and rotorcraft. CVRs enhance safety and are required in turbine-powered airplanes and rotorcraft carrying a certain passenger count as a necessary hazard analysis tool used during an accident investigation. The FAA asserted as early as 1978 that consideration should be given to requiring Ground Proximity Warning Systems (GPWS), CVR, and FDR equipment on turbojet-powered airplanes with 10 or more passenger seats due to the complexity and high-performance characteristics of those airplanes.[424] CVRs provide accident investigation information that is unattainable from any other source, with valuable auditory information such as sounds captured in the cockpit. These sources of information aid in determining causal and contributing factors in accident and incident investigation. Amendments issued in response to NTSB recommendations as well as congressional mandates identify the FAA's broader responsibility to apply these appropriately to all aircraft with certain seating capacities.[425]

Section 135.151(a) requires a multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of six or more and for which two pilots are required by certification or operating rules to be equipped with an approved cockpit voice recorder that meets various CVR installation requirements provided by the airworthiness standards for normal category airplanes or rotorcraft, or transport category airplanes or rotorcraft, as applicable. Section 135.151(b) requires a multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of 20 or more to be equipped with an approved CVR that meets various CVR installation requirements provided by the airworthiness standards for normal category airplanes or rotorcraft, or transport category airplanes or rotorcraft, as applicable. Both § 135.151(a) and (b) further require that the cockpit voice recorder be operated continuously from the use of the check list before the flight to completion of the final check list at the end of the flight.

Section 135.151(d) requires large turbine-powered airplanes manufactured after October 11, 1991 to be equipped to record uninterrupted audio signals received by a boom or mask microphone in accordance with § 25.1457(c)(5). Paragraph (d) also requires that on these aircraft equipped to record the uninterrupted audio signals received by a boom or a mask microphone, the flightcrew members must use the boom microphone below 18,000 feet mean sea level.

Section 135.151(g) applies to aircraft manufactured on or after April 7, 2010, which includes the caveat that if the aircraft is also required to have a flight data recorder (FDR) under § 135.152, then the aircraft must have a CVR that meets the requirements listed in paragraph (g)(1) (applicable to multiengine, turbine-powered airplanes or rotorcraft with a passenger seating configuration of six or more seats and for which two pilots are required by certification or operating rules) or (g)(2) (applicable to multiengine, turbine-

[421] See Independent Power Source for Public Address System in Transport Category Airplanes, 54 FR 43922 (Oct. 27, 1989).

[422] Independent Power Source for Public Address System in Transport Category Airplanes, 54 FR 43926 (Oct. 27, 1989).

[423] Id.

[424] Air Taxi Operators and Commercial Operators, 43 FR 46759 (Oct. 10, 1978).

[425] Cockpit Voice Recorders and Flight Recorders, Final Rule, 53 FR 26135 (Jul. 11, 1988).

powered airplanes or rotorcraft with a passenger seating configuration of 20 or more seats). Such aircraft equipped with an FDR have different requirements for cockpit voice recorders because the FAA found that, for newly manufactured aircraft also required to have a flight data recorder, ''evidence of benefit in changes to wiring systems that could prevent inadvertent shutdown of power sources, and for an independent power supply for CVRs.'' [426]

Section 135.151(h) applies to all airplanes and rotorcraft that are required by this part to have a CVR and a FDR that also have datalink communication equipment that was installed on or after December 6, 2010. For those aircraft, all datalink messages must be recorded.

For the same reasons the FAA imposed the CVR requirements for certain airplanes and rotorcraft, the FAA proposes to require CVRs for powered-lift with similar seating configurations and pilot requirements. Specifically, the FAA proposes, regardless of the types of powerplant, that powered-lift which have a passenger seating configuration of six or more and for which two pilots are required by certification or operating rules, or that have a passenger seating configuration of 20 or more seats will be required to comply with paragraph (a), (b), or (g), based upon the passenger seating configuration and whether an FDR is required under § 135.152. These proposals are contained in § 194.307(h), (i), (k), and (l). The FAA also proposes in § 194.307(j) and (m) that although paragraphs (d) and (h) reference airplanes or rotorcraft, these paragraphs will also apply to powered-lift to ensure they appropriately record uninterrupted audio signals and that all datalink messages are recorded when required. The FAA intends to include CVR airworthiness requirements during type certification based on an applicant's proposed operational needs. Operators will need to ensure that the CVR for each powered-lift be installed and equipped in accordance with the certification provisions listed in the applicable paragraph of § 135.151 or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b).

The FAA is proposing in § 194.307(n) to apply flight data recorder requirements of § 135.152 to powered-lift because of the same rationale discussed previously for § 135.151. Section 135.152(a) requires that a multiengine, turbine-engine powered airplane or rotorcraft having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats, that was either brought onto the U.S. register after, or was registered outside the U.S. and added to the operator's U.S. operations specifications after October 11, 1991, to be equipped with one or more approved flight recorders that uses a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. Additionally, this paragraph requires that the flight recorder must retain no less than 25 hours of aircraft operation. The FAA proposes in § 194.307(o) that a powered lift, regardless of the type of powerplant, that otherwise meets the threshold requirements of this paragraph be required to comply with this paragraph. However, paragraph (a) specifies that the parameters for the flight recorder that must be recorded are contained in part 135, appendix B or C, which are specific to airplanes or rotorcraft. As discussed extensively throughout this preamble, powered-lift are manufactured combining the design features of an airplane and helicopter with complex systems. The FAA does not have sufficient experience and knowledge of every possible design type of powered-lift, as most powered-lift are still in development.

Accordingly, in place of appendices B and C to part 135,[427] the FAA has drafted new flight data recorder tables, which appear in proposed §§ 194.314 and 194.315,[428] which outline the FDR specifications for powered-lift under part 135. In developing these tables, the FAA applied the FDR requirements from the airplane and helicopter appendices to powered-lift, dependent on which operational flight mode is in use (*i.e.,* wing-borne flight mode or vertical-lift flight mode). In addition, the FAA replaced helicopter-specific nomenclature to accommodate powered-lift. For example, helicopter flight controls, as written, describe pedals and collective controls, which may not apply to powered-lift. In addition, the FAA changed the terminology that provided directional controls for ''ascent and descent''. Notwithstanding slight nomenclature changes within the parameters, the FAA did not change the other information and numbers within the appendices. The FAA invites comments on these draft tables to ensure that the FAA has adequately addressed all of the requirements for these novel aircraft.

Section 135.152(b) applies to multiengine turbine-powered airplanes having a passenger seating configuration of 20 to 30 seats and to multiengine turbine-powered rotorcraft having a passenger seating configuration of 20 or more seats. Paragraph (b) requires these aircraft to be equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. Additionally, paragraphs (b)(1) and (2) provide the FDR parameters that are required for aircraft type certificated before and after October 1, 1969. After this date, the number of mandatory parameters an aircraft must record are determined by the date of aircraft type certification of that aircraft. Paragraph (b)(3) requires that the FDRs on the aircraft referenced in paragraph (b) introductory text [429] manufactured after October 11, 1991, must record all the parameters outlined in appendix D or E to part 135. Currently, the FAA is not aware of any powered-lift designs that contain 20 or more passenger seats; however, should an applicant seek to certificate a powered-lift with a passenger seating configuration of 20 or more seats, the FAA proposes in § 194.307(p) that paragraphs (b) introductory text and (b)(3) apply to these aircraft, regardless of the type of powerplant. Because the FAA does not anticipate any powered-lift with this seating configuration to be developed during the term of this SFAR, the FAA has determined it will not create a new FDR table that addresses powered-lift of this size at this time. For potential future rulemaking, the FAA welcomes input on the FDR parameters that would be essential for a powered-lift of this size.

Section 135.152(c) requires that an installed flight recorder be operated continuously from the instant the airplane begins the takeoff roll or the rotorcraft begins the lift-off and until the airplane has completed the landing roll or the rotorcraft has landed at its destination. Powered-lift may perform takeoffs and landings similar to airplanes or rotorcraft; accordingly, the FAA proposes in § 194.307(n)(3) to apply the requirements of § 135.152(c) to powered-lift with a passenger seating configuration, excluding crewmember seats, of 10 to 30, whenever the takeoff

[426] Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations, 70 FR 9751 (February 28, 2005).

[427] See appendix B to part 135, Airplane Flight Recorder Specifications, and appendix C to part 135, Helicopter Flight Recorder Specifications, 14 CFR part 135.

[428] The SFAR tables are found in the regulatory text within the SFAR amendment.

[429] As mentioned above, paragraph (b) applies to multiengine turbine-powered airplanes with a passenger seating configuration of 20 to 30 seats and to multiengine turbine-powered rotorcraft with a passenger seating configuration of 20 or more seats.

roll or lift off begins and until the landing is completed.

Paragraph (d) in § 135.152 requires the certificate holder to keep certain recorded data for a specified time. Paragraph (d) requires the certificate holder to keep the recorded data until the airplane has been operating for at least 25 hours and, for a rotorcraft, 10 hours. The difference in the amount of FDR recorded data required for rotorcraft versus airplanes was because the FAA agreed that rotorcraft typically operate short-haul flights and that a 10-hour requirement is adequate for rotorcraft.[430] Although the range is expected to be closer to that of a rotorcraft, the precise range of future powered-lift is uncertain and thus, conservatively, the FAA is proposing to apply the 25-hour requirement currently applicable to airplanes. Accordingly, the FAA has considered both recorded data requirements of § 135.152(d) and proposes in § 194.307(n)(2) to require certificate holders to keep the data until the powered-lift has been operating for at least 25 hours. This requirement would be applicable to powered-lift with a passenger seating configuration, excluding crewmember seats, of 10 to 30.

The FAA has determined that § 135.152(e) is already applicable to powered-lift because it applies to aircraft; accordingly, in the event of any accident or occurrence that requires the immediate notification of the NTSB and that results in the termination of the flight, the certificate holder must remove the recording media from the powered-lift and keep the recorded data for at least 60 days or for a longer period, if requested by the NTSB or the FAA.

Paragraph (f)(1) of § 135.152 imposes requirements for FDR systems installed on airplanes manufactured on or before August 18, 2000, and ''all other aircraft.'' Notwithstanding this description, paragraphs (a) and (b) state that § 135.152 only applies to certain airplanes and rotorcraft with passenger seating configurations between 10 and 30 seats. Paragraph (f)(2) imposes requirements for FDR systems installed on airplanes manufactured after August 18, 2000. As indicated in previous discussions, the flight recorder must be installed and equipped in accordance with the appropriate certification provisions listed in § 135.152 or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b). In addition to the installation requirements, paragraphs (f)(1) and (2) both require a correlation to be established between the values recorded by the FDR and the corresponding values being measured. Establishing a correlation for the required parameters is essential to derive meaningful data for the recorded digital signal from the FDR. This correlation converts the recorded basic digital signal into engineering units so when the recorder is downloaded, the data will be certified to provide accident investigators and operators information that is representative of the actual aircraft system units such as degrees of pitch, roll or yaw; altitude in feet; and airspeed in knots instead of the recorded digital signal format. Without this correlation document, accident and incident investigators or operators will not be able to derive meaningful information from the FDR. Operators must have this correlation information readily available for the aircraft they operate. Therefore, the FAA proposes in § 194.307(n)(1) that paragraphs (f)(1) and (2) apply to powered-lift that are otherwise required by this section to have an FDR installed. This requirement will help ensure the FDR systems are installed adequately and the appropriate correlations are established. Because the specific parameters for compliance with paragraph (f) will be established through the type certification process for each powered-lift, specific compliance with this paragraph will be established in accordance with the airworthiness criteria for the aircraft.

Paragraph (g) requires each flight recorder required under § 135.152 that records the data specified in paragraphs (a) and (b)[431] to have an approved device to assist in locating that recorder under water. As explained above, the FAA proposes applying paragraphs (a) and (b) to powered-lift with a passenger seating configuration of 10 to 19 seats or with a passenger seating configuration of 20 to 30 seats, respectively. Because paragraphs (a) and (b) apply to powered-lift, paragraph (g) would also apply, thereby helping to ensure the recorder is found if a powered-lift has an accident or occurrence into water.

Paragraph (h) outlines the operational parameters that digital FDRs must record as required under paragraphs (i) and (j). Examples of these operational parameters include time, pressure altitude, indicated airspeed, and pitch attitude. The operational parameters cover all aircraft and are established to ensure the minimum parameters needed to assist in determining probable cause are recorded when an information source for those parameters is installed. This list, in conjunction with the FDR tables proposed in §§ 194.314 and 194.315, will specify what parameters must be recorded and the ranges, accuracies, resolutions, and recording intervals requirements of those parameters. Accordingly, at this time, the FAA determined that all of the items in this list apply to powered-lift that are required to have an FDR in accordance with this section.

Paragraphs (i) and (j) apply to all turbine-engine powered airplanes with a seating configuration, excluding any required crewmember seat, of 10 to 30 passenger seats. Paragraph (i) is applicable to aircraft manufactured after August 18, 2000, and limits the required parameters to those listed in paragraphs (h)(1) through (57); however, this paragraph does not apply as it is superseded by paragraph (j) for aircraft manufactured after August 19, 2002. Paragraph (j) applies to all turbine-engine powered airplanes manufactured after August 19, 2002, with a seating configuration, excluding any required crewmember seat, of 10 to 30 passenger seats and requires the parameters listed in paragraphs (h)(1) through (88)[432] to be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix F to part 135. As described in the discussion of § 135.152(b) above, the FAA is not aware of any powered-lift designs that contain 20 or more passenger seats. Notwithstanding, to the extent a manufacturer develops a powered-lift with a passenger seating configuration of 20 or more seats, the FAA proposes paragraph (j) apply to these aircraft, as well as to those with 10–19 seats. Because the FAA does not anticipate any powered-lift with this seating configuration to be developed during the term of this SFAR, the FAA has determined it will not create a new FDR table that addresses powered-lift of 20–30 passenger seats at this time. For potential future rulemaking, the FAA seeks comment on the FDR parameters that would be necessary for a powered-lift of that size. Powered-lift with 10–19 seats would comply with the FDR tables developed for this SFAR for operations under part 135, set forth in proposed §§ 194.314 and 194.315.

While considering the FDR requirements of § 135.152, the FAA

[430] Cockpit Voice Recorders (CVR) and Flight Recorders, 53 FR 26134 (Jul. 11, 1988).

[431] Paragraphs (a) and (b) require the flight recorders to use a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. These paragraphs also require the recorder to record the parameters outlined in the appropriate SFAR tables.

[432] As explained below, the FAA proposes permanently amending paragraph (j) to cross-reference paragraph (h) instead of paragraph (a).

became aware of the need for a technical correction in paragraph (j), which cross-references the operational parameters that must be recorded for turbine-engine powered airplanes with a seating configuration of 10 to 30 passengers seats. Currently, paragraph (j) references the parameters in paragraphs (a)(1) through (88); however, the parameters are enumerated under paragraph (h) not paragraph (a). Moreover, the proposed rule that added these parameter requirements explained that § 135.152(j) would require the above-referenced airplanes ''to record the parameters listed in paragraph (h)(1) through (88) of this section''.[433] The FAA is proposing to correct the cross-reference in paragraph (j) to refer to paragraphs (h)(1) through (88).

Paragraph (l) does not apply to powered-lift because it applies to ''all aircraft manufactured before April 7, 2010''; however, paragraph (m) applies to all aircraft manufactured on or after April 7, 2010, and that are required to have a FDR installed. This paragraph requires these aircraft to have a FDR installed that also meets the certification requirements under § 23.1459 or § 25.1459 that were not included in paragraph (f)(2). As indicated in previous discussions, the installation requirements for FDRs on powered-lift will be established through the type certification process as set forth in § 21.17(b). In general, § 135.152(m) requires that all aircraft FDR systems receive electrical power from the bus that provides the maximum reliability for operation of the FDR without jeopardizing service to essential or emergency loads; that the FDR remains powered for as long as possible without jeopardizing emergency operation of the aircraft; that any single electrical failure external to the FDR does not disable both the CVR and the FDR; and they provide requirements for installation of combined flight data and CVRs. These requirements are applicable to powered-lift because they ensure the data essential for post-accident or incident investigation are reliably recorded during all foreseeable accident or incident scenarios.

Section 135.154 requires turbine-powered airplanes to be equipped with TAWS. These types of systems were previously known as Ground Proximity Warning Systems (GPWS) and then Enhanced Ground Proximity Warning Systems (EGPWS). TAWS equipment is broken down into 2 different classes: Class A TAWS and Class B TAWS. Class A TAWS equipment is required for airplanes operated under parts 121 and 135 configured with 10 or more passenger seats. Class B TAWS equipment is required for airplanes operated under part 135 with a passenger seating configuration of 6 to 9 seats. In addition to TAWS, HTAWS are currently only required in HAA operations.

The FAA promulgated § 135.154 in response to several NTSB recommendations resulting from accidents involving controlled flight into terrain (CFIT).[434] Additionally, multiple DOT Volpe National Transportation Systems Center (VNTSC) studies found that GPWS and EGPWS equipment could be a particularly effective means of preventing CFIT accidents.[435] After the GPWS rules were issued, advances in terrain mapping technology permitted the development of a new type of GPWS that provides greater situational awareness for flight crews—TAWS.

TAWS improved on the existing GPWS systems by providing the flight crew with earlier aural and visual warnings of impending terrain. Class A and B TAWS incorporate a forward-looking capability. In addition, Class A TAWS equipment includes current GPWS-required functions and provides the pilots with a visual representation of the impending terrain by use of a display unit.[436] These improvements in TAWS provide the flight crew with more time and greater situational awareness to enable them to take positive corrective actions. HTAWS, like Class A TAWS, provides a display unit for the pilots to see a visual depiction of the terrain ahead. Both Class A and B TAWS units look farther ahead of the airplane and provide terrain and obstacle alerts sooner than the HTAWS alerts. In addition, both Class A and B TAWS units provide a greater terrain clearance in comparison to HTAWS.

With the greater terrain clearance and farther look ahead of TAWS, for certain operations, there is the potential of low altitude nuisance alerts in rotorcraft or powered-lift operations because this equipment is designed for forward flight of an airplane rather than the flight characteristics of a rotorcraft or powered-lift. Nuisance alerts can be dangerous because they may dilute the effectiveness of TAWS when a pilot inhibits or ignores repetitive alerts. These nuisance alerts can also become a distraction especially when a pilot is in a high workload or emergency situations where the pilot's attention and ability to respond may be compromised, such as during approach and landing phases of flight. Compared to TAWS, HTAWS would be more likely to reduce nuisance alerts because the HTAWS units use a closer-in look at the terrain rather than looking farther out like the TAWS units. This is an important distinction considering the high-performance characteristics and the anticipated low altitude operating environment in which powered-lift are likely to operate.

Powered-lift operate in a manner similar to airplanes in cruise flight and conduct take-off and landing operations similar to helicopters. However, the FAA expects the transition of a powered-lift from cruise flight to vertical flight will not be instantaneous, regardless of the type of powerplant. The current TAWS and HTAWS, individually, are not a complete solution for powered-lift that operate similar to both airplanes and helicopters. Although there is no specification yet developed that incorporates the features of both TAWS and HTAWS in a single unit, the FAA would consider a hybrid system in a powered-lift that utilizes the features of a TAWS A system for wing-borne flight and HTAWS for vertical flight modes of operation for compliance with § 135.154. The FAA has determined that without a TAWS A/HTAWS hybrid system, and until a TAWS specification is developed specifically for powered-lift, the current HTAWS specification, which requires a terrain display unit, would provide the best level of safety without an undue number of nuisance alerts. To ensure that powered-lift engaged in air carrier operations will be operated at the highest possible degree of safety, as required by 49 U.S.C. 44701(d)(1)(A), the FAA proposes in § 194.307(q) that powered-lift having a passenger seating configuration, excluding any pilot seat, of 6 or more be equipped with a HTAWS that meets the requirements in Technical Standard Order (TSO) C194 and Section 2 of RTCA DO–309, as prescribed for helicopters and contained in § 135.605, unless equipped with a FAA approved TAWS A/HTAWS hybrid system.

In addition, the FAA proposes in § 194.307(q) that § 135.154(c) apply to powered-lift as they will be required to have an aircraft flight manual that contains the appropriate procedures on the use of this equipment and the proper flight crew reactions in response to a HTAWS activation. This will ensure powered-lift equipped with HTAWS or

[433] Revisions to Digital Flight Data Recorder Rules, NPRM, 61 FR 37144, 37156 (Jul. 16, 1996).

[434] Terrain Awareness and Warning System, 65 FR 16737 (Mar. 29, 2000).

[435] Id.

[436] Display units in Class B TAWS are not required.

an FAA approved TAWS A/HTAWS hybrid system are operated at a level of safety that a terrain awareness system currently provides for airplanes.

Section 135.158 requires transport category airplanes equipped with a flight instrument pitot heating system to also be equipped with an operable pitot heat indication system that complies with § 25.1326.[437] The FAA added this requirement for transport category airplanes to provide greater assurance that pilots would be alerted when the pitot heat was not operating and reduce the possibility of the pilots relying on faulty flight data instrumentation indications for aircraft control.[438] On March 13, 1978, the FAA published the final rule requiring pitot heat warning indicators on transport category airplanes.[439] This requirement was added to part 25 (§ 25.1326) and to part 91 (§ 91.50).[440] Existing part 135 operators were required to comply with the requirements of § 91.50, so a separate rule specifically for part 135 was not required. On August 31, 1981, the FAA published a final rule relieving general aviation operators of transport category airplanes operated under part 91 from the requirement to install a pitot heat indicating system citing that there were no records of general aviation transport category airplane accidents that were attributable to a pitot heating system failure.[441] In that rulemaking the FAA also stated that part 91 operations are not any less susceptible than operations conducted under part 135 to the problems at which Amendment 91–148 was directed. However, the FAA also stated that it holds part 135 operations to a higher level of safety and there are stricter safety standards than those placed on part 91 operations. As a result, the FAA added the pitot heat warning indicator requirement into § 135.158.[442]

Section 135.158 was initially codified for transport category airplanes, to ensure that the flight crew receives an indication when the pitot heating system is not operating. Since the inception of this rule in 1978, technological advances in aircraft display and control systems, such as fly by wire, highly integrated glass cockpits, and highly augmented advanced flight control systems which require accurate sensory data, further justify the need for accurate pitot/static information captured into the processing units on powered-lift. The FAA anticipates that powered-lift will incorporate the technological advances in aircraft display, will require highly augmented advanced flight control systems, and will be capable of operations in conditions conducive to icing. Accordingly, the FAA proposes in § 194.307(r) that § 135.158 apply to all powered-lift that have a required pitot heating system installed.

The FAA adopted § 135.159 in 1986 as a result of the Rotorcraft Regulatory Review Program.[443] The requirement for a gyroscopic rate-of-turn indicator is required for aircraft carrying passengers under VFR at night or under VFR over-the-top except as provided in § 135.159(a)(1) through (3).[444] Amendments to § 135.159 updated the airworthiness and operating requirements to reflect advanced technology being incorporated in current designs while maintaining an acceptable level of safety.[445] These amendments also included related changes to the general and air taxi operating rules, including an exception under § 135.159(a)(1) and (2) allowing a third attitude indicator in lieu of a gyroscopic rate-of-turn indicator.[446] These proposals arose from the recognition, by both government and industry, that updated safety standards are needed for an acceptable level of safety in the design requirements for airplanes and helicopters that are used in both private and commercial operations. The rule provides that flight instrument systems with a third attitude indicator need not include the gyroscopic rate-of-turn indicator. Allowing a third attitude indicator with a dedicated power supply to replace the gyroscopic rate-of-turn indicator relieves the burden on the manufacturer and allows safer operations because attitude indicators provide both aircraft bank and pitch information to the pilot, thus increasing aircraft control and safety as compared to only a gyroscopic rate-of-turn indicator.

Because powered-lift will be operated much like a traditional airplane in cruise flight, the FAA proposes in § 194.307(s) that the exception detailed in § 135.159(a)(1) should also apply to powered-lift. Conversely, given the similarities of powered-lift and traditional airplanes during cruise flight, the FAA does not propose to apply the helicopter-specific paragraphs prescribed in § 135.159(a)(2) and (3) to powered-lift. For more information on this topic, please refer to the discussion in section VI.A regarding the applicability of § 91.205(d).

Section 135.165 details communication and navigation equipment for extended over-water or IFR operations. This section is general to aircraft except for § 135.165(d) and (g)(1) which are specific to airplanes. In the final rule published in 1978, the FAA summarized the equipment requirements listed in § 135.165 as essential to safety of extended over-water and IFR operations, and for maintaining communications during these operations.[447]

Paragraph (d) contains the communication equipment requirement for turbojet airplanes that have a passenger seat configuration, excluding any pilot seat, of 10 seats for more, or for a multiengine airplane used in commuter operations. Although this paragraph specifies airplanes, the FAA determined that this paragraph should also apply to powered-lift with a passenger seating configuration, excluding any pilot seat, of 10 seats or more, or a powered-lift used in commuter operations, regardless of the type of powerplant, as proposed in § 194.307(t).

Paragraph (g) provides for extended over-water exceptions that allow the use of a single long-range navigation and single long-range communication system in certain geographic areas as authorized by the FAA. A list of operational factors the FAA may consider is listed in paragraph (g)(1) through (3) of this section. Although paragraph (g)(1) uses the term airplane, the FAA proposes in § 194.307(u) to extend the ability to request that exception to powered-lift that are able to conduct extended over-water operations.

The FAA proposes that paragraphs (d) and (g)(1) apply to powered-lift, as previously described. Powered-lift operate like airplanes while in cruise flight, and any powered-lift that triggers the threshold for applicability of this

[437] Transport Category Airplanes—Pitot Heat Indication Systems, Final Rule, 46 FR 43804 (Aug. 31, 1981).

[438] Transport Category Airplanes—Pitot Heat Indication Systems, NPRM, 43 FR 10338 (Mar. 13, 1978).

[439] Id.

[440] Id.

[441] Transport Category Airplanes—Pitot Heat Indication Systems, Final Rule, 46 FR 43804 (Aug. 31, 1981).

[442] Id.

[443] Rotorcraft Regulatory Review Program Amendment No. 5; Operations and Maintenance, 51 FR 40695 (Nov. 7, 1986).

[444] VFR over-the-top, with respect to the operation of aircraft, means the operation of an aircraft over-the-top under VFR when it is not being operated on an IFR flight plan.

[445] Small Airplane Airworthiness Review Program Amendment No. 5, 55 FR 43306 (Oct. 26, 1990).

[446] Id.

[447] Regulatory Review Program; Air Taxi Operators and Commercial Operators, 43 FR 46742 (Oct. 10, 1978).

section should be operated at the same level of safety as an airplane. This will ensure powered-lift will be able to communicate as required during IFR and extended over-water flights.

Section 135.169 provides for additional airworthiness requirements for large airplanes, or small airplanes with a passenger-seating configuration of 10 or more seats. These airplanes are held to a higher airworthiness safety standard either through aircraft certification basis or certain other regulatory standards or requirements. This regulation also has certain rules about the material used as a liner for cargo or baggage compartments. The preamble from the final rule promulgating this regulation states that the purpose of the rule was to ensure that airplanes of this size used in part 135 operations met a higher level of airworthiness standards for equipment and materials used.[448] Powered-lift will spend their cruise portion of flight similar to airplanes, including the in-flight environment in which they operate. When a powered-lift is configured with 10 or more passenger seats or is large, the persons riding on that aircraft should be afforded the same level of safety afforded to them if they were a passenger in an airplane. At this time, the FAA has not identified a reason to differentiate between airplanes and powered-lift when it relates to the safety standards required by this section as detailed below.

Section 135.169(a) applies to large airplanes and requires them to meet the additional airworthiness requirements of §§ 121.213 through 121.283 and 121.307. Section 121.213 no longer exists; §§ 121.215 through 121.283 provide additional airworthiness requirements for aircraft equipment and materials (*e.g.,* materials for the cabin interior, internal doors, fuel valves, fire walls, and lines and fittings). Section 121.307 requires certain engine instruments such as a carburetor air temperature indicator, fuel pressure indicator, and manifold pressure indicator. The FAA proposes in § 194.307(v) to require a large powered-lift to comply with appropriate certification provisions listed in § 135.169(a) or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b), as previously discussed in section IV.A of this preamble.

Section 135.169(b) applies to operators of small airplanes that have a passenger seating configuration, excluding pilot seats, of 10 seats or more and requires certain type certifications for these aircraft. The FAA has determined that paragraphs (b)(2) through (7) would not be applicable to powered-lift, as these aircraft are new designs and would be required to meet the latest aircraft certification safety standards. The remaining provisions in paragraph (b)—paragraphs (b)(1) and (8)—were determined to be applicable to powered-lift. Paragraph (b)(1) requires the airplane be certificated in the transport category, and paragraph (b)(8) requires certification in the normal category as a multi-engine certification level 4 airplane as defined in part 23. The FAA proposes in § 194.307(w) that small powered-lift with a passenger seating configuration of 10 seats or more operating under part 135 must comply with the applicable part 23 provisions identified in § 135.169(b)(8) or such airworthiness criteria as the FAA may find provides an equivalent level of safety in accordance with § 21.17(b). The purpose of proposed § 194.307(w) will ensure that, at a minimum, a small powered-lift utilized in part 135 operations and carrying more than 10 passengers will achieve a certification standard at least equivalent to the standard set forth in § 135.169(b)(8) or a higher standard.

Section 135.169(d) addresses cargo or baggage compartment requirements of 200 cubic feet or greater volume in transport category airplanes. The intent of § 135.169(d) is to reduce the risk of fire burning through the compartment liner and becoming uncontained by requiring more flame-resistant materials.[449] The FAA has determined that ceiling and sidewall liner panels such as Kevlar or Nomex, aluminum or glass fire reinforced resin should be required. Accordingly, the FAA proposes in § 194.307(x) for large powered-lift that have a cargo or baggage compartment of 200 cubic feet or greater, be required to meet the certification requirements of part 25, appendix F, part III, or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b). The FAA identified that the same benefits exist for ensuring that large cargo or baggage compartments meet the certification requirements of part 25 or equivalent for powered-lift as exist for airplanes.

Section 135.170 lists the requirements for materials used in the compartment interiors of specific airplanes as denoted in this rule. The flammability requirements are tied to the number of seats in the airplane to increase survivability in the case of an in-cabin fire. These regulations were promulgated for airplanes because there were far fewer helicopters that had a similar number of seats, and due to the performance characteristics of airplanes, descent, landing, and evacuation would take longer in an airplane than in a helicopter with a similar number of seats. Some powered-lift may be able to transition to landing quickly; however, others may have descent, landing, and evacuation times similar to airplanes.

Section 135.170(b) applies to large airplanes and specifies additional airworthiness requirements that must be met. To maintain a high level of safety, and until the FAA has more experience with commercial operations conducted with large powered-lift, the FAA proposes in § 194.307(y) and (z) that large powered-lift comply with the applicable paragraphs of § 135.170(b)(1) and (2). Powered-lift must comply with appropriate certification provisions listed in § 135.170(b)(1) and (2) or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b).

Section 135.170(c) details the requirements for thermal/acoustic materials on transport category airplanes. For large powered-lift, the FAA asserts that the flame propagation requirements applicable to transport category airplanes should also be applicable. This will help to ensure that persons or property carried on large powered-lift are afforded the same safety provided to persons or property carried in transport category airplanes. Accordingly, large powered-lift would be required to comply with the provisions of § 135.170(c). As proposed in § 194.307(aa), this section requires that large powered-lift comply with § 25.856 (Thermal/Acoustic insulation materials) or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b).

Section 135.173(a) requires aircraft, excluding helicopters operating under day VFR conditions, that have a passenger seating configuration, excluding any pilot seat, of 10 seats or more in passenger-carrying operations to be equipped with either approved thunderstorm detection equipment or approved airborne weather radar equipment. Helicopters were excluded from this requirement for day VFR

[448] See Air Taxi and Commercial Operators, 42 FR 43490 (Aug. 29, 1977).

[449] See Fire Protection Requirements for Cargo or Baggage Compartments, Final Rule, 54 FR 7384 (Feb. 17, 1989).

flights in 1986.[450] Though helicopters have less potential range than airplanes, making it more difficult for helicopters to escape a weather system once within one, helicopters are highly maneuverable and have the capability to adjust altitude and direction rapidly. This enables them to change altitude, airspeed, and direction rapidly in order to circumnavigate or avoid a thunderstorm.

Section 135.173(b) is specific for helicopters and only requires this equipment under night VFR when current weather reports indicate that thunderstorms or other potentially hazardous weather conditions that can be detected with airborne thunderstorm detection equipment may reasonably be expected along the route to be flown. This equipment is beneficial for night operations because considerable thunderstorm activity occurs at night and this equipment aids in locating hazardous unseen storm activity. This contributes to greater safety in operations because it enables the pilot to detect and locate severe adverse weather areas early. The equipment also enables the pilot to avoid these areas or take other action necessary for safety of flight. The FAA asserted that although a helicopter has the ability to land in small areas and can use this ability to avoid hazardous weather conditions, this advantage is not significant during VFR night operations when a landing option may not be available, such as when over water, forests, mountainous or congested areas, or when visibility is restricted.[451] Additionally, a helicopter is as susceptible to thunderstorm hazards as the airplane if the pilot fails to avoid severe weather areas.

The FAA has determined that the helicopter exception contained in this regulation should not apply to powered-lift because these new entrant aircraft are expected to operate similar to an airplane during the en route phases of flight and at this point, the agency does not have enough information about the operations of powered-lift to state definitively whether they will have the agility and maneuverability of a helicopter during the cruise portion of flight. Powered-lift will likely require more time and space to recognize and successfully maneuver out of the dangers associated with hazardous thunderstorm activity. The FAA expects to gather more information about this during the term of the SFAR.

Section 135.178 details additional emergency equipment applicable to airplanes having a passenger seating configuration of more than 19 seats. Helicopters generally do not meet the threshold of having this configuration. This section was implemented largely due to several studies conducted by the Civil Aerospace Medical Institute (CAMI) on exit row configurations and equipment necessary for the most efficient emergency exit of the airplane in the case of emergency.[452]

The FAA anticipates that due to advances in technology, powered-lift developed in the future could surpass the 19-passenger seating configuration. The FAA proposes in § 194.307(bb) that when a powered-lift is operated while having a passenger seating configuration of more than 19 seats this rule should be applicable because a powered-lift that is able to carry more than 19 passengers should have the requisite procedures and equipment to evacuate those passengers in the event of an emergency such as is currently required for airplanes. As proposed, this section requires that certain powered-lift meet specific airworthiness requirements from part 25. Powered-lift must comply with appropriate part 25 certification provisions listed in § 135.169(a) or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b).

Section 135.179 contains the conditions required to take off an aircraft with inoperable instruments or equipment, lists the Minimum Equipment List (MEL) requirements, and what instruments and equipment may not be contained within the MEL. The availability of a MEL in part 135 was introduced with the publication of the final rule on October 10, 1978.[453] Until 1991, only multi-engine aircraft were permitted to use a MEL, then the FAA published a final rule expanding the availability of a MEL to any civil aircraft that can be operated under part 135, including single-engine aircraft. The notice of proposed rulemaking[454] that is directly related to the 1991 final rule states that the MEL provisions would apply to ''aircraft'' and that ''[t]he FAA also proposes to amend the language of §§ 135.179 and 125.201 to make them essentially the same as § 121.628''.[455] The FAA notes that the mention of airplane in § 135.179(b)(1) appears to be an oversight in transcription and should actually reference aircraft, as do the rest of the references in § 135.179. This is in contrast to § 121.628, where all references are to airplane. Review of the historical information for this rule reveals that the FAA's original intent was for § 135.179 to apply to ''any civil aircraft,'' which includes powered-lift. As a result, the FAA proposes to make a technical amendment to § 135.179(b)(1) to reflect that intent.

Section 135.180 was implemented to require traffic alert and collision avoidance systems (TCAS) for turbine-powered airplanes that have a passenger seat configuration, excluding any pilot seat, of 10 to 30 seats. TCAS uses nearby aircraft's transponder signals to alert pilots to the danger of mid-air collisions. The FAA considered many factors when determining which part 135 airplanes would be required to be equipped with a TCAS.[456] These factors included the relative speed, size, and the number of passengers per airplane, as well as the fact that these types of airplanes can operate in the same high density terminal airspace as airplanes operating under part 121.[457] The FAA anticipates that certain powered-lift will have the same relative speed, size, and passenger-carrying capacity of the airplanes that were required to be equipped with TCAS. Additionally, the FAA anticipates that some powered-lift will have the ability to operate in the same airspace as other larger, high performance aircraft, including airplanes operating under part 121. To afford the same level of safety through the mitigation of potential mid-air collisions and their devastating effects on persons and property onboard or in the same airspace as powered-lift, the FAA is proposing in § 194.307(cc) that this section apply to powered-lift that have a passenger seat configuration, excluding any pilot seat, of 10 to 30 seats.

Powered-lift that are required to have TCAS will also be required to have the content specified in § 135.180(b) in the powered-lift's aircraft flight manual. This will ensure that the persons operating a powered-lift will have access to the appropriate procedures for the use of the TCAS equipment, proper flightcrew action with respect to the TCAS equipment, and an outline of all the input sources that must be operating for proper TCAS operation.

[450] Rotorcraft Regulatory Review Program Amendment No. 5; Operations and Maintenance, 51 FR 40692 (Nov. 7, 1986).

[451] Rotorcraft Regulatory Review Program Notice No. 5, 50 FR 10144 (Mar. 13, 1985).

[452] See Improved Access to Type III Exits, 57 FR 19220 at 19245 (May 4, 1992).

[453] Air Taxi Operators and Commercial Operators, 43 FR 46770 (Oct. 10, 1978).

[454] Minimum Equipment List Requirements, 54 FR 3320 (Jan. 23, 1989).

[455] Minimum Equipment List Requirements, 56 FR 12311 (Mar. 22, 1991).

[456] Traffic Alert and Collision Avoidance System, 54 FR 951 (Jan. 10, 1989).

[457] Id. at 951.

iv. Subpart D: VFR/IFR Operating Limitations and Weather Requirements

Subpart D prescribes operating limitations for VFR/IFR flight operations and associated weather requirements for operations under part 135. Section 135.203 provides the VFR minimum altitude requirements for airplanes and helicopters. The FAA established minimum altitudes in the Civil Air Regulations (CAR) to ensure that a pilot had sufficient altitude to enable safe maneuvering of the aircraft, especially when encountered with an emergency situation, while still ensuring the safety of persons and property on the surface. Different minimum altitudes for airplanes and helicopters exist because the FAA recognized that the special flight characteristics of a helicopter enable it to accomplish an emergency landing in a small space compared to an airplane. Additionally, the maneuverability of a helicopter permits it to make corrective actions in less distance than most airplanes; a helicopter is able to avoid obstacles at a closer range and land in much more confined areas. This enables a helicopter to be operated over congested areas at 300 feet above the surface without compromising safety of persons or property on the surface.

The FAA anticipates many powered-lift, other than necessary for takeoff and landing, in order to gain efficiencies in speed and range, will prefer to utilize lift provided by the wing for as long as practical. Since powered-lift will likely operate like an airplane in cruise flight, they will require more time and distance to correct their flightpath to avoid other aircraft and obstacles. Since a gliding aircraft requires more space to conduct a safe landing, a gliding powered-lift would require a higher altitude to provide the pilot more time to select an appropriate off-airport landing site. Unlike other aircraft categories, powered-lift have to make a transition from flight on the rotors or other thrust devices to flight on the wing and vice versa in order to conduct takeoff and landing operations. The FAA expects the transition of a powered-lift from forward flight to vertical flight would not be instantaneous, requiring additional time, distance, and altitude that is unique from other categories of aircraft. Although some powered-lift may be capable of performing an emergency autorotation into a more confined space, the FAA anticipates that additional altitude would increase the chances of a successful outcome without undue hazard to persons or property on the surface. The FAA is proposing in § 194.307(dd) to apply the airplane minimum altitude requirements of § 135.203(a) to powered-lift. The FAA anticipates learning more about powered-lift operational capabilities and commonalities during the term of this SFAR.

Section 135.205 provides the visibility requirements for an airplane or helicopter operating under VFR in uncontrolled airspace. There is a wide range of powered-lift in development and the aircraft produced will have a wide range of performance capabilities. Since powered-lift will have the potential to fly at airspeeds higher than rotorcraft, the FAA anticipates a powered-lift pilot will need the additional visibility required for them to safely acquire other aircraft and obstacles and to make appropriate corrective actions. Additionally, a more conservative application of this rule is in the public's best interest and should apply to powered-lift until such time as the FAA has enough operational data to support reduced visibility requirements. Accordingly, the FAA proposes in § 194.307(ee) to require powered-lift operating under VFR in uncontrolled airspace to maintain the ceiling and visibility requirements detailed for airplanes under § 135.205(a).

Section 135.209 details that airplanes are required to have enough fuel supply under VFR considering wind and forecast weather conditions to reach the first point of intended landing at normal cruise fuel consumption and then fly after that point for 30 minutes. At night, this requirement increases to 45 minutes past the first point of intended landing. Helicopters must have enough fuel to fly to the first point of intended landing, considering wind and forecast weather conditions, and to fly after that for at least 20 minutes regardless of day or nighttime.

The FAA predicts that powered-lift will conduct cruise operations in configurations similar to airplanes while conducting takeoff and landing operations in a manner similar to helicopters. Because these aircraft will predominately use wing-borne flight during cruise similar to airplanes, the FAA anticipates that some powered-lift will have the potential to fly at higher altitudes and speeds. Additionally, some powered-lift may require more surface area to conduct a landing than a helicopter, thereby reducing the number of available unplanned landing sites, and would benefit from the additional fuel reserves required for airplanes. Therefore, the FAA proposes in § 194.307(ff) to require powered-lift to adhere to the fuel reserves set forth in § 135.209(a).

Section 135.221 provides the requirements for alternate airport weather minimums. Paragraph (a) requires, for an aircraft other than rotorcraft, that no person may designate an alternate airport unless the weather reports or forecasts indicate the weather conditions will be at or above authorized alternate airport landing minimums for that airport at the estimated time of arrival. Authorized landing minimums for these aircraft are specified in Operations Specification C055. The FAA anticipates powered-lift will spend a majority of their flight time in wing-borne flight and cruise at higher altitudes with the potential for higher speeds than rotorcraft. As a result, the FAA determined the provisions contained in § 135.221(a) applicable to aircraft would be best suited for powered-lift until such time the FAA receives data that supports the application of the rotorcraft alternate airport weather minimums as contained in § 135.221(b). Accordingly, this provision applies to powered-lift as drafted and the FAA does not propose to apply the exception for rotorcraft in § 135.221(b).

Section 135.223(a) requires aircraft to carry a 45-minute fuel reserve and helicopters to carry a 30-minute fuel reserve. The 30-minute fuel reserve requirement for helicopters was initially granted under SFAR 29.[458] Operations under SFAR 29 gave the FAA insight to make a safety and risk analysis enabling SFAR 29 to be codified in §§ 91.167 and 135.223. The final rule language for § 91.167 (and similarly for § 135.223) noted that the FAA had gained sufficient experience with operations conducted under SFAR 29 to justify a reduction for minimum fuel reserve requirements for helicopters.[459] The FAA does not have sufficient experience to grant relief for powered-lift fuel requirements at this time, and consistent with the phased approach taken to provide additional fuel reserve relief for helicopters, will retain the 45-minute fuel reserve requirement and not apply the less restrictive helicopter minimum set forth in § 135.223(a)(3). The FAA may reevaluate the 45-minute

[458] The FAA promulgated SFAR No. 29 in 1975 to allow the Administrator to issue approvals for rotorcraft IFR operations on an interim basis pending the conclusion of a study to determine whether the FAA should establish a ''limited'' IFR category for these rotorcraft, including flight characteristics and equipment requirements, operating procedures and limitations, flight crew requirements, and training requirements. See FAA Study of Limited IFR Operations in Rotorcraft, 40 FR 2420 (Jan. 13, 1975).

[459] Rotorcraft Regulatory Review Program Amendment No. 5; Operations and Maintenance, 51 FR 40692 (Nov. 7, 1986).

fuel reserve requirement once it has sufficient experience under this SFAR.

Section 135.225 contains requirements generally applicable to aircraft performing instrument approaches to airports. Section 135.225(e) requires a PIC of a turbine powered airplane who has not served at least 100 hours as PIC in that type of airplane to increase the Minimum Descent Altitude (MDA) or Decision Altitude/Decision Height (DA/DH) and visibility landing minimums by 100 feet and ½ mile respectively. This requirement has existed in part 135 since its original codification in 1964.[460] This requirement was initially codified into 14 CFR parts 40, 41, and 42 with the publication of the FAA's final rule on April 22, 1961.[461] The FAA asserted that the safe execution of an instrument approach to the lowest minimums requires the highest degree of pilot familiarity with the airplane, its controls, instruments, and performance characteristics, and that 100 hours of experience in a new type of airplane as PIC in air carrier or commercial operations is necessary in order to achieve this degree of familiarity.

Although this requirement was implemented more than 61 years ago, this familiarity requirement is still relevant to operations conducted in airplanes today. The FAA ascertains that PICs of powered-lift should also possess the highest degree of familiarity with their aircraft, its controls, instruments, and performance requirements. The FAA also determined that powered-lift's additional complexity required as the aircraft transitions from winged to vertical flight during a critical phase of flight requires that PICs of all powered-lift have the increased MDA or DA/DH and visibility landing minimums as required by § 135.225(e). To maintain the level of safety currently afforded to persons and property in the air and on the ground, the FAA proposes in § 194.307(gg) to require that the requirements of § 135.225(e) apply to PICs of any powered-lift.

Section 135.227 addresses the operating limitations in icing conditions for airplanes and helicopters. Paragraph (a), which applies to ''aircraft'' including powered-lift, states ''no pilot may take off an aircraft that has frost, ice, or snow adhering to any rotor blade, propeller, windshield, stabilizing or control surface; to a powerplant installation; or to an airspeed, altimeter, rate of climb, flight attitude instrument system, or wing, except that takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the FAA.'' Section 135.227(a) applies to all aircraft and powered-lift must comply with those requirements as written.

Paragraph (b) applies to airplane operations and requires certificate holders to ensure their pilots receive the training required by § 135.341 when the conditions are such that frost, ice, or snow may reasonably be expected to adhere to the airplane, if the certificate holder authorizes takeoffs in ground icing conditions.[462] This paragraph was included in the Training and Checking in Ground Icing Conditions proposed rule. The FAA promulgated this rule in 1993 in response to part 135 accidents caused by pilots beginning a takeoff with contamination adhering to critical airplane surfaces.[463] The NPRM cited a common thread throughout the accidents and incidents of the pilot's apparent lack of awareness of the potential hazard from even small amounts of frost, ice, or snow on the airplane wings and controls surfaces. Paragraph (b) does not allow a certificate holder to authorize an airplane to take off anytime conditions are such that frost, ice, or snow may reasonably be expected to adhere to the airplane unless one of the following requirements are met: (1) A pretakeoff contamination check established by the certificate holder and approved by the FAA for the specific airplane type has been completed within 5 minutes prior to beginning the takeoff—this pretakeoff contamination check is a check to ensure the wings and control surfaces are free of frost, ice, or snow; (2) the certificate holder has an approved alternative procedure which will determine the airplane is free of frost, ice, or snow; or (3) the certificate holder has an approved deicing/anti-icing program meeting the requirements of § 121.629.

The 1993 preamble states that the FAA's goal in this rulemaking was twofold. First, as provided in part 121, to ensure pilots will be made fully aware, through training, of the dangers involved in beginning takeoff with contamination adhering to the airplane.[464] Second, to require pilots to accomplish one or more checks (pretakeoff and/or pretakeoff contamination) prior to beginning takeoff. Requiring that a pretakeoff contamination check is completed within 5 minutes prior to beginning a takeoff is intended to provide an equivalent level of safety to § 121.629. Under paragraph (b)(2) of § 135.227, the FAA allows certificate holders to use an approved alternative procedure to ensure their airplanes are free of frost, ice, or snow. The FAA asserted in the preamble that the option to use an approved alternative procedure was included to permit certificate holders to develop alternative check procedures in lieu of the pretakeoff contamination check. To ensure that any alternative check procedures will provide an adequate level of safety, these procedures require FAA approval prior to their use by the certificate holder. These procedures must be specifically designed for the type of aircraft and the type of operations in which they would be used.

The FAA anticipates that some certificate holders operating powered-lift will desire the ability to conduct takeoffs when the conditions are such that frost, ice, or snow may reasonably be expected to adhere to aircraft surfaces, provided the pilot has completed all applicable training as required by § 135.341 and they are able to meet one of the requirements outlined in paragraphs (b)(1) through (3). Therefore, the FAA proposes in the SFAR to apply these options to certificate holders operating powered-lift.[465] In addition to wings and control surfaces, powered-lift may have other surfaces that are negatively impacted by frost, ice, or snow adhering to those surfaces, such as rotor blades. These other surfaces are considered critical surfaces, which the manufacturer will identify during certification, and which will be outlined in the Aircraft Flight Manual for that aircraft. Any frost, ice, or snow adhering to a ''critical surface'' could have an adverse impact on the aircraft's ability to operate safely. The FAA proposes that under the procedure referenced in paragraph (b)(1), or any

[460] Miscellaneous Amendments, 29 FR 2988 (Mar. 5, 1964).

[461] IFR Landing Minimums for Pilots With Less than 100 Hours as Pilot in Command in a Particular Type of Airplane, 26 FR 3460 (Apr. 22, 1961).

[462] Section 135.227 references training required by § 135.341. Section 135.341(b) requires the training program for part 135 operators to include ground training for initial, transition, and upgrade training. Section 135.345 specifies the required content of initial, transition, and upgrade ground training. Specifically, § 135.345(b)(6)(iv) requires training on operating during ground icing conditions (*i.e.,* any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the airplane), if the certificate holder expects to authorize takeoffs in those conditions.

[463] Training and Checking in Ground Icing Conditions, 58 FR 49164 (Sept. 21, 1993).

[464] Id. at 49166.

[465] See section V.J of this preamble for a corresponding proposal to apply the initial, transition, and upgrade ground training requirements for operations in ground icing conditions, specified in § 135.345(b)(6)(iv), to powered-lift pilots if the certificate authorizes takeoffs in ground icing conditions.

approved alternative procedures referenced in paragraph (b)(2), a powered-lift's wings, control surfaces, and other critical surfaces are determined to be free of frost, ice, or snow. This will ensure that powered-lift are operated at the highest level of safety during ground icing conditions. Thus, the FAA proposes in § 194.307(hh) that paragraph (b) apply to certificate holders operating powered-lift when either paragraph (hh)(1), (2), or (3) is met.

Section 135.227(c) includes the regulatory requirements for flight into icing conditions, and it specifies that no pilot may fly under IFR into known or forecast light or moderate icing conditions or under VFR into known light or moderate icing conditions unless certain conditions are met. Section 135.227(c)(1) requires the ''aircraft'' to have functioning deicing or anti-icing equipment protecting each rotor blade, propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system. The requirement applies to all aircraft; accordingly, any powered-lift that intends to fly into the icing conditions specified must have functioning deicing or anti-icing equipment.

Section 135.227(c)(2) and (3) are airplane-specific. The FAA will not apply these paragraphs to powered-lift because paragraph (d)—which applies to helicopters—serves the same purpose as paragraph (c) by allowing flight into known or forecast light or moderate icing conditions, discussed previously in further detail in section VI.D.1.iii of this preamble.

Section 135.227(e) states no pilot may fly an aircraft into known or forecast severe icing conditions unless that aircraft is an airplane that has the ice protection provisions that meet section 34 of appendix A, or those airplanes certificated under the airplane transport category type certification. This paragraph is specific to airplanes and references airplane certification requirements that airplanes must meet to operate in known or forecast severe icing conditions. Severe icing is defined in Advisory Circular 91–74B [466] as the rate of ice accumulation is such that ice protection systems fail to remove the accumulation of ice and accumulation occurs in areas not normally prone to icing, such as aft of protected surfaces and other areas identified by the manufacturer. Due to the novel design of powered-lift, the FAA lacks the research, operational experience, and certification criteria for authorizing operation of these aircraft in severe icing conditions. Until the FAA has sufficient data to authorize powered-lift to operate in known or forecast severe icing conditions, the FAA does not propose to allow powered-lift to fly into known or forecast severe icing conditions as provided in § 135.227(e). The FAA welcomes comments including data regarding this proposal.

v. Subpart I: Airplane Performance Operating Limitations

Subpart I outlines the airplane performance operating limitations applicable to large transport category, large nontransport category, small transport category, and small nontransport category airplanes with different types of powerplants. Although this subpart is airplane specific, the FAA acknowledges in this SFAR that some powered-lift may fit the definition of large aircraft, which is more than 12,500 pounds, while others will be considered small aircraft, which are 12,500 pounds or less. The FAA anticipates some powered-lift could operate similar to an airplane during takeoff and landing and will routinely operate similar to an airplane during horizontal flight. In those cases, the powered-lift will be supported in flight by the dynamic reaction of the air against their wings (termed wing-borne flight), as explained in section VI.A.

The FAA anticipates that some powered-lift will only be able to conduct VTOL operations, while others may have the ability to conduct a takeoff or landing that depends on wing-borne lift—similar to an airplane. For those powered-lift, some of the requirements of subpart I would be applicable, and those that the FAA has determined would be applicable are discussed in this section. Accordingly, for powered-lift that can conduct takeoff and landings using wing-borne lift, the performance data will be published in the aircraft flight manual and will contain items such as: takeoff roll, takeoff distance, and landing distance required. This will enable a pilot of a powered-lift to determine that an adequate area is available to enable a safe takeoff or landing. The FAA asserts that persons or property being transported on powered-lift meeting the size and certification standards of this subpart should be afforded the safety requirements of this subpart that is currently afforded to those transported on airplanes.

This subpart also specifies requirements for transport category airplanes. This SFAR will propose applicability of those transport category requirements to large powered-lift, recognizing that the FAA has not yet published a transport category certification standard for powered-lift. As previously discussed in section IV.A of this preamble, during the certification the FAA develops the certification criteria for each individual powered-lift design. Due to the novel designs of powered-lift and the varying capabilities of those aircraft, this could require using a combination of the aircraft certification standards from the various sections of parts 23, 25, 27, and 29.

Section 135.361 is an applicability regulation for airplane performance operating limitations. This section also defines in paragraphs (b) and (c) respectively, for the purposes of this subpart, the terms ''effective length of the runway'' and ''obstruction clearance plane.'' The FAA proposes in § 194.307(ii) that the sections of subpart I apply to powered-lift as delineated in each section, regardless of powerplant type.

Section 135.363(a) through (e) contain a general outline of which sections of subpart I apply to certain airplanes considering factors such as: the size, type of powerplant, and certification basis for the airplane. The FAA does not anticipate that there will be a large powered-lift produced with a reciprocating engine, therefore paragraph (a) will not be applicable. The FAA proposes in § 194.307(jj) that when a powered-lift meets the criteria established in paragraphs (b) through (e), regardless of powerplant type, then the referenced regulatory sections will be applicable.

Section 135.363(f) requires that the performance data in the Airplane Flight Manual must be used in determining compliance with §§ 135.365 through 135.387. It also contains a provision to allow the interpolation and for computing the effects of changes in specific variables, as long as those calculations are as accurate as the results of direct tests. Although this section specifies an Airplane Flight Manual, the FAA asserts that any powered-lift that meets the threshold, therefore requiring compliance as detailed in §§ 135.365 through 135.387, the powered-lift aircraft flight manual will contain any applicable performance data. Additionally, the FAA expects that the interpolation and computation that is permitted in § 135.363(f) could be accomplished for powered-lift without any degradation of safety, just as it is allowed for airplanes. Therefore, the FAA proposes in § 194.307(kk) that if a powered-lift is required to be in compliance with a section contained in

[466] Available at *https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_91-74B.pdf.*

§§ 135.365 through 135.387, then the provisions of § 135.363(f) will apply.

Section 135.364 sets the requirement for a certificate holder operating an airplane, other than an all-cargo airplane with more than two engines, on a planned route that exceeds 180 minutes flying time (at the one-engine-inoperative cruise speed under standard conditions in still air) from an Adequate Airport outside the continental U.S. unless the operation is approved by the FAA in accordance with appendix G to part 135, Extended Operations (ETOPS). Although ETOPS is currently applicable only to airplanes, the FAA anticipates that at some point a powered-lift could be designed with the range capability where ETOPS operations could be applicable, but likely not during the term of this SFAR. Accordingly, the FAA will not propose to amend part 135, appendix G, at this time or apply this regulation to powered-lift in this SFAR.

Section 135.379(a) requires that no person operating a turbine engine powered large transport category airplane may take off that airplane at a weight greater than that listed in the Airplane Flight Manual. The calculation for determining that takeoff weight must consider the elevation of the airport and the ambient temperature existing at the time of takeoff. This regulation provides important performance criteria to ensure that operators of an aircraft consider the effects of altitude and temperature when determining the maximum allowable takeoff weight. This is an important consideration because aircraft performance is reduced as the altitude and the temperature is increased. A takeoff in any aircraft should not be attempted, including in powered-lift, if the weight of the aircraft is greater than that listed in the Aircraft Flight Manual. These computations must include the elevation of take-off and the ambient temperature at the time of takeoff, which would also be applicable to large powered-lift. Section 135.379(b) is not applicable to powered-lift because of the date restrictions on certification in that paragraph.

Section 135.379(c) sets requirements for turbine engine powered large transport category airplanes certificated after August 29, 1959. It requires that an airplane cannot takeoff at a weight greater than that listed in the Airplane Flight Manual and lists specific performance requirements, such as the takeoff run must not be greater than the length of the runway, accelerate-stop distances, and required takeoff distance. This ensures that the airplane does not require more distance for its takeoff run than the available runway length, that the airplane can stop during an aborted takeoff on either the runway or any available stopway, and that there are no obstacles in the flightpath during the initial portion of a takeoff and climb. These considerations would also be applicable to large powered-lift utilizing wing-borne lift for takeoff.

Section 135.379(d) requires that an airplane cannot takeoff at a weight greater than that listed in the Airplane Flight Manual and lists specific performance requirements for obstacle clearance in the takeoff path (for airplanes certificated after August 26, 1957, but before October 1, 1958) and takeoff flight path (for airplanes certificated after September 30, 1958). This ensures that the airplane will clear all obstacles within the airport boundaries during takeoff operations. This restriction would also be applicable to large powered-lift.

Section 135.379(e) requires certain corrections to be considered when determining maximum takeoff weights, minimum distances, and flight paths under § 135.379(a) through (d). These corrections are runway used and gradient, airport elevation, ambient temperature, wind component. Additionally, some airplane flight manuals require corrections for wet runways, and when provided in the airplane flight manual, wet runways with grooved or porous friction course surfaces. These corrections are made to ensure that operators take all relevant performance factors related to takeoff operations into account to ensure that the airplane safely remains within its weight limitations for a particular takeoff. This provision would also be relevant to large powered-lift determining maximum takeoff weights, minimum distances, and flight paths and that utilize wing-borne lift for takeoff.

Section 135.379(f) sets two assumptions when calculating takeoff performance: the airplane is not banked before reaching a height of 50 feet, and after that the maximum bank is not more than 15 degrees. This ensures the airplane is operated at its maximum performance capability during the initial phase of takeoff and climb. This provision would also be applicable to powered-lift calculating takeoff performance using wing-borne lift.

The FAA proposes in § 194.307(ll) that paragraphs (a) and (d) of § 135.379 apply to large powered-lift. In addition, the FAA proposes in § 194.307(mm) that paragraphs (c), (e), and (f) of § 135.379 apply to large powered-lift and that utilize wing-borne lift during takeoff and have the takeoff performance information contained in the aircraft flight manual. The FAA finds that the expected commonalities between transport category airplane and large powered-lift operations warrant application of these provisions to large powered-lift. The accelerate-stop distance set forth in § 135.379(c)(1) must either meet § 25.109 or such airworthiness criteria as the FAA may find provides an equivalent level of safety in accordance with § 21.17(b).

Section 135.381(a) specifies that a person operating a turbine engine powered large transport category airplane must takeoff at a weight, allowing for normal consumption of fuel and oil, which will ensure that the airplane with one engine inoperative will clear all terrain and obstructions within its flightpath, which also includes a horizontal and vertical safety area. Paragraph (b) lists six assumptions that must be considered when computing the net flight path and required horizontal and vertical safety areas required by § 135.381(a)(2). Large powered-lift will conduct en-route operations similar to transport category airplanes and this important safety criteria should apply if one engine were to become inoperative thereby ensuring they remain clear of all terrain and obstructions within their flightpath, including the required horizontal and vertical safety areas. The FAA proposes in § 194.307(nn) that this section be applicable to large powered-lift.

Section 135.383(c) specifies that a person operating a turbine engine powered large transport category airplane on an intended route will ensure that the airplane is no more than 90 minutes away from an alternate airport, or with two engines inoperative will clear all terrain and obstructions within its flightpath, which also includes a horizontal and vertical safety area. Large powered-lift will conduct en route operations similar to airplanes and this important safety criteria should apply if two engines were to become inoperative thereby ensuring they remain clear of all terrain and obstructions within their flightpath, including the required horizontal and vertical safety areas. Additionally, this section contains assumptions that must be considered when computing the net flight path, required horizontal and vertical safety areas and fuel requirements, as listed in § 135.383(c)(2). Having alternate airports planned along the route is essential for en route operations. Therefore, the FAA proposes in § 194.307(oo) that both § 135.383(c)(1) and (2) apply to large powered-lift.

Section 135.385(a) stipulates that no person operating a turbine engine

powered large transport category airplane may take off at a weight that (allowing for normal consumption of fuel and oil in flight to the destination or alternate airport) if the weight of the airplane on arrival would exceed the landing weight as contained in the Airplane Flight Manual taking in consideration the elevation of the destination or alternate airport and the ambient temperature anticipated at the time of landing. This regulation establishes important pre-takeoff planning criteria that must consider the maximum landing weight at the destination or alternate airport to ensure that the airplane is at a weight that will allow a landing that is within the performance capabilities of that aircraft. This regulation does not allow a turbine engine powered large transport category airplane to takeoff at a weight that would cause it to exceed the maximum landing weight at either the destination or alternate airport. This section is intended to ensure an airplane will not arrive overweight for landing, and the subsequent paragraphs (b) through (f) detail what factors must be applied when determining the required landing distances, and these considerations are equally applicable to large powered-lift. Therefore, the FAA proposes in § 194.307(pp) that paragraph (a) be applicable to large powered-lift.

Section 135.385(b) specifies that in order for a person to conduct a takeoff in a turbine engine powered large transport category airplane, the airplane weight on arrival, allowing for normal consumption of fuel and oil, must allow a full stop landing at the intended destination airport within 60 percent of the effective length of each runway. Additionally, this paragraph provides some parameters that must be considered when calculating the maximum landing weight, such as: the airplane being landed in still air on the most favorable runway and in the most favorable direction, the airplane being landed on the most suitable runway taking into consideration the probable wind velocity and direction, the ground handling characteristics of the airplane, and considering other conditions such as landing aids and terrain. This rule provides for a 40 percent safety margin to help ensure that an airplane can safely land and prevents a person from attempting to operate into runways where there is no margin of error, which is also important for large powered-lift that utilize wing-borne lift during landing.

Therefore, the FAA proposes in § 194.307(qq) the paragraph (b) provision of 60 percent of the effective runway length be applicable to large powered-lift that utilize wing-borne lift during landing and have landing performance information in the aircraft flight manual.

Paragraphs (c) and (e) of § 135.385 provide that a turbopropeller- or turbojet-powered airplane, respectively, that would be prohibited from conducting a takeoff because it could not be landed on the most suitable runway considering the probable wind velocity and direction and the ground handling characteristics of the airplane, and considering other conditions such as landing aids and terrain, may takeoff if an alternate airport is selected. Under paragraph (c), the alternate airport must meet all of the requirements of § 135.385, and under paragraph (e), the alternate airport must meet all the requirements of paragraph (b) of § 135.385. Additionally, paragraph (c) allows for using 70 percent of the effective length of the runway at the alternate airport to determine suitability of that runway's length. The FAA does not have sufficient operational data regarding powered-lift that conduct landings that depend on wing-borne lift to support proposing this provision to be applied to powered-lift at this time. Accordingly, the FAA has determined that the most conservative application of this provision is appropriate and § 135.385(c) will not apply to powered-lift.

Notwithstanding the inapplicability of paragraph (c), the FAA proposes in § 194.307(qq) that paragraph (e) apply to large powered-lift that conduct landing operations that depend on wing-borne lift and have that landing performance information contained in the aircraft flight manual.

Section 135.385(d) requires that, unless approved and included in the airplane flight manual, a large transport category turbojet airplane must add an additional 15 percent margin onto the landing distance calculated per § 135.385(b) when the destination may be wet or slippery at the estimated time of arrival. Therefore, the FAA proposes in § 194.307(qq) that this paragraph be applicable to large powered-lift that utilize wing-borne lift during landing and has landing performance information contained in the aircraft flight manual.

Section 135.385(f) provides an option to those ''eligible on-demand operators'' which permits an operator operating a turbine engine powered large transport category airplane to conduct a takeoff on an on-demand flight if the operation is permitted by an approved Destination Airport Analysis in that operator's manual and certain conditions are also met. Those conditions are that to determine the landing weight, the following are assumed: the airplane is landed on the most favorable runway and direction, in still air, and it is landed on the most suitable runway considering the probable wind velocity, direction, the ground handling characteristics of the airplane, and other conditions such as landing aids and terrain. The operator must also have an approved Destination Airport Analysis contained in their operations manual. The eligible on-demand operator calculates the required runway distance at 80 percent of the effective length of the runway. Therefore, the FAA proposes in § 194.307(qq) this paragraph be applicable to large powered-lift that utilize wing-borne lift during landing and has landing performance information contained in the aircraft flight manual.

Section 135.387(a) and (b) sets the requirements for the required length of the runway when designating an alternate airport. This section requires the selected alternate airport must allow the airplane to be brought to a full stop landing based on the weight of the airplane expected at the time of arrival at the alternate airport. Turbojet airplanes require that distance to be calculated at 60 percent of the effective length of the runway, turbopropeller airplanes require 70 percent, and eligible on-demand operators require 80 percent. Therefore, the FAA proposes in § 194.307(rr) that paragraphs (a) and, for eligible on-demand operators, paragraph (b), be applicable to large powered-lift that utilize wing-borne lift during landing and has landing performance information contained in the aircraft flight manual.

Sections 135.389, 135.391, 135.393, and 135.397 all contain takeoff and landing limitations for large nontransport category airplanes. As described in the discussion in section IV.A., the FAA determined that for purposes of this proposal, regulations applicable to large transport category airplanes would be applicable to large powered-lift, because the agency has not yet established a transport category standard for powered-lift. Accordingly, application of these provisions is not necessary considering the previous discussion regarding the applicability of the provisions in this subpart regarding large transport category airplanes.

Section 135.397(a) and (b) outline the performance requirements for small transport category airplanes. This section requires compliance with weight, takeoff, and landing limitations as contained in other sections of subpart I. This regulation applies to airplanes that are reciprocating and turbine

engine powered, and small, which means 12,500 pounds or less, but yet are still certificated to the safety standards of transport category certification because they have a passenger seating configuration of more than 19 seats. Section 135.397(a) is applicable to reciprocating engine powered airplanes, and the FAA has previously asserted in this document that the sections referenced in paragraph (a) would not be applicable to powered-lift. Therefore, the FAA proposes in § 194.307(ss) that only paragraph (b) be applicable for small powered-lift that have a passenger seating configuration of more than 19 seats, that utilize wing-borne lift during takeoff and landing, and have takeoff and landing performance information contained in the aircraft flight manual.

E. Part 136 Rules for Powered-Lift

Enabling powered-lift to be used in commercial air tours is an appropriate step in the safe integration of such aircraft. As discussed in section III, in the Update to Air Carrier Definitions NPRM, the FAA proposed expanding the definitions and applicability of part 136 to accommodate powered-lift and to ensure that the more stringent safety risk mitigations afforded in that part would apply to powered-lift that are anticipated to be used to conduct commercial air tours.[467] The Update to Air Carrier Definitions NPRM also proposed amending references of ''helicopter'' to ''rotorcraft'' to ensure that the part 136 safety standards apply to other types of aircraft that may conduct commercial air tours. Consequently, in this SFAR, except when referring to existing section titles or explaining the current regulatory text, the FAA uses the term ''rotorcraft'' for part 136 discussion rather than ''helicopters''. While the Update to Air Carrier Definitions NPRM proposed amendments to certain sections of part 136, to the extent that the proposal affects powered-lift, it is consistent with the proposed changes offered in this NPRM. The amendments offered in both proposals will be reconciled before each rule is finalized.

In this proposed SFAR, the FAA addresses the operational requirements within part 136. The FAA has analyzed each of the limitations and requirements of part 136, subpart A and Appendix A, and determined the requirements of part 136 that are applicable to all aircraft are appropriate for operations of powered-lift. Additionally, in § 194.310 of this SFAR, the FAA proposes applying certain requirements of part 136 that are specific to helicopters while giving consideration to powered-lift that may conduct commercial air tours in the wing-borne flight mode to ensure clarity and address the risks associated with enabling the operation of commercial air tours in powered-lift.

1. Suitable Landing Area for Helicopters

This proposed rule would apply the definition of the term ''suitable landing area for helicopters,'' codified at § 136.1, to powered-lift. The current definition states such an area is one that provides the operator reasonable capability to land without damage to equipment or injury to persons. It further provides that such areas must be site-specific, designated by the operator, and accepted by the FAA. In the Update to Air Carrier Definitions NPRM, the FAA proposed amending this definition to apply more broadly to rotorcraft instead of only helicopters to ensure those aircraft are subject to the safety standards of part 136. It also proposed removing reference to ''damage to equipment'' to instead focus on preventing ''serious injury to persons''.

The FAA's purpose in applying the definition for suitable landing areas for rotorcraft to powered-lift is to ensure powered-lift operators designate potential landing areas in advance of an operation, as such designation reduces the risk of an accident because the PIC is aware of potential sites for emergency landings. Further, given the vertical takeoff and landing capabilities of powered-lift, they are capable of landing at locations that would also accommodate rotorcraft. The FAA expects operators conducting commercial air tours in powered-lift to be able to designate a site-specific landing area that, when used, would not cause serious injury to persons.

2. Life Preservers for Over Water

Section 136.9 requires the operator and PIC of commercial air tours over water beyond the shoreline to ensure each occupant is wearing a life preserver from before takeoff until the flight is no longer over water. The regulation provides relief from that requirement under the following circumstances as long as the operator and PIC ensure that a life preserver is readily available and easily accessible to each occupant: if the aircraft is equipped with floats; if the airplane is within power-off gliding distance to the shoreline for the duration of the time that flight is over water; or if the aircraft is a multi-engine aircraft that can be operated with the critical engine inoperative at a weight that will allow it to climb, at least 50 feet a minute, at an altitude of 1,000 feet above the surface, as provided in the airplane or rotorcraft flight manual. No life preserver is required if the overwater operation is necessary for takeoff or landing.

The preamble to part 136 states that life preservers discussed in this rule apply to both helicopters and airplanes when operating a commercial air tour over water.[468] The rule also specifies when life preservers are required to be available and when they are required to be worn by all occupants. In the Update to Air Carrier Definitions NPRM, the FAA proposed replacing ''Airplane Flight Manual'' under § 136.9(b)(3) with ''Aircraft Flight Manual'' to provide more flexibility for other aircraft conducting commercial air tours. If that NPRM is adopted as final, this reference would also apply to a powered-lift's flight manual.

The exceptions found in § 136.9(b)(1), which applies to aircraft equipped with floats, and in paragraph (b)(3), for multiengine aircraft, currently apply to powered-lift because powered-lift are considered ''aircraft.'' The FAA proposes to also apply § 136.9(b)(2) to powered-lift. Paragraph (b)(2) would apply when a powered-lift is operating in the wing-borne flight mode within the power-off gliding distance to the shoreline. When a powered-lift is operating in the wing-borne flight mode, it more closely aligns with the performance capabilities of an airplane over water and therefore would have the ability to glide to shore. Therefore, the FAA proposes that paragraph (b)(2) apply to powered-lift, thereby excepting the operator and PIC of a commercial air tour over water beyond the shoreline from requiring each occupant to wear a life preserver as long as the powered-lift is within power-off gliding distance of the shoreline while the aircraft is over water and in wing-borne flight mode.

3. Helicopter Floats Over Water

Section 136.11 currently permits single-engine helicopters in commercial air tours to operate over water beyond the shoreline only when they are equipped with fixed floats or an inflatable flotation system adequate to accomplish a safe emergency ditching. Similarly, multiengine helicopters that cannot be operated with the critical engine inoperative at a weight that will allow it to climb at least 50 feet a minute at an altitude of 1,000 feet above the surface with an engine inoperative as provided in the Rotorcraft Flight Manual (RFM) also must be equipped

[467] See Update to Air Carrier Definitions NPRM, 87 FR 74995 (Dec. 7, 2022).

[468] See National Air Tour Safety Standards; Final Rule, 72 FR 6884 (Feb. 13, 2007).

with fixed floats or an inflatable flotation system. Those helicopters that are equipped with flotation systems must have an activation switch for the flotation system on one of the primary flight controls and the system must be armed when the helicopter is over water and flying at a speed that does not exceed the maximum speed prescribed in the RFM. These requirements, however, do not apply to operations over water during the takeoff and landing portions of flight or to operations within the power-off gliding distance to the shoreline for the duration of the flight provided each occupant is wearing a life preserver from before takeoff until the aircraft is no longer over water. In the Update to Air Carrier Definitions NPRM, the FAA proposed expanding § 136.11 to rotorcraft and referencing ''aircraft flight manual'' instead of ''Rotorcraft Flight Manual.'' In addition, the FAA proposed clarifying in paragraph (b)(2) that the flotation system must be armed when the rotorcraft is over water ''beyond the shoreline'' and proposed removing paragraph (d) because the lead-time date of September 5, 2008, is no longer relevant.

Extending the aforementioned requirements of § 136.11 to commercial air tour operations using powered-lift when the aircraft is operating in the vertical-lift flight mode under part 136 would mitigate the risks associated with emergency water landings. Therefore, § 136.11(a)(2), (b), and (c) apply to powered-lift. Section 136.11(a)(1) would not apply to powered-lift because, as stated earlier, all powered-lift coming to market are currently multiengine, not single-engine.[469] In addition, since the FAA anticipates powered-lift may be designed to either auto-rotate or glide, the FAA proposes to apply this regulation to powered-lift that are conducting air tour operations in the vertical-lift flight mode beyond the auto-rotational distance or gliding distance from the shoreline. While these terms may not seem appropriate for all powered-lift, the intent is to capture engine out safe landing distances. This will ensure the power off landing capabilities of powered-lift, regardless if they auto-rotate or glide, are covered by the regulation. The FAA determined the risks that are present in rotorcraft commercial air tours would be similar to powered-lift operating in the vertical-lift flight mode. In this regard, powered-lift can create lift in the same manner as rotorcraft, and the FAA expects they could be capable of performing a stationary hover in or out of ground effect. Moreover, when conducting air tour operations, powered-lift will likely be used in a manner similar to rotorcraft. Because powered-lift and rotorcraft may have similar flight profiles in air tour operations, they share common risks during those operations. The risks that arise with losing power in an aircraft during air tour operations over water are serious. As a result, flotation equipment is an appropriate requirement to mitigate these risks.

In regard to the above-mentioned justification and to increase the occupants' chances of survival in the event of an unplanned landing over water, the FAA is proposing to apply this requirement to powered-lift operations that occur under part 136 when operating in the vertical-lift flight mode.

4. Helicopter Performance Plans and Operations

This proposed rule would apply § 136.13 to powered-lift. Section 136.13(a) currently requires commercial air tour operators to complete helicopter performance plans before each operation that will occur under part 136.[470] The PIC of the operation must review the plan for accuracy and comply with it for each flight. Such performance plans are a key component of mitigating the risk of commercial air tour operations, as they require the PIC to be prepared to respond to unforeseen events. In the Update to Air Carrier Definitions NPRM, the FAA proposed replacing ''helicopter'' with ''rotorcraft'' and ''Rotorcraft Flight Manual'' with ''aircraft flight manual'' to broaden the scope of the regulation.

The FAA promulgated the requirement for performance plans in 2007 based on the need for operators to conduct preflight planning and for pilots to have operational knowledge that is essential to the aircraft being flown in commercial, passenger-carrying operations. In particular, the FAA emphasized the importance of the height/velocity (H/V) diagram component of performance plans.[471] This same rationale could apply to commercial air tours that occur in powered-lift that have height velocity information or performance criteria with avoidance areas related to the transitions that occur between the vertical-lift and wing-borne mode. The FAA realizes that some powered-lift may only contain height-velocity or flight mode transition information, whereas some may contain both types of information in their aircraft flight manual. Operators will likely take advantage of the vertical takeoff, out of ground effect hovering capabilities, and out of ground effect slow flight capabilities of powered-lift at speeds that do not exceed effective translational lift airspeed when conducting operations under part 136.

In the 2007 National Air Tour Safety Standards rule, the FAA stated that extended operation within the ''avoid'' portion of the height/velocity diagram increases the exposure to the risk of not being able to execute successfully an autorotation landing in the event of an engine failure, or in the case of multiengine helicopters, a safe one-engine inoperative landing. Therefore, aviation safety requires that commercial air tour operators not only plan, but also operate in accordance with the performance plan.[472] As a result, operators should be aware of H/V diagrams or engine out performance capability as applicable to their aircraft. Such awareness and planning are essential in reducing the risk of accidents.

Consequently, the FAA proposes to apply § 136.13 to powered-lift in order to provide an equivalent level of safety for commercial air tour operators and PICs using powered-lift to conduct commercial air tours or to conduct operations under § 91.146 or § 91.147.

5. Commercial Air Tours in Hawaii

This rule would also apply operating provisions contained in appendix A to part 136—Special Operating Rules for Air Tour Operators in the State of Hawaii—to powered-lift operations. The safety standards in part 136 are specific to commercial air tours and provide additional risk mitigations for those operations. As stated in the National Air Tour Safety Standards final rule, the FAA determined that minimum, mandatory safety standards directly relate to a decrease in the occurrence of accidents.[473] Therefore, in the Update to Air Carrier Definitions NPRM, the FAA replaced references to ''helicopter'' with ''rotorcraft'' in appendix A to expand the scope of applicability and to ensure air tour operations would not pose additional safety risks, and it also amended the applicability of appendix A to include powered-lift. The NPRM

[469] See section VI.A for discussion regarding multiengine powered-lift.

[470] This requirement also applies to operations that occur under §§ 91.146 (''Passenger-carrying flights for the benefit of a charitable, non-profit, or community event'') and 91.147 (''Passenger carrying flights for compensation or hire'').

[471] National Air Tour Safety Standards, Final Rule, 72 FR 6884 (Feb. 13, 2007).

[472] National Air Tour Safety Standards; Final Rule, 72 FR 6883 at 6912 (Feb. 13, 2007).

[473] Id. at 6889.

also proposed to amend the references to RFMs currently within section 4 of the appendix to instead read ''aircraft flight manual'' in the regulatory text. Subjecting powered-lift to these safety standards is appropriate for the same reasons.

Appendix A previously existed as SFAR No. 71.[474] In 2007, when the FAA last amended part 136, the FAA explained that many air tour operations occur in Hawaii and the Grand Canyon, and that the rules of SFAR No. 71 had improved safety.[475] The FAA explained that more restrictive altitude standards apply to air tours in Hawaii because a large number of commercial air tour flights occur ''in a relatively small amount of airspace'' and other demonstrated hazards exist.[476] As one commenter noted, many Hawaiian operations occur over large bodies of water and water conditions in Hawaii are ''rough, unlike the conditions in other parts of the country'' in which operators conduct air tours.[477] The appendix A requirements are equally important for air tour operations in aircraft other than helicopters. The FAA's rationale for extending the requirements and provisions of appendix A to powered-lift remains consistent with the rationale the FAA expressed in its 2007 rule. Enabling powered-lift to be used in commercial air tours is an appropriate step in the safe integration of such aircraft.

Section 1 of appendix A (''Applicability'') currently states, ''This appendix prescribes operating rules for airplane and helicopter visual flight rules air tour flights conducted in the State of Hawaii under 14 CFR parts 91, 121, and 135.'' [478] The appendix also defines air tour as ''any sightseeing flight conducted under visual flight rules in an airplane or helicopter for compensation or hire.'' [479] The Update to Air Carrier Definitions NPRM [480] addressed section 1 of appendix A. In the Update to Air Carrier Definitions NPRM, the FAA determined the existing criteria and requirements of appendix A, section 1, are appropriate to apply to powered-lift. The NPRM also addressed the definitions in section 2 by expanding ''air tour'' to include sightseeing flights conducted under VFR in a powered-lift.

In this SFAR, the FAA also proposes applying section 3 to powered-lift. Subject to two exceptions, section 3 of appendix A currently requires flotation equipment for air tour operations that occur in Hawaii in single-engine helicopters beyond the shore of any island, regardless of whether the helicopter is within auto-rotational distance [481] of the shore. Each person onboard the helicopter must wear approved flotation gear. This requirement, however, does not apply to helicopters that are amphibious or that are equipped with floats adequate to accomplish a safe emergency ditching and when the approved flotation gear is easily accessible for each occupant. Section 3 also does not apply if each person onboard is wearing approved flotation gear. This proposed rule would extend this requirement to apply to operations that occur in powered-lift. Applying the requirement for flotation equipment would increase the likelihood of surviving in the event of a water landing. These requirements were created specifically for Hawaii due to the rugged terrain. Extending this requirement to all powered-lift operators conducting air tours in Hawaii beyond the shore of any island is appropriate because powered-lift will likely operate in a manner that is similar to rotorcraft when conducting air tour operations in Hawaii.

This proposed rule would apply section 4 of the appendix—the requirement for performance plans—to powered-lift. Section 4 currently applies only to operators of helicopters and requires operators to complete performance plans based on information in the RFM, considering the maximum density altitude for which the operation is planned for the flight. As discussed above with the requirement of § 136.13, the performance plan must consider all those criteria outlined in paragraphs (a) through (c). Applying this performance plan requirement to operators of powered-lift conducting air tours in Hawaii would ensure the operator conducting the operation is aware of the necessary information concerning the aircraft and the intended operation. This requirement is an appropriate risk mitigation measure for powered-lift because the FAA anticipates powered-lift will generally operate in a manner consistent with how rotorcraft operate when conducting air tours in Hawaii. Environmental conditions relevant to the altitude and temperature of the operation are critical considerations in ensuring safety of flight because both affect the performance of the aircraft. Operators' performance plans would ensure operators' awareness of how conditions could affect the flight; as a result, operators will be in a position to make appropriate contingency plans and make suitable decisions should they encounter hazards during an air tour operation.

Similarly, the FAA proposes that the operating limitations of section 5 of part 136, appendix A (Helicopter Operating Limitations), apply to powered-lift. Section 5 requires the PIC to operate at a combination of height and forward speed that would permit a safe landing in the event of engine power loss in accordance with the height-speed envelope under current weight and aircraft altitude. The FAA proposes applying section 5 to powered-lift conducting commercial air tours that have height velocity information contained within their aircraft flight manuals. Applying such requirements to powered-lift is appropriate because operations conducted under appendix A in powered-lift will likely occur in a manner that is similar to operations presently conducted in rotorcraft. In this regard, the FAA expects powered-lift will hover and have other operating characteristics similar to rotorcraft when conducting air tours. This section, in particular, is important because engine power loss could have detrimental consequences; as a result, powered-lift may require quick landings in response to engine failures. An appropriate means of mitigating the risk associated with an engine power loss is to require the PIC to operate the aircraft in a manner that permits the PIC to land safely. Such aspects are unique to the type of aircraft and the circumstances of the operation. As a result, the FAA determined the proposed inclusion of powered-lift in this requirement would be a suitable risk mitigation measure.

Part 136, appendix A, section 6, Minimum flight altitudes, and section 7, Passenger briefing, currently apply in general terms to air tour flights in Hawaii and do not specify the type of aircraft used for such flights. Therefore, amending these sections to apply to additional types of aircraft is not necessary; the minimum flight altitudes

[474] Air Tour Operators in the State of Hawaii, 59 FR 49138 (Sep. 26, 1994).

[475] National Air Tour Safety Standards; Final Rule, 72 FR 6883 at 6889 (Feb. 13, 2007), acknowledging that while multiple reasons existed for the accident rate improvement in Hawaii and other parts of the country, the provisions of SFAR No. 71 had a positive impact on safety.

[476] Id. at 6891.

[477] Id. at 6903.

[478] The section includes a paragraph that specifically excludes from its applicability ''[f]lights conducted in gliders or hot air balloons.'' 14 CFR part 136, appendix A, section 1(b).

[479] Id. section 2.

[480] Update to Air Carrier Definitions, NPRM, 87 FR 74995 (Dec. 7, 2022).

[481] In general, autorotational distance is the horizontal distance a rotorcraft can maneuver laterally, while descending without power. See 14 CFR 1.1 (definition of ''autorotation''). Factors affecting this distance include: initial altitude above the surface, density altitude, winds, auto-rotation entry airspeed, horizontal airspeed, rotor pitch, aircraft weight, and rotor design.

and passenger briefing requirements would apply to all air tour flights in Hawaii, regardless of the aircraft used in such flights.[482]

F. Part 43 Applicability to Powered-Lift

Part 43 prescribes rules governing the maintenance, preventive maintenance, rebuilding, and alteration of any aircraft having a U.S. airworthiness certificate; foreign-registered civil aircraft used in common carriage or carriage of mail under the provisions of part 121 or 135; and airframe, aircraft engines, propellers, appliances, and component parts of such aircraft.[483] As discussed previously, the regulations under title 14 of the Code of Federal Regulations that reference ''aircraft'' currently apply to powered-lift. Sections 43.2, 43.5, 43.10, 43.11, 43.12, 43.13, and 43.17 and appendix F to part 43 all apply to ''aircraft'', and, accordingly, to powered-lift.

Sections 43.1, 43.3, 43.7, 43.9, and 43.15 and appendices A, B, D, and E to part 43 all refer to aircraft, which include powered-lift, but some paragraphs within these sections are specific to airplane, rotorcraft, propellers, and helicopter, which the FAA reviewed to determine which of those regulations would also be appropriate to apply to powered-lift. The FAA determined that it would be appropriate to apply §§ 43.3(h) and 43.15(b) to powered-lift as described in the paragraphs that follow.

Section 43.3(h) states that the Administrator may approve a part 119 certificate holder, operating rotorcraft in a remote area under part 135, to allow a pilot to perform specific preventive maintenance items, under certain limitations, when no certificated mechanic is available and an unscheduled malfunction occurs. The preamble for this rule indicated that a part 119 certificate holder that operates rotorcraft in remote sites under part 135 can allow an appropriately trained and authorized pilot to perform preventive maintenance as defined in § 1.1 and as listed in appendix A to part 43.[484] The FAA expects a pilot who is trained under the requirements of § 43.3(h) would provide the same level of competency as a certificated mechanic when performing the authorized preventive maintenance function.[485] The pilot, who is required to complete an approved training program, performs the specific preventive maintenance items under the direct control of the certificate holder's preventive maintenance program. Some powered-lift may operate in remote areas and would consequently experience the same challenges that exist for rotorcraft when an unscheduled malfunction occurs. Therefore, the FAA proposes in § 194.402 that the preventive maintenance protocols outlined in § 43.3(h) also apply to certificate holders under part 135 operating powered-lift in remote areas.

In addition to § 43.3(h), § 43.15(b) requires the person performing an inspection required by part 91 on a rotorcraft to inspect certain aircraft system(s) in accordance with the manufacturer's maintenance manual or Instructions for Continued Airworthiness. The systems listed under § 43.15(b) are generally considered systems comprised of ''critical parts'' as defined in §§ 27.602 and 29.602.[486] The FAA proposes applying § 43.15(b) to persons performing an inspection required by part 91 on a powered-lift. Those parts that the powered-lift manufacturer has identified as ''critical parts'' used for flight will be a required inspection item and will be identified and listed in the aircraft manufacturer's maintenance manual. Powered-lift are new entrant aircraft, and as a result, the FAA does not have the information to know all the systems on any given powered-lift that may be considered a critical part. In determining critical parts, the manufacturer must consider a flight safety-critical aircraft part list which, if nonconforming, missing, or degraded, could cause a catastrophic failure resulting in loss of, or serious damage to, the aircraft or an uncommanded engine shutdown resulting in an unsafe condition. The characteristic can be critical in terms of dimension, tolerance, finish, or material; an assembly, manufacturing, or inspection process; or an operation, maintenance, or overhaul requirement. Examples of critical part(s) may include a multi-computer aircraft system with a high level of automation in order to aviate, navigate, or communicate or integrated flight control/navigation systems with advanced fly-by-wire flight control system that utilizes electronically operated controls with no direct mechanical link from the pilot to the control surfaces. For powered-lift with critical parts, a type design must include a critical parts list and define the critical design characteristics, identify processes that affect those characteristics, and identify the design change and process change controls necessary for showing compliance with the quality assurance requirements of part 21. Consequently, the FAA proposes to apply § 43.15(b) to persons performing an inspection required by part 91 on powered-lift ''critical parts'', as outlined in the aircraft manufacturer's maintenance manual or that the FAA otherwise deems appropriate, in order to provide an equivalent level of safety to those aircraft. The FAA invites comments to understand the types of systems and critical parts expected to comprise powered-lift.

Additionally, the FAA will evaluate the existing airman certification testing standards under part 65 for mechanics and repairmen to determine if any revisions to those standards are necessary to incorporate powered-lift and, if any updates are necessary, promulgate those updates to correspond with the issuance of the final rule.

G. Pilot Records Database

Part 111 prescribes rules governing the use of the Pilot Records Database (PRD). The PRD facilitates the sharing of pilot records among air carriers and other operators in an electronic data system managed by the FAA.[487] Part 111 requires air carriers, specific operators holding out to the public, entities conducting public aircraft operations, air tour operators, fractional ownerships, and corporate flight departments to enter relevant data on individuals employed as pilots into the PRD. The PRD is intended to help maintain records about a pilot's performance with previous employers that could influence a future employer's

[482] In the FAA's National Air Tour Safety Standards rule, the FAA emphasized the importance of passenger briefings for overwater operations. Id. at 6902. The FAA cited a 1999 report from the Department of Transportation's Office of Inspector General, Oversight of the Air Tour Industry, Report No. AV–1999–099 (May 28, 1999), available at *https://www.oig.dot.gov/library-item/30819*. That report cites one air tour accident flight that occurred in Hawaii, in which three fatalities resulted when occupants were not able to use life preservers that were located in their containers beneath each seat. Ensuring aircraft remain at minimum safe altitudes provides an additional safety margin for dealing with in-flight emergencies; as the FAA stated in National Air Tour Safety Standards, the FAA imposes more restrictive altitude standards for air tours in Hawaii due to the large volume of commercial air tour flights in a relatively small amount of airspace.

[483] 14 CFR 43.1.

[484] See Rotorcraft Regulatory Review Program Amendment No. 5; Operations and Maintenance, 51 FR 40692 at 40702 (Nov. 7, 1986).

[485] See Rotorcraft Regulatory Review Program Amendment No. 5; Operations and Maintenance, 51 FR 40692 (Nov. 7, 1986).

[486] Sections 27.602 and 29.602 define a ''critical part'' as ''a part, the failure of which could have a catastrophic effect upon the rotorcraft, and for which critical characteristics have been identified which must be controlled to ensure the required level of integrity.'' The procedures referenced in §§ 27.602(b) and 29.602(b) will be addressed during the § 21.17(b) certification process.

[487] See Pilot Records Database, 86 FR 31006 (Jun. 10, 2021).

hiring decision.[488] Section 111.1 outlines part 111 applicability. Specifically, § 111.1(b)(4) introductory text states that part 111 applies to an operator that operates two or more aircraft described in paragraphs (b)(4)(i) and (ii), solely pursuant to the general operating rules in part 91, or that operates aircraft pursuant to a Letter of Deviation Authority issued under § 125.3. Paragraphs (b)(4)(i) and (ii) apply to standard airworthiness airplanes that require a type rating under § 61.31(a) and turbine-powered rotorcraft, respectively. The FAA refers to the operators outlined under § 111.1(b)(4) as ''corporate flight departments.'' [489]

The FAA proposes to require reporting by corporate flight departments that operate large powered-lift pursuant to the general operating and flight rules in part 91 or pursuant to a Letter of Deviation Authority issued under § 125.3. Section 111.1(b)(4)(i) applies to airplanes that require a type rating under § 61.31(a) (or similar in the case of paragraph (b)(4)(ii) for turbine-powered rotorcraft). Currently, a large powered-lift requires a type rating under § 61.31(a)(1) [490] and is therefore similar to the airplanes that require a type rating under § 111.1(b)(4)(i). In addition, the FAA expects that pilots of large powered-lift may go on to work for an air carrier in the future. Reporting these pilot records would be relevant to a future hiring air carrier. Therefore, the FAA proposes permanently amending § 111.1(b)(4) to include a new paragraph (b)(4)(iii) that applies to large powered-lift. This proposal aligns with the current requirements and intent of § 111.1(b)(4) and the type rating requirements under § 61.31(a).

VII. Air Traffic Operations

The FAA will leverage its existing standards and procedures used today for aircraft for powered lift air traffic operations. The FAA develops air traffic standards and procedures including those governing the separation of aircraft by ATC. Air traffic services are administered for the purpose of ensuring the safe, orderly, and expeditious flow of air traffic. The standards and procedures may differ based upon factors such as the classification of airspace and aircraft. Currently, there are separation standards that apply differently to certain aircraft. The FAA is in the process of identifying and implementing any necessary updates to the existing separation standards that capture powered lift operations.

The air traffic separation standards are contained in Air Traffic Order (JO) 7110.65, Air Traffic Control. Currently, the Order explicitly addresses separation standards and procedures for how ATC handles ''aircraft'' and provides alternative handling procedures for aircraft classified as a ''helicopter''. JO 7360.1, Aircraft Type Designators, provides standard abbreviations (aircraft type designators) for the most common aircraft that are provided with air traffic services. JO 7360.1 identifies those aircraft considered to be helicopters for the purpose of applying ATC procedures as per JO 7110.65. The FAA is considering the need to update how the JO 7110.65 procedures may need to be amended to accommodate new or differing aircraft types certified as powered-lift.

The Air Traffic Organization (ATO) is working closely with their partners in Aviation Safety (AVS) to update the standards and procedures contained in JO 7110.65 to address those aircraft certified as powered lift to ensure that they can operate safely and efficiently in the NAS. Aircraft are currently separated by classification (Weight) and categorization (Wake). Another factor is the distance the aircraft are from the surveillance radar antenna source that is interrogating the aircraft. Although aircraft manufacturers provide the FAA with data to make initial determinations, the Office of NextGen performs an analysis of the data along with AVS to establish wake separation standards. The ATO continuously monitors NAS operations and event data to ensure these standards are not adversely affecting safety of NAS operations.

While the ATO takes the necessary steps to update the standards and procedures for powered lift aircraft, the standards and procedures which apply to aircraft, which is defined in § 1.1 as a device that is used or intended to be used for flight in the air, continue to apply to powered-lift.

The ATO stood up a FAA crossline of business team that routinely meets, in part, to exchange information, identify gaps in knowledge and identify potential solutions, and conduct a review of the existing separation standards to make recommendations and support the integration of powered-lift. The team plans to consider information such as aircraft maneuverability and other performance characteristics when discussing whether updates are needed to better account for any performance unique to powered-lift. The team's goal is to accomplish the necessary initial updates prior to powered-lift entering into commercial service.

As the recommendations are developed, the Office of Primary Responsibility or designated representatives will coordinate the recommendations for review and clearance as appropriate. During the review process, the Office of Safety and Technical Training may determine that a Safety Risk Management panel is necessary due to the impact of the recommended changes on the NAS.

While the powered-lift SFAR will fully enable powered-lift operations, the FAA will continue to review and evolve the rules and procedures as powered-lift performance and operational tempo evolve over time. Updates to JO 7110.65 will enable powered-lift operations by accounting for them in existing procedures and standards, while also establishing new procedures for their unique VTOL performance capabilities. The FAA acknowledges that the safety and efficiency of these operations is critical in ensuring the success of the industry.

VIII. International Operations for Powered-Lift

The FAA's policy is to meet the U.S. obligations under the Convention on International Civil Aviation (''Chicago Convention'') by conforming to the International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPs) to the maximum extent practicable. ICAO annexes contain the international SARPs for safety, regulation, and efficiency of air navigation. The Chicago Convention ensures that certificates of airworthiness, certificates of competency, and licenses are recognized by other Member States as long as the issuing States meet the minimum ICAO standards. The Member States' Civil Aviation Authorities each integrate the ICAO SARPs into their national legal frameworks and practices and are responsible for regulatory oversight.

A. Personnel Licensing

Part 61 prescribes the requirements for the issuance of pilot, flight instructor, and ground instructor certificates, as well as the privileges and limitations of such. ICAO Annex 1 provides the SARPs for personnel licensing, including those for pilot and

[488] Id.

[489] Id.

[490] Section 61.31(a)(1) states that a person who acts as a PIC of any ''large aircraft (except lighter-than-air)'' must hold a type rating for that aircraft. Because powered-lift are considered ''aircraft'', this requirement currently applies to large powered-lift.

instructor licensing for powered-lift.[491] Absent the establishment of classes, the ICAO Annex 1 SARPs dictate [492] that pilots and flight instructors must hold a powered-lift type rating for the powered-lift they operate when conducting international operations.[493] As discussed in section V.A of this preamble, the FAA proposes in this SFAR that, because each powered-lift may have complicated and distinctive operating equipment and characteristics, it is not feasible at this time to establish classes within the powered-lift category. If the FAA were to generalize the training requirements based on the classification of powered-lift, the training requirements would not sufficiently address the unique characteristics of each powered-lift that require specific powered-lift training and testing to determine pilot competency in flying the aircraft. Instead, the FAA proposes that pilots must hold a type rating to serve as PIC for each type of powered-lift. Therefore, the FAA's proposal complies with the standard dictated in ICAO Annex 1.

ICAO also sets forth recommendations [494] for the issuance of a powered-lift category rating on a private pilot license, commercial pilot license, and ATP license.[495] Specifically, these provide recommended flight hours of experience, including solo flight time, cross-country flight time, and night flight time, as applicable; and flight instruction time, including areas of operational experience. Additionally, these recommendations encourage a licensing authority to determine whether experience as a pilot in other categories of aircraft or under instruction in an FSTD are acceptable in obtaining a powered-lift category rating. The FAA acknowledges these recommendations and has proposed regulations in this SFAR, as explained in this preamble, that the FAA has determined will ensure a sufficient level of safety, while considering such recommendations. Should these ICAO recommendations become standards in the future, the FAA will undertake measures to align with ICAO standards as a Member State as practicable.

The FAA also notes that ICAO sets forth recommended transitional measures to ensure Member States have adequate time to implement pilot licensing requirements for powered-lift. Specifically, in the transitional measures, section 2.1.1.4 states that a licensing authority may endorse a type rating for a powered-lift category on an existing airplane or helicopter pilot license (*i.e.,* certificate). Should a licensing authority implement this endorsement, the endorsement must indicate the aircraft is part of the powered-lift category and must result from training during a course of approved training. Additionally, the training must consider previous experience in an airplane or helicopter, as appropriate, and incorporate all relevant operational aspects of a powered-lift. The FAA is not implementing this permissive transitional measure; rather, through this SFAR, the FAA is facilitating alternative measures for a pilot to directly receive a powered-lift category rating and a powered-lift type rating instead of adding an endorsement for the type rating to an existing airplane or helicopter certificate. However, as discussed in this preamble, these alternative measures to receive a powered-lift category and type rating would be completed during a course of approved training (*i.e.,* part 135, 141, or 142) and would take previous experience of an applicant in an airplane or helicopter into account, as appropriate.[496]

B. Operations of Aircraft

Under the Chicago Convention, flights operating in international airspace over the high seas must also follow the international standards set forth in ICAO Annex 2.[497] ICAO Annex 2 contains the standards applicable to the flight and maneuver of civil aircraft operating over the high seas and over national territories to the extent that they do not conflict with the rules of the State over which they are flying.[498] ICAO Annex 2 was incorporated by reference into § 91.703, effective August 18, 1990,[499] and is also cited in § 135.3.

U.S. operators intending to operate powered-lift over the high seas must comply with the applicable requirements of ICAO Annex 2. While in foreign airspace, operators must follow the rules and regulations of those countries as specified in § 91.703 or § 135.3 and ICAO Annex 2. Though Annex 2 is silent on powered-lift, its standards are applicable to ''aircraft.'' Annex 2 defines aircraft as ''any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface.'' [500] Given Annex 2's general application to aircraft, U.S. operators would be able to conduct their operations over the high seas so long as the PIC is operating in accordance with the Rules of the Air in Annex 2. However, U.S. air carriers seeking to operate powered-lift in foreign airspace must follow the rules and regulations of those states.

Section 129.5(b) of title 14 requires foreign air carriers conducting operations in the U.S. to conduct their operations in accordance with the Standards in Annex 1 (Personnel Licensing); Annex 6 (Operation of Aircraft); part I (International Commercial Air Transport—Aeroplanes) or part III (International Operations—Helicopters), as appropriate; and in accordance with Annex 8 (Airworthiness of Aircraft) to the Convention on International Civil Aviation. To ensure an adequate level of safety for part 129 operators, the FAA issues operations specifications to identify restrictions, limitations, and U.S. airspace requirements, including navigation differences. Annex 6 currently does not contain standards for powered-lift operations, consequently restricting the FAA's ability to propose any changes to part 129 for foreign air carriers seeking to operate in the U.S.[501]

C. Airworthiness of Aircraft

Annex 8 does not address powered-lift airworthiness standards. Because ICAO has declared Annex 8 as constituting the minimum standards for the purpose of Article 33 of the Chicago Convention, it is not clear whether the lack of ICAO standards would result in States not recognizing another State's airworthiness certificate for a powered-lift since no minimum international standards have been established. No

[491] Annex 1 to the Convention on the International Civil Aviation, Personnel Licensing, General rules concerning licenses, 1.2 (Jul. 2022).

[492] Annex 1 defines Standards, in pertinent part, as specifications that are recognized a necessary for the safety or regularity of international air navigation and to which Contracting States will conform in accordance with the Convention.

[493] Annex 1 to the Convention on the International Civil Aviation, Personnel Licensing, Circumstances in which class and type ratings are required, section 2.1.1.4 (Jul. 2022).

[494] Annex 1 defines Recommended Practices, in pertinent part, as any specification of which the uniform application is recognized as desirable in the interest of safety, regularity, or efficiency of international air navigation, and to which Contracting States will endeavor to conform in accordance with the Convention.

[495] Annex 1, sections 2.3.5, 2.4.5, 2.6.5.

[496] For more information on how the FAA will consider previous aeronautical experience for powered-lift pilots, see section V.A.

[497] Incorporation by Reference (IBR) of ICAO and Annex (Updates Existing IBR; Removal of North Atlantic (NAT) Minimum Navigation Performance Specifications (MNPS).

[498] Id.

[499] Revision of General Operating and Flight Rules, 54 FR 34320 (Aug. 18, 1989).

[500] Annex 2 to the Convention on International Civil Aviation, Rules of the Air, Definitions, 1–2 (Jul. 2005).

[501] Operations specifications, 14 CFR 129.5(b).

revision of ICAO Annex 8 design standards for powered-lift has been initiated by ICAO. ICAO Document 10103, Guidance on the Implementation of ICAO Standards and Recommended Practices for Tilt-rotors, sets forth basic guidance relative to large turbine-powered tilt-rotors (a kind of powered-lift); however, this document does not address electric-powered tilt-rotors or other types of powered-lift.

Under § 21.17(b), the FAA designates powered-lift as special class aircraft for type certification and applies airworthiness criteria that meet an equivalent level of safety to the existing airworthiness standards.[502] In addition, these special class aircraft are eligible for a standard airworthiness certificate under § 21.183. As such, the FAA intends to apply airworthiness criteria for powered-lift under § 21.17(b) that comply with the intent of ICAO Annex 8 to the Chicago Convention since design standards for these aircraft have not yet been developed.

IX. 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 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. The FAA has provided a detailed Regulatory Impact Analysis (RIA) in the docket for this rulemaking. 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 proposed rule: (1) will result in benefits that justify costs; (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) will not create unnecessary obstacles to the foreign commerce of the United States; and (4) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Data and Assumptions

This Special Federal Aviation Regulation proposes alternate eligibility requirements to safely certificate initial groups of powered-lift pilots, as well as determine which operating rules to apply to powered-lift on a temporary basis to enable the FAA to gather additional information and determine the most appropriate permanent rulemaking path for these aircraft. The analysis for the regulatory evaluation is based on the following assumptions and data sources.

- The FAA uses a 10-year time period of analysis.[503] The analysis uses 2022 constant dollars. Year 1 of the period of analysis, which would correlate with the effective date of the proposed rule, is used as the base year.
- The analysis provides a range of costs from low to high. The FAA considers the primary estimate of net impacts of the rule to be the base scenario.
- It is estimated that it would cost an individual approximately $22,124 to accomplish the training and testing required for a type rating.[504] The FAA believes that in many circumstances, this training and testing would be at the expense of an operator using powered-lift in its operations.
- Operational rules under parts 43, 91, 97, 135, and 136 that are applicable to aircraft continue to be applicable to powered-lift because powered-lift meet the definition of an aircraft in § 1.1. Otherwise, the more conservative airplane specific operational rules will apply to powered-lift, with limited exceptions.
- The FAA uses a three percent and seven percent discount rate to quantify present value costs and cost savings as prescribed by OMB in Circular A–4. The pilot forecast below were used to estimate costs of the proposed SFAR.[505]

B. Summary of the Regulatory Impact Analysis

The powered-lift currently undergoing the type certification process are comparatively different compared to the powered-lift proposed during the 1990's. Currently, manufacturers are proposing aircraft and operations that were not conceptualized in the 1997 rulemaking that introduced the powered-lift category of aircraft into the airmen certification rules. When these rules were introduced, it was the FAA intention to initiate further rulemakings to develop operational rules for powered-lift. However, these intentions never came to fruition.

If powered-lift were available for civil operations today, they would not be subject to operating rules that are specific to an aircraft category or class. Instead, the only rules that would apply are the part 91 rules that are specific to ''aircraft.'' Through this SFAR, the FAA seeks to provide operating rules applicable to powered-lift and to provide a pathway for pilots to obtain powered-lift ratings through alternate aeronautical experience requirements and expanded logging provisions. The regulatory evaluation portion of this SFAR evaluates the economic impact of the proposed amendments.

The table below presents the regulations proposed by this rule on an amendment-by-amendment basis. The first column of the table identifies the affected part; the second column identifies the section and/or paragraph being amended; and the last column identifies the impact of the proposed change. The table is designed to quickly inform the reader of the proposed change and its resulting impact. Amendments with little to no impact are excluded from the table.

[502] For more information on the certification of powered-lift, see section IV.A.

[503] In addition, the FAA acknowledges uncertainty in estimating incremental impacts of this proposed rule since the FAA has yet to type certificate a powered-lift.

[504] The estimated cost for this provision is detailed in the regulatory impact analysis prepared for this SFAR.

[505] OMB Circular A–4, Regulatory Analysis (2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf.*

TABLE 11—SFAR—PROPOSED AMENDMENTS

Section	Proposed amendment	Impact
Part 43—*Maintenance, Preventive Maintenance, Rebuilding, & Alterations*.	§ 43.3(h) *Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations*.	Provides relief to operators of powered-lift on a scale that is equivalent to the relief provided to operators of rotorcraft.
	§ 43.15(b) *Additional performance rules for inspections*	Imposes a regulatory burden on operators conducting powered-lift operations on a scale no greater than that imposed on like operators conducting operations with rotorcraft.
Part 91—*General Operating and Flight Rules*.	§ 91.9(a)(b) *Civil aircraft flight manual* ..... § 91.103(b)(1) *Preflight action.* § 91.109 *Flight instruction; Simulated instrument flight.* § 91.151 *Fuel requirements for flight in VFR conditions.* § 91.167 *Fuel requirements for flight in IFR conditions.* § 91.205(b)(11) *Anti-collision lights.* § 91.205(b)(14) *Shoulder harness, restraint system.* § 91.207 *Emergency locator transmitters.* § 91.215 *ATC transponder and altitude reporting equipment and use.* § 91.219 *Altitude alerting system or device.* § 91.223 *Terrain awareness and warning.* § 91.313 *Shoulder harness, restraint system.* § 91.409 *Inspection programs.* § 91.411 *Altimeter system and altitude reporting.* § 91.501 *Applicability.* § 91.503 *Flying equipment and operating information.* § 91.505 *Aircraft flight manual.* § 91.507 *Equipment required for over-the-top or night VFR ops.* § 91.509 *Survival equipment.* § 91.511 *Communications and navigation.* § 91.513 *Emergency equipment.* § 91.517 *Passenger information, seatbelts/non-smoking.* § 91.519 *Oral briefing.* § 91.521 *Safety equipment requirements.* § 91.523 *Requirements for storage of carry-on baggage.* § 91.525 *Requirements for storage of cargo.* § 91.527 *Requirements for operating in icing conditions.* § 91.529 *Flight engineer requirements.* § 91.531 *Second-in-command requirements.* § 91.533 *Flight attendant requirements.* § 91.603 *Aural speed warning device.* § 91.605 *Transport category civil airplane weight limitations.* § 91.609 *Flight data recorders and cockpit voice recorders.* § 91.613 *Materials for compartment interiors.* § 91.1041 *Proving and validation tests.* § 91.1045 *HTAWS and thunderstorm detection equipment.* § 91.1065 *Initial and recurrent pilot testing requirements.*	Imposes costs on operators of powered-lift on a scale equivalent to costs imposed on operators of airplanes or rotorcraft.
Part 91—*General Operating and Flight Rules*.	§ 91.107(a)(3) *Use of restraint systems* § 91.205(d)(3) *U.S. airworthiness certificates: Instrument and equipment requirements.* § 91.213 *Inoperative instruments and equipment.*	Provides relief to operators of powered-lift on a scale equivalent to the relief provided to operators of airplanes or rotorcraft.
Part 91—*General Operating and Flight Rules*.	§ 91.113(d)(2) and (3) *Right-of-way rules* ..... § 91.126(b)(1) and (2) *Operating in Class G: Direction of turns.* § 91.129 *Operations in Class D airspace—approaches.* § 91.131 *Operations in Class B airspace.* § 91.155 *Basic VFR weather minimums.* § 91.157 *Special VFR weather minimums.* § 91.169 *IFR flight plan: Information required.* § 91.175 *Takeoff and landing under IFR.* § 91.515 *Rules for appropriate flight altitudes.* § 91.611 *Authorization for ferry flight with one engine—not allowed by SFAR.* § 91.1037 *Limitations; destination and alternate airports.* § 91.1039 *IFR takeoff, approach and landing minimums.* § 91.1055 *Pilot operating limitations and pairing requirement.*	Imposes costs on operators of powered-lift on a scale equivalent to costs imposed on operators of airplanes or rotorcraft.

TABLE 11—SFAR—PROPOSED AMENDMENTS—Continued

Section	Proposed amendment	Impact
Part 91	§ 91.126(c) *Operating in Class G airspace—flap settings* § 91.129 *Operations in Class D airspace—minimum altitudes.* § 91.129 *Operations in Class D airspace—departures.* § 91.129 *Operations in Class D airspace—noise abatement.*	Imposes a regulatory burden on operators conducting powered-lift operations on a scale no greater than that imposed on like operators conducting operations with airplanes or rotorcraft.
Part 97—*Standard Instrument Procedures.*	§ 97.3. *Copter procedures*	Enabling.
Part 135—*Operating Requirements Commuter and On-Demand Operations and Rules Governing Persons on Board Such Aircraft.*	§ 135.4 *Applicability of rules for eligible on-demand operations* § 135.23(r)(7) *Manual contents.* § 135.93 *Minimum altitudes for use of autopilot.* § 135.100 *Flight crewmember cuties.* § 135.159(a)(2)(3) *Helicopter exceptions are not allowed.* § 135.181 *Aircraft operated over-the-top or in IFR conditions.* § 135.183 *Land aircraft operated over water.* § 135.203 *VFR: Minimum altitudes.* § 135.205 *VFR: Visibility requirements.* § 135.207 *VFR: Helicopter surface reference requirements.* § 135.221 *Alternate airport weather minimums.* § 135.361 *Applicability.* § 135.363 *General.* § 135.379 *Large transport category airplanes. Turbine engine powered: Takeoff limitations.* § 135.381 *Large transport category airplanes. Turbine engine powered: En-route limitations: One engine inoperative.* § 135.383 *Large transport category airplanes. Turbine engine powered: En-route limitations: Two engines inoperative.* § 135.385 *Large transport category airplanes. Turbine engine powered: En-route limitations: Landing limitations.* § 135.387 *Large transport category airplanes. Turbine engine powered: En-route limitations: Landing limitations: Alternate airports.* § 135.389 *Large non-transport category airplanes: Takeoff limitations.* § 135.391 *Large non-transport category airplanes. En-route limitations: One engine inoperative.* § 135.393 *Large non-transport category airplanes. Landing limitations: En-route limitations: Destination airports.* § 135.395 *Large non-transport category airplanes. Landing limitations: En-rout limitations: Alternate airports.* § 135.397 *Small transport category airplanes performance operating limitations.* § 135.399 *Small transport category airplanes performance.*	Imposes a regulatory burden on operators conducting powered-lift operations on a scale no greater than that imposed on like operators conducting operations with airplanes or rotorcraft.
Part 135—*Operating Requirements Commuter and On-Demand Operations and Rules Governing Persons on Board Such Aircraft.*	§ 135.1(a)(9) *Conducting operations in accordance with subpart L (Helicopter Air Ambulance Equipment, Operations, and Training Requirements).* § 135.117(a)(9) *Briefing of passengers before flight.* § 135.145 *Aircraft proving and validation tests.* § 135.150 *Public address and crewmember interphone systems.* § 135.151 *Cockpit voice Recorders.* § 135.152 *Flight data recorders.* § 135.154 *Terrain awareness warning systems.* § 135.158 *Pitot heat indication systems.* § 135.160 *Radio altimeters for rotorcraft operations.* § 135.165 *Communication and navigation equipment.* § 135.168 *Emergency equipment.* § 135.169 *Additional airworthiness requirements.* § 135.170 *Materials for compartment interiors.* § 135.173 *Airborne thunderstorm equipment requirements.* § 135.178 *Additional emergency equipment.* § 135.180 *Traffic alert and collision avoidance system.* § 135.209 *VFR: Fuel supply.* § 135.223 *IFR: Alternate airport requirements.* § 135.227 *Icing conditions: Operating limitations.* § 135.271 *Helicopter hospital emergency medical evacuation services (HEMES).*	Imposes costs on operators of powered-lift on a scale equivalent to costs imposed on operators of airplanes or rotorcraft.
Part 135—*Operating Requirements Commuter and On-Demand Operations and Rules Governing Persons on Board Such Aircraft.*	§ 135.128 *Use of safety belts, child restraint systems* § 135.159(a)(1) *Gyroscopic rate of turn indicator.* § 135.163(g) *Exception for helicopters is allowed.* § 135.229 *Airport requirements.* § 135.429(d) *Required inspection personnel.*	Provides flexibility or relief to operators of powered-lift on a scale equivalent to the flexibility or relief provided to operators of airplanes or rotorcraft.

TABLE 11—SFAR—PROPOSED AMENDMENTS—Continued

Section	Proposed amendment	Impact
Part 61—*Certification: Pilots, Flight Instructors, and Ground Instructors.*.	§ 61.31(a) *Type rating requirements, additional training, and authorization reqts.* § 61.109(e)(5) *Aeronautical experience.*	Imposes a regulatory burden on individuals seeking airmen certification in powered-lift on a scale no greater than that imposed on individuals accomplishing airmen certification in other aircraft categories.
Part 61—*Certification: Pilots, Flight Instructors, and Ground Instructors.*	Addressing: § 61.1(b) *Applicability and definitions: Cross-country time definition (paragraph (ii)).* § 61.3 *Reqt for certificates, ratings, and authorizations: Flt instructor certificate.* § 61.45 *Requirement for certificates, ratings, and authorizations: Practical tests:* *Required aircraft and equipment.* § 61.51 *Requirement for certificates, ratings, and authorizations: Pilot logbooks.* § 61.55 *Requirement for certificates, ratings, and authorizations: SIC.* § 61.63(d)(3) *Additional aircraft ratings (other than for ratings at the airline transport pilot certification level). Proposed eligibility requirements.* § 61.65 *Instrument rating requirements.* § 61.107 *Flight proficiency.* § 61.109(e)(2)(i), (e)(5)(ii) *Aeronautical experience.* § 61.127 *Flight proficiency (commercial pilots).* § 61.129 *Aeronautical experience: Alternate experience and logging reqts.* § 61.167 *Airline transport pilot privileges and limitations.* § 61.195 *Flight instructor limitations and qualifications.*	Relieving. No additional regulatory costs.
Part 61—*Certification: Pilots, Flight Instructors, and Ground Instructors.*	Addressing: § 61.64 *Use of a flight simulator and flight training device—SFAR—removes three of four available alternative requirements that enable a person to accomplish a practical test for a powered-lift type rating in a simulator.*	Imposes a regulatory burden on individuals accomplishing a powered-lift type rating in an FFS on a scale no greater than that imposed on individuals accomplishing a type rating in an FFS for airplanes or helicopters.
Part 135—*Operating Requirements Commuter and On-Demand Operations and Rules Governing Persons on Board Such Aircraft.*	*SFAR temporarily allow the completion of certain part 135 tests and checks to meet the flight proficiency requirements for the addition of a powered-lift category rating, an instrument-powered-lift rating, and powered-lift type rating to a commercial certificate.*	Relieving.
Part 135—*Operating Requirements Commuter and On-Demand Operations and Rules Governing Persons on Board Such Aircraft.*	§ 135.3 *Rules applicable to operations subject to this part—FAA proposes certificate holders comply with subpart Y of part 121 (Advanced Qualification Program (AQP)).* § 135.243 *Pilot in command qualifications.* § 135.244 *Operating experience.* § 135.245 *Second in command qualifications.* § 135.293 *Initial and recurrent pilot testing requirements.* § 135.297 *Pilot in command: Instrument proficiency check requirements.* § 135.340 *Initial and transition training and checking: Check airmen (aircraft), check airmen (simulator).* § 135.345(b)(6)(iv) *Pilots: Initial, transition, and upgrade ground training.*	Imposes costs on operators of powered-lift on a scale equivalent to costs imposed on operators of airplanes or rotorcraft.
Part 111—*Pilot Records Database*	§ 111.1 *Applicability*	Imposes costs on operators of powered-lift on a scale equivalent to costs imposed on operators of airplanes or rotorcraft.
Part 136—*Commercial Air Tours and National Parks Air Tour Management.*	§ 136.1 *Suitable landing area for helicopters* ..... § 136.9 *Life preservers for over water.* § 136.11(c) *Helicopter floats for over water.* § 136.13(a) *Helicopter performance plan and operations.* Appendix A *Special Operating Rules for Air Tour Operators in the State of Hawaii.*	Imposes costs on operators of powered-lift on the same scale as costs imposed on operators of airplanes or rotorcraft.
Part 141—*Flight Schools*	§ 141.35 *Chief instructor qualifications* ..... § 141.36 *Assistant chief instructor qualifications.* § 141.37 *Check instructor qualifications.*	Relieving—no additional regulatory costs.

TABLE 11—SFAR—PROPOSED AMENDMENTS—Continued

Section	Proposed amendment	Impact
Part 142—*Training Centers*	§ 142.47(a), (c) *Training center instructor eligibility requirements* § 142.53 *Training center instructor training and testing requirements*	Imposes a regulatory burden on part 142 training centers conducting powered-lift training on a scale no greater than that imposed on like training centers conducting training with airplanes or rotorcraft.
Part 142—*Training Centers*	§ 142.11 *Application for issuance or amendment*	Enabling. No additional regulatory costs unless a part 142 training center chooses conduct training with powered-lift flight simulators and flight training devices.
Part 142—*Training Centers*	§ 142.57 *Aircraft requirements*	Provides relief to part 142 training centers conducting powered-lift training on a scale equivalent to that provided to training centers conducting training with airplanes or rotorcraft.

1. Benefits Summary

Operations with powered-lift are anticipated to offer benefits over traditional airplanes and rotorcraft. A report published by the U.S. Government Accountability Office stated that many of these newer category of aircraft could be easier to design, simpler to construct, less complicated to maneuver, quieter to fly, and more economical to operate compared to traditional aircraft.[506] Many use cases for these aircraft are envisioned, and just a few are described below.

It is envisioned smaller versions of these aircraft may reduce congestion in urban areas by allowing for more efficient transportation of passengers compared to existing ground transportation methods. To do so, these aircraft would use vertiports located on top of buildings, at parking facilities, or in other open areas.[507] Such transportation could occur from a heliport or vertiport and then proceed at speeds and ranges similar to turboprops. Powered-lift could also be capable of transporting heavier loads at higher altitudes and faster cruise speeds than a traditional rotorcraft. Such capability may increase efficiency in transporting crew and material to remote locations such as offshore oilrigs. Other use cases may involve medical response, disaster relief, rescue operations, border patrol, and last-mile logistics.

This proposed rule is a step toward enabling the ecosystem for this industry to evolve. It applies the appropriate set of rules for a range of certificate-holder operations conducted with powered-lift, and for certification of the pilots that would fly them. It was deliberated with the intent of mitigating risk to the NAS while maintaining its current level of safety.

2. Costs Summary

While operators choosing to conduct operations with powered-lift would incur costs to comply with regulations proposed by this SFAR, these costs would be on a scale no greater than those incurred by operators choosing to conduct operations with airplanes or rotorcraft under similar regulations. Likewise, costs imposed on individuals that choose to accomplish the required training and testing required to hold an airman's certificate with a type rating in the powered-lift category would be on a scale no greater than those incurred by individuals accomplishing training and testing to hold an airman's certificate with a type rating in the airplane or rotorcraft category. In other words, the costs imposed on operators and individuals that choose to comply with regulations proposed by this rule would be no more burdensome than the costs incurred by entities and individuals complying with corresponding airplane and rotorcraft regulations that are already in effect.

However, to address the significant operational differences between each powered-lift, the FAA is proposing to require the PIC of a powered-lift to hold a type rating for the aircraft flown. The FAA has determined that requiring persons to hold type ratings for powered-lift would establish the appropriate level of safety than would be established by only holding a powered-lift category rating by ensuring persons receive adequate training and are tested on the unique design and operating characteristics of each powered-lift.

The following table presents a summary of the primary estimates of the quantified costs of this rule, as well as estimates for the pessimistic and optimistic scenarios. This analysis provides a range of costs from low to high based on these scenarios. The FAA considers the primary estimate of costs to be the base scenario. For the primary estimate, over a 10-year period of analysis this rule would result in present value costs of approximately $30.5 million at a three percent discount rate with annualized net costs of approximately $3.6 million. At a seven percent discount rate, the present value costs are approximately $24.1 million with annualized costs of $3.4 million.

[506] Transforming Aviation: Stakeholders Identified Issues to Address for 'Advanced Air Mobility' | U.S. GAO.

[507] Vertiport Assessment and Mobility Operations System (VAMOS!) | T2 Portal (*nasa.gov*) A vertiport refers to a physical structure for the departure, arrival, and parking/storage of advanced air mobility vehicles. Evaluation factors for vertiports include zoning, land use, transit stations, fire stations, noise, and time-varying factors like congestion and demand.

TABLE 12—QUANTIFIED COSTS OF PROPOSED SFAR

[Millions$] *

Forecast scenario	10-Year present value (3%)	Annualized (3%)	10-Year present value (7%)	Annualized (7%)
Base—Primary Estimate	$30.5	$3.6	$24.1	$3.4
Pessimistic	27.4	3.2	21.0	3.0
Optimistic	33.7	4.0	27.3	3.9

* Table notes: Columns may not sum to total due to rounding. Estimates are provided at three and seven percent discount rates per Office of Management and Budget (OMB) guidance.

Please see the regulatory impact analysis for this SFAR available in the docket for more details.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) and the Small Business Jobs Act of 2010 (Pub. L. 111–240), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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 FAA is publishing this Initial Regulatory Flexibility Analysis (IRFA) to aid the public in commenting on the potential impacts to small entities from this proposal. The FAA invites interested parties to submit data and information regarding the potential economic impact that would result from the proposal. The FAA will consider comments when making a determination or when completing a Final Regulatory Flexibility Assessment.

An IRFA must contain the following:

(1) A description of the reasons why the action by the FAA is being considered;

(2) A succinct statement of the objective of, and legal basis for, the proposed rule;

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

(6) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

(1) A description of the reasons why the action by the FAA is being considered;

This proposed rule would establish the requirements for the certification and operation of powered-lift. Powered-lift is defined in 14 CFR part 1 as a heavier-than-air aircraft capable of vertical takeoff, vertical landing, and low speed flight that depends principally on engine-driven lift devices or engine thrust for lift during these flight regimes and on nonrotating airfoil(s) for lift during horizontal flight.

The powered-lift that are coming to the civilian market have complex and unique design, flight, and handling characteristics with varying degrees of automation. To add to the challenges, the FAA does not anticipate that the initial powered-lift that obtain type certification will be broadly available for basic airman certification and training at the private pilot level. Rather, manufacturers intend to produce powered-lift for commercial purposes, meaning the initial pilots will be required to hold at least commercial pilot certificates to act as required flightcrew members (i.e., PIC or SIC) for compensation or hire.

The FAA lacks sufficient information at this time regarding emerging operations to implement permanent regulations. The FAA has found the use of an SFAR has been an effective way to gain such experience while enabling some degree of operations. The SFAR will establish a regulatory structure that leverages existing rules, removes operational barriers, and mitigates safety risks for powered-lift. Utilizing the SFAR will allow the FAA to observe operations and subsequently make any requisite safety improvements in a later permanent change to the regulations.

(2) A succinct statement of the objective of, and legal basis for, the proposed rule.

Statement of the legal basis. Through this rulemaking, the FAA will make both permanent and temporary changes to parts 61 and 135 to train and certify powered-lift pilots.

Further, the FAA would enable powered-lift operations under parts 43, 91, 97, 135, and 136 through the SFAR. The FAA is issuing this proposal under the authority described in Title 49 of the United States Code, Subtitle VII, Part A, Subpart i, Section 40113, Administrative, and Subpart iii, Section 44701, General Requirements; Section 44702, Issuance of Certificates; Section 44703, Airman Certificates; Section 44704, Type Certificates, Production Certificates, Airworthiness Certificates, and Design and Production Organization Certificates; Section 44705, Air Carrier Operating Certificates; and Section 44707, Examination and Rating of Air Agencies. Under these sections, the FAA prescribes regulations and minimum standards for practices, methods, and procedures necessary for safety in air commerce, including the authority to examine and rate civilian schools and prescribe regulations to ensure the competency of instructors. The FAA is also authorized under these sections to issue certificates, including airman certificates, type certificates, and air carrier operating certificates, in the interest of safety.

This rulemaking is also proposed under the authority described in Subtitle VII, Part A, Subpart iii, Section 44712, Emergency Locator Transmitters; Section 44713, Inspection and Maintenance; 44715, Noise and Sonic Boom; 44716, Collision Avoidance Systems; and 44722, Winter conditions. These sections direct the Administrator to prescribe regulations to govern the use of emergency locator transmitters and collision avoidance systems, the standards for inspecting and performing maintenance on aircraft, and regulations to control aircraft noise and safety risks related to winter conditions. Lastly, this

proposed rulemaking derives authority from Section 44730, Helicopter Air Ambulance Operations, which directs the Administrator to prescribe regulations governing the safety of helicopter air ambulance operations. This proposed rulemaking is issued under the authority described in each of the above sections.

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

The proposed rule would affect operators of powered-lift under parts 91, 135, and 136, as well as part 141 flight schools and part 142 training centers. Part 91 operators conduct operations for non-commercial purposes while part 135 operators conduct on-demand operations, which may include a limited number of scheduled operations, or commuter operations, which allow an unlimited number of scheduled operations as well as on-demand operations.[508] There are specific limitations associated with these operations depending on whether they are on-demand or commuter. These limitations include the number of passenger seats installed on the aircraft, maximum payload limits, and whether turbo-jet aircraft can be used in the operation. Part 136 operators conduct commercial air tours.

There are five North American Industry Classification System (NAICS) codes for air transportation services based on by type of activity conducted. Four of these codes identify a small entity as one with 1,500 or fewer employees. The exception is NAICS code 481219, which includes ''other nonscheduled air transportation.'' Entities falling within this code are identified as small if revenues are $22 million or less.[509] At the time of this proposed rule, there were approximately 1,700 part 135 operators, and 900 part 91 operators. A vast majority of these operators are small and the FAA does not anticipate that they will be impacted by this rule. Due to this being an emerging market, the number of entities that will be impacted by this rule is uncertain.

Flight training is available through part 141 flight schools or part 142 flight centers. Part 141 flight schools train with actual aircraft while part 142 flight centers train with flight simulators. The FAA notes that NAICS code for flight training is in Sector 61—Education Services. Specifically, flight training schools are identified by code 611512. The Small Business Administration identifies entities in this code as small based on revenues of $30 million or less.

There are currently 525 part 141 flight schools and 45 part 142 training centers. FAA conducted research on the internet to determine revenues for these entities. While some of the part 141 flight schools are part of a curriculum offered at an institution of higher learning, most appear to be private entities, and thus revenues were not publicly available. Of the 45 part 142 training centers, 10 have revenues greater than $30 million and 22 were identified as having revenues less than $30 million. Revenue information for the remaining 13 part 142 training centers was not readily available. Based on this information, it is believed that a majority of flight schools under parts 141 and 142 are small entities.

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The FAA prescribes regulations and minimum standards for practices, methods, and procedures necessary for safety in air commerce, including airman certificates, type certificates, and air carrier operating certificates, and the authority to examine and rate civilian schools and prescribe regulations to ensure the competency of instructors. Powered-lift manufacturers, air carriers, pilots, and instructors have important roles in the development of this sector of the aviation industry. The reporting and recordkeeping requirements imposed by this SFAR currently exist for manufacturers and operators of airplanes and rotorcraft. These requirements will now be applicable to those same entities that choose to operate powered-lift. These requirements are described below.

First, each operator which seeks to obtain, or is in possession of, an air carrier or FAA operating certificate is mandated to comply with the requirements of part 135 to determine if the carrier is operating in accordance with minimum safety standards. This burden results in reporting, recordkeeping, and disclosure requirements. All reporting provisions and approval processes can be accomplished electronically, including operations and maintenance manuals, crewmember and aircraft dispatcher records, maintenance records, and minimum equipment lists. However, certain documents, such as passenger briefing cards, must be available in paper form for safety reasons. The burden imposed on operators by this reporting requirement is proportionate to the size of its operation.[510]

Next, repair stations certificated under part 145 and air taxi operators certificated under part 135 are required to submit Malfunction or Defect Reports, or Service Difficulty Reports. This data identifies mechanical failures, malfunctions, and defects that may be a hazard to the operation of an aircraft. When defects are reported that are likely to exist on other products of the same or similar design, the FAA may disseminate safety information to a particular section of the aviation community. These reports are submitted occasionally. The submission of information for this requirement is accomplished electronically. The FAA has found that this submission of data does not have a significant impact on a substantial number of small businesses.

Lastly, the *Application for Pilot School Certification* is necessary for the FAA to collect information to ensure flight schools will meet the minimum acceptable training standards as prescribed by part 141. The FAA approves course curricula, training facilities, the chief instructor and any assistant chief instructors, if applicable, for each course, and ensures oversight of flight instructors that provide training under part 141. Completion of the required items is of minimal burden to the respondent due to the simplistic format of the document. The FAA notes that flight training schools are contained within Sector 61, Education Services, of the NAICS code. Specifically, flight training schools are identified by code 611512. The Small Business Administration identifies entities in this code as small based on revenues of $30 million or less. There are currently 525 part 141 flight schools. The FAA is unsure what portion of these schools qualify as small using SBA criteria. While some of the part 141 flight schools are part of a curriculum offered at an institution of higher learning, most appear to be private entities.

[508] *https://www.faa.gov/licenses_certificates/airline_certification/135_certification/general_info.*

[509] NAICS code 481111—Scheduled Passenger Air Transportation; 481112—Scheduled Freight Air Transportation; 481211—Nonscheduled Passenger Air Transportation; 481212—Nonscheduled Freight Air Transportation; 481219—Other Nonscheduled Air Transportation.

[510] For example, single pilot operations are not required to prepare an operations manual or training program which significantly reduces the burden. The number of records and required reports are proportional to the number of pilots and aircraft used by the operator. Further, in several cases, such as for passenger briefings or aircraft checklists, commercially produced products are available from the aircraft manufacturer.

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

The FAA is unaware that the proposed rule will overlap, duplicate, or conflict with existing Federal rules.

(6) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

The FAA considered engaging in permanent rulemaking to address the introduction of powered-lift in civilian operations. However, the FAA lacks sufficient information at this time regarding emerging operations to implement permanent regulations. The FAA has found the use of an SFAR has been an effective way to gain such experience while enabling some degree of operations, therefore, the FAA find that the use of an SFAR is the most viable option at this time. Utilizing the SFAR will allow the FAA to observe operations and subsequently make any requisite safety improvements in a later permanent change to the regulations.

Another alternative considered for this SFAR included the number of years it would remain in effect. After contemplating several options, the FAA determined ten years to be an appropriate length of time. In selecting ten years as the appropriate duration for this SFAR, the FAA considered a number of factors including the time it will take to initiate operations after the adoption of this NPRM as a final rule considering the type certification status of the powered-lift that are commercially viable. The FAA also considered the appropriate length of time to collect operational data after operators initiate commercially viable operations, and then the time necessary to complete a subsequent rulemaking to propose and implement permanent regulations.

D. 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 proposed rule and determined that it ensures the safety of the American public and does not exclude imports that meet this objective. As a result, the FAA does not consider this rule as creating an unnecessary obstacle to foreign commerce.

E. 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 the proposed rule will not result in the expenditure of $165 million or more by State, local, or tribal governments, in the aggregate, or the private sector, in any one year.

F. 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. 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.

This action contains the following proposed amendments to the existing information collection requirements previously approved under OMB Control Numbers 2120–0039, –0600, –0663, –0009, and –0021. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection amendments to OMB for its review.

1. Revision of Existing Information Collection 2120–0039: Operating Requirements: Commuter and On-Demand Operation [511]

Abstract: Each operator which seeks to obtain, or is in possession of, an air carrier or FAA operating certificate is mandated to comply with the requirements of part 135 in order to maintain data which is used to determine if the carrier is operating in accordance with minimum safety standards. Air carrier and commercial operator certification is completed in accordance with part 119. Part 135 contains operations and maintenance requirements. The burden associated with part 135 is associated with reporting, recordkeeping and disclosure.

The FAA has estimated the increase in the existing burden for this collection based on four part 119 certificate holders beginning powered-lift operations by the end of the third year following finalization of this proposed rule. Note that not all information collection requirements are proposed to have a burden increase as a result of the proposed revisions to this information collection.

TABLE 13—THREE-YEAR INCREMENTAL BURDEN FOR 2120–0039 OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

Section	Section title	Number of respondents	Number of responses	Total responses	Hours-jobcat (1)	Hours-jobcat (2)	Hours-jobcat (3)	Hours-jobcat (4)	Hours-jobcat (5)	Total burden (hours)	Total burden (cost)
135.21	Manual requirements ..	4	5	20	0.5	.....	2.0	.....	.....	50.0	$2,097
135.63	Recordkeeping requirements-aircraft available for use.	2	2	4	.....	.....	1.0	.....	.....	4.0	185
	Pilot records	173	4	692	0.1	.....	.....	.....	.....	69.2	1,696

[511] Official FAA forecasts related to the operation of powered-lift in the NAS have yet to be developed. Thus, forecasts for operators of part 135 aircraft and fleet were prepared solely for the purpose of estimating the cost of the information collections affiliated with this proposed rule, and developed using publicly available data related to orders and options for powered-lift Using the fleet forecast and an assumption for utilization (*i.e.* hours flown), forecasts for airmen and departures were also developed to estimate incremental costs of the paperwork burden.

TABLE 13—THREE-YEAR INCREMENTAL BURDEN FOR 2120–0039 OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS—Continued

Section	Section title	Number of respondents	Number of responses	Total responses	Hours-jobcat (1)	Hours-jobcat (2)	Hours-jobcat (3)	Hours-jobcat (4)	Hours-jobcat (5)	Total burden (hours)	Total burden (cost)
	Pilot flight & duty	173	200	34,600	0.1					3,460.0	84,805
	Load manifest	292,273	1	292,273	0.1					29,227.3	716,360
135.64	Retention of contracts and amendments written.	6	13	78		0.5				39.0	1,514
	Retention of contracts and amendments oral.	6	2	12	0.5					6.0	147
135.65	Reporting manual irregularities.	6	75	450					0.3	112.5	7,611
135.79	Flight locating requirements.	2	1	2			0.5			1.0	46
135.117	Briefing of passengers before flight.	292,273	1	292,273					0.03	8,768.2	593,167
135.179	Inoperable instruments and equipment.	6	1	6	3.0		20.0			138.0	5,996
135.227	Icing limitations	6	1	6	5.0		20.0			150.0	6,290
135.325	Training program and revision.	6	1	6	5.0		15.0			120.0	4,901
135.415	Mechanical reliability reports.	131	1	131				1.0		131.0	6,119
135.417	Mechanical interruption summary report.	6	12	72				1.0		72.0	3,363
135.419	Approved aircraft inspection program.	6	1	6	0.5			1.0		9.0	649
135.431	Continuing analysis and surveillance.	6	1	6				70.0		420.0	35,967
	Incremental burden									42,777.2	1,454,270

Note: Row and column totals may not sum due to rounding.

2. Revision of Existing Information Collection 2120–0600: Training and Qualification Requirements for Check Airmen and Flight Instructors [512]

Abstract: The reporting requirements are to ensure the check pilots and instructors are adequately trained and checked/evaluated to ensure they are capable and competent to perform the duties and responsibilities required by the air carrier to meet the regulations. Experienced pilots who would otherwise qualify as flight instructors or check airmen, but who are not medically eligible to hold the requisite medical certificate are mandated to keep records that may be inspected by the FAA to certify eligibility to perform flight instructor or check airmen functions. This information is inspected on occasion and will be used by the FAA to determine and to assure that check airmen and instructors maintain the high qualification standards (training and experience) required to perform their safety functions.

The FAA has estimated the increase in the existing burden for this collection based on the percentage of instructors that are not medically eligible to hold the requisite medical certificate and are mandated to keep records that may be inspected by the FAA to certify eligibility to perform flight instructor or check airmen functions. The table below shows the incremental burden by the end of the third year following finalization of the proposed rule for this recordkeeping requirement.

TABLE 14—THREE-YEAR BURDEN ESTIMATE FOR INFORMATION COLLECTION 2120–0600 [513] TRAINING AND QUALIFICATION REQUIREMENTS FOR CHECK AIRMEN AND FLIGHT INSTRUCTORS

	Total burden
Respondents	66
Responses per Respondent	1
Time per Response—15 seconds (in minutes)	0.25
Total Incremental Time (in minutes)	16.44
Total Incremental Time (in hours)	0.27
Cost per Hour (Check Airman Wage plus Benefits—per Hour)	$87.63
Total Incremental Cost	$24.54

Note: Row and column totals may not sum due to rounding.

[512] Official FAA forecasts related to the operation of powered-lift in the NAS have yet to be developed. Thus, forecasts for operators of part 135 aircraft and fleet were prepared solely for the purpose of estimating the cost of the information collections affiliated with this proposed rule and developed using publicly available data related to orders and options for powered-lift. FAA notes that none of the orders for the multitude of powered-lift models being developed are firm as of the time of this writing, with the exception of one model. Using the fleet forecast and an assumption for utilization (*i.e.* hours flown), forecasts for airmen and departures were also developed to estimate costs of the paperwork burden.

[513] The current collection identifies 15,925 respondents performing recordkeeping requirements. The 2021 Civil Airmen Statistics (source: *https://www.faa.gov/data_research/avia)tion_data_statistics/civil_airmen_statistics*) shows there are 121,270 active flight instructors, thus 13.1 percent of the flight instructor population (15,925 ÷ 121,270 = .131) perform this recordkeeping requirement. Additionally, FAA records show 251 active airmen holding a flight instructor certificate with a powered-lift rating; thus, it is estimated that 13.1 percent of these airmen are affected by the recordkeeping requirement (for a total of 32.9 airmen).

3. Revision of Existing Information Collection 2120–0663: Service Difficulty Report [514]

Abstract: Service Difficulty Reports (SDRs), may be used by the air carrier industry and repair stations to submit mandated reporting of occurrences or detection of failures, malfunctions, or defects and can be submitted in an electronic format. Repair stations certificated under part 145 and Air taxi operators certificated under part 135 are required to submit Malfunction or Defect Reports, or Service Difficulty Reports. Report information is collected and collated by the FAA and used to determine service performance of aeronautical products. When defects are reported which are likely to exist on other products of the same or similar design, the FAA may disseminate safety information to a particular section of the aviation community. The FAA also may adopt new regulations or issue Airworthiness Directives (ADs) to address a specific problem.[515] The regulations enhance air carrier safety by collecting additional and timelier data pertinent to critical aircraft components. This data identifies mechanical failures, malfunctions, and defects that may be a hazard to the operation of an aircraft. Reports are submitted on occasion.

The FAA has estimated the increase in the existing burden for this collection based on four part 119 certificate holders beginning powered lift operations under part 135 by the end of the third year following finalization of this proposed rule.

TABLE 15—THREE-YEAR BURDEN ESTIMATE FOR INFORMATION COLLECTION 2120–0063 SERVICE DIFFICULTY REPORT

Summary (three years)	Reporting	Recordkeeping	Disclosure
Number of Respondents	4		
Number of Responses per respondent	1		
Time per Response	0.667		
Total # of responses	4		
Total burden (hours)	2.7		
Total Burden (cost) [516]	$95.8		

Note: Row and column totals may not sum due to rounding.

4. Revision of Existing Information Collection 2120–0009: Application for Pilot School Certification

Abstract: This information is reported and recorded by 14 CFR part 141 certificated pilot schools seeking to maintain their Air Agency Certification. Uncertificated pilot schools seeking certification as a part 141 pilot school are also required by part 141 to report information to the FAA and keep specific records. Part 141 pilot schools train private, commercial, flight instructor, and ATPs, along with training for associated ratings in various types of aircraft. The information collected becomes a part of the FAA's official records and is only used by the FAA for certification, compliance, enforcement, and when accidents, incidents, reports of noncompliance, safety programs, or other circumstances requiring reference to records. The requirements of part 141 include reporting and recordkeeping. The FAA has estimated the increase in the existing burden for this collection based on one new applicant per year for part 141 certification and one renewal.

TABLE 16—THREE-YEAR BURDEN ESTIMATE FOR INFORMATION COLLECTION 2120–0009 [517] APPLICATION FOR PILOT SCHOOL CERTIFICATION

Section	Burden type	Time/response (hours)	Responses	Total time (hours)	Labor cost ($35.84/hr)
§ 141.13, Application	Reporting	0.5	4	2.0	$72
§ 141.53, Training course outline	Reporting	25.0	3	75.0	2,688
§ 141.63, Application for examining authority	Reporting	20.0	3	60.0	2,150
§ 141.87, Change of chief instructor	Reporting	0.1	3	0.3	11
§ 141.110, Training records	Recordkeeping	50	3	150	5,376
Total				136.8	10,297

Note: Row and column totals may not sum due to rounding.

[514] Official FAA forecasts related to the operation of powered-lift in the NAS have yet to be developed. Thus, forecasts for operators of part 135 aircraft and fleet were prepared solely for the purpose of estimating the cost of the information collections affiliated with this proposed rule, and developed using publicly available data related to orders and options for powered-lift. FAA notes that none of the orders for the multitude of powered-lift models being developed are firm as of the time of this writing, with the exception of one model. Using the fleet forecast and an assumption for fleet utilization (*i.e.* hours flown), forecasts for airmen and departures were also developed to estimate costs of the paperwork burden.

[515] ADs are mandatory repair or modifications essential for the prevention of accidents.

[516] Costs are based upon a private industry hourly wage of $25.18. The fully-burdened wage is $35.90 and includes employee compensation related to benefits that is estimated to be 30.0 percent of the fully-burdened wage. (Source: Bureau of Labor Statistics, Employer Costs for Employee Compensation. *https://www.bls.gov/news.release/pdf/ecec.pdf* by month)

[517] The FAA believes that the responses to this information collection will be performed by flight instructors and similar personnel at certificated pilot schools. The median hourly wage for these occupations is $27.38. The FAA multiplied this base hourly rate by 1.309, representing a load factor of 30.9%, and a fully loaded wage of $35.84.

5. Revision of Existing Information Collection 2120–0021: Airman Certificate and/or Rating Application

Abstract: The Airman certificate and/or Rating Application form and the required records, logbooks and statements required by part 61 are submitted to Federal Aviation Administration (FAA) Flight Standards District Offices or its representatives to determine qualifications of the applicant for issuance of a pilot or instructor certificate, or rating or authorization. If the information collection was not conducted, the FAA would be unable to issue the appropriate certificates and ratings. The information collected becomes a part of the FAA's official records and is only used by the FAA for certification, compliance, enforcement, and when accidents, incidents, reports of noncompliance, safety programs, or other circumstances requiring reference to records. The requirements of part 61 include reporting and recordkeeping.

TABLE 17—THREE-YEAR BURDEN ESTIMATE FOR INFORMATION COLLECTION 2120–0021 [518] AIRMAN CERTIFICATE AND/OR RATING APPLICATION

Section	Time per response (hours)	Responses	Reporting (hours)	Record-keeping (hours)	Total cost (15.40/hr)
61.13	0.10	89	8.9	.....	$137
61.39	0.05	89	4.5	.....	69
61.49	0.05	1	0.0	.....	0
61.51	1.00	23	.....	23.1	356
61.56(a)	0.10	23	2.3	.....	36
61.57	0.10	89	.....	8.9	137
61.87	0.05	89	.....	4.5	69
61.93	0.10	89	.....	8.9	137
61.185	0.10	15	.....	1.5	23
61.189	1.00	15	.....	15.0	231
61.197	0.10	15	1.5	.....	23
Totals	.....	537	17	62	1,217

The FAA is soliciting comments to—

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

(2) Evaluate the accuracy of the FAA's estimate of the burden;

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

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by August 14, 2023. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Office Building, Room 10202, 725 17th Street NW, Washington, DC 20053.

[518] To calculate the economic burden on respondents, the FAA uses an hourly rate of $15.40. This is an all-purpose travel-time rate, which is appropriate for this ICR because respondents represent a wide array of occupations, and are often performing their reporting or recordkeeping activities on their own time. The travel-time rate is derived from Department of Transportation guidance (*https://www.faa.gov/regulations_policies/policy_guidance/benefit_cost/*), modified by a Consumer Price Index for all Urban Consumers (CPI–U) value calculated by the Minneapolis Fed (*https://www.faa.gov/regulations_policies/policy_guidance/benefit_cost/*). The FAA is *not* applying a load factor for overhead or benefits, because, as noted, these activities are typically not performed as part of a respondent's job or occupation.

G. 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 reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences between the FAA's proposed regulations and the ICAO standards.

H. Environmental Analysis

In accordance with the provisions of regulations issued by the Council on Environmental Quality (40 CFR parts 1500 through 1508), 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 NPRM action qualifies for the categorical exclusion identified in paragraph 5–6.6.f of this order and involves no extraordinary circumstances.

In making this determination, the FAA also considered the recent technological advancement regarding fabrication of small and powerful electric motors, actuators, and advance control system technologies that manufacturers could apply in the design and development of new and novel aircraft that are different from the legacy conventional aircraft categories defined in current noise certification standards of 14 CFR part 36.

These diverse concept designs may require additional noise certification requirements that are tailored to these new aircraft types, instead of following the existing requirements for small propeller airplanes, jet transport airplanes, helicopters, or tiltrotor aircraft. The FAA will examine each application and determine whether existing part 36 requirements are appropriate as a noise certification basis. If not, FAA may require Rules of Particular Applicability (RPA) to establish the noise certification basis for these new aircraft designs.

This categorical exclusion finding applies only to this proposed rule. The FAA will initiate a separate review of any final rule.

I. Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying 14 CFR in a manner affecting

intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. Because this proposed rule would apply to operations of powered-lift that could occur throughout the territorial airspace of the United States, it could, if adopted, affect intrastate aviation in Alaska. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

X. Executive Order Determinations

A. Executive Order 14036, Promoting Competition in the United States Economy

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order (E.O.) 14036, Promoting Competition in the United States Economy. The FAA finds that this action would promote competition by enabling powered-lift to enter the market. The FAA anticipates that powered-lift would compete with surface transportation modes in congested intra-city areas for those passengers that want the benefits of convenient and shorter travel times compared to traditional intra-city travel modes that are currently available. Additionally, the integration of powered-lift into the NAS would foster competition between powered-lift, airplanes, and helicopters with respect to passenger-carrying operations and cargo operations, which would benefit American travelers, consumers, and businesses. By enabling the safe integration of powered-lift into the NAS, the proposed rule would facilitate innovations that foster United States market leadership and market entry to promote competition and economic opportunity and to resist monopolization, while also ensuring safety, promoting equity, and providing oversight of market participants.

B. Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order (E.O.) 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. Consistent with Executive Order 13985, the FAA has analyzed this proposed rule to assess whether, and to what extent, it may perpetuate systemic barriers to opportunities and benefits for underserved communities and their members. The FAA finds that the proposed rule to enable the certification of powered-lift pilots and safe powered-lift operations could advance equity for historically disadvantaged communities by expanding their access to goods and services. FAA seeks comment on how this emerging technology could promote equity, and what factors impacting equity, if any, FAA should consider as it enters the marketplace.

C. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order (E.O.) 13132, Federalism. The FAA has determined that this action would 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, would not have federalism implications. The FAA notes that States are already preempted from regulating aviation safety and the efficient use of airspace by aircraft.[519]

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

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,[520] and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,[521] 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.

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

The FAA analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The FAA has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

F. 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 E.O. 13609 and has determined that this action would have no effect on international regulatory cooperation.

XI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. 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.

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 *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.dot.gov/privacy.*

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[519] Congress has vested the FAA with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, pilot training and certification, and aircraft noise at its source. *See, e.g.,* 49 U.S.C. 40103, 44502, and 44701–44735.

[520] 65 FR 67249 (Nov. 6, 2000).

[521] FAA Order No. 1210.20 (Jan. 28, 2004), available at *http://www.faa.gov/documentLibrary/media/1210.pdf.*

B. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to 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 the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Electronic Access and Filing

A copy of this NPRM, all comments received, any final rule, and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this proposed 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 *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov.* A copy may also be found at the FAA's Regulations and Policies website at *https://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 proposed rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

D. 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

14 CFR Part 1

Air transportation.

14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 60

Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 61

Aircraft, Airmen, Aviation safety, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 91

Agriculture, Air carriers, Air taxis, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Charter flights, Freight, Reporting and recordkeeping requirements, Security measures, Transportation.

14 CFR Part 97

Air traffic control, Airports, Navigation (air), Weather.

14 CFR Part 111

Administrative practice and procedure, Air carriers, Air taxis, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 136

Air transportation, Aircraft, Aviation safety, National parks, Recreation and recreation areas, Reporting and recordkeeping requirements.

14 CFR Part 141

Airmen, Educational facilities, Reporting and recordkeeping requirements, Schools.

14 CFR Part 142

Airmen, Educational facilities, Reporting and recordkeeping requirements, Schools, Teachers.

14 CFR Part 194

Air carriers, Air taxis, Air traffic control, Air transportation, Aircraft, Airmen, Airports, Aviation safety, Charter flights, Freight, Incorporation by reference, Navigation (air), Recreation and recreation areas, Reporting and recordkeeping requirements, Teachers, Schools.

The Proposed Amendment

For the reasons discussed in the preamble, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

■ 2. Amend § 1.1 by revising the introductory text to read as follows:

§ 1.1 General definitions.

As used in this chapter, unless the context requires otherwise:

* * * * *

■ 3. Amend § 1.2 by revising the introductory text to read as follows:

§ 1.2 Abbreviations and symbols.

In this chapter:

* * * * *

■ 4. Amend § 1.3 by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 1.3 Rules of construction.

(a) In this chapter, unless the context requires otherwise:

* * * * *

(b) In this chapter, the word:

* * * * *

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

■ 5. The authority citation for part 43 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

■ 6. Amend § 43.1 by adding paragraph (e) to read as follows:

§ 43.1 Applicability.

* * * * *

(e) Additional applicability of maintenance provisions for powered-lift is set forth in part 194 of this chapter.

PART 60—FLIGHT SIMULATION TRAINING DEVICE INITIAL AND CONTINUING QUALIFICATION AND USE

■ 7. The authority citation for part 60 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, and 44701; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note).

■ 8. Amend § 60.1 by revising paragraph (a) to read as follows:

§ 60.1 Applicability.

(a) This part prescribes the rules governing the initial and continuing qualification and use of all aircraft flight simulation training devices (FSTD) used for meeting training, evaluation, or flight experience requirements of this chapter for flight crewmember certification or qualification. Additional requirements for FSTD representing powered-lift are set forth in part 194 of this chapter.

* * * * *

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 9. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 44729, 44903, 45102–45103, and 45301–45302; sec. 2307, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); and sec. 318, Pub. L. 115–254, 132 Stat. 3186 (49 U.S.C. 44703 note).

■ 10. In part 61, revise all references to ''cross-country flight time'' to read ''cross-country time''.

■ 11. Amend § 61.1 by:

■ a. Revising paragraph (a); and

■ b. In the definition of ''Cross-country time'' in paragraph (b), revising paragraph (i) introductory text.

The revision reads as follows:

§ 61.1 Applicability and definitions.

(a) Except as provided in parts 107 and 194 of this chapter, this part prescribes:

(1) The requirements for issuing pilot, flight instructor, and ground instructor certificates and ratings; the conditions under which those certificates and ratings are necessary; and the privileges and limitations of those certificates and ratings.

(2) The requirements for issuing pilot, flight instructor, and ground instructor authorizations; the conditions under which those authorizations are necessary; and the privileges and limitations of those authorizations.

(3) The requirements for issuing pilot, flight instructor, and ground instructor certificates and ratings for persons who have taken courses approved by the Administrator under other parts of this chapter.

(b) * * *

Cross-country time * * *

(i) Except as provided in paragraphs (ii) through (vii) of this definition, time acquired during flight—

* * * * *

■ 12. Amend § 61.3 by revising paragraphs (e)(1) and (2), (f)(2)(i) and (ii), and (g)(2)(i) and (ii) to read as follows:

§ 61.3 Requirement for certificates, ratings, and authorizations.

* * * * *

(e) * * *

(1) The appropriate aircraft category, class, type (if a class or type rating is required), and instrument rating on that person's pilot certificate for any airplane, helicopter, or powered-lift being flown;

(2) An airline transport pilot certificate with the appropriate aircraft category, class, and type rating (if a class or type rating is required) for the aircraft being flown;

* * * * *

(f) * * *

(2) * * *

(i) Holds a pilot certificate with category and class ratings (if a class rating is required) for that aircraft and an instrument rating for that category aircraft;

(ii) Holds an airline transport pilot certificate with category and class ratings (if a class rating is required) for that aircraft; or

* * * * *

(g) * * *

(2) * * *

(i) Holds a pilot certificate with category and class ratings (if a class rating is required) for that aircraft and an instrument rating for that category aircraft;

(ii) Holds an airline transport pilot certificate with category and class ratings (if a class rating is required) for that aircraft; or

* * * * *

■ 13. Amend § 61.5 by:

■ a. Redesignating paragraphs (b)(7)(iii) and (iv) as paragraphs (b)(7)(iv) and (b)(9), respectively; and

■ b. Adding new paragraph (b)(7)(iii).

The addition reads as follows:

§ 61.5 Certificates and ratings issued under this part.

* * * * *

(b) * * *

(7) * * *

(iii) Powered-lift.

* * * * *

■ 14. Amend § 61.31 by:

■ a. Redesignating paragraph (a)(3) as paragraph (a)(4);

■ b. Adding new paragraph (a)(3); and

■ c. Revising paragraph (l)(1).

The revision and addition read as follows:

§ 61.31 Type rating requirements, additional training, and authorization requirements.

(a) * * *

(3) Powered-lift.

* * * * *

(l) * * *

(1) This section does not require a category and class rating for aircraft that is not identified as an aircraft under § 61.5(b).

* * * * *

■ 15. Amend § 61.39 by revising paragraph (a)(3) to read as follows:

§ 61.39 Prerequisites for practical tests.

(a) * * *

(3) Have satisfactorily accomplished the required training and obtained the aeronautical experience prescribed by this part for the certificate or rating sought, and:

(i) If applying for the practical test with flight time accomplished under § 61.159(c), present a copy of the records required by § 135.63(a)(4)(vi) and (x) of this chapter; or

(ii) If applying for a practical test for the issuance of an initial category and class rating (if a class rating is required) at the private, commercial, or airline transport pilot certificate level in an aircraft that requires a type rating or a flight simulator or flight training device that represents an aircraft that requires a type rating, meet the eligibility requirements for the type rating or already hold the type rating on their pilot certificate;

* * * * *

■ 16. Amend § 61.43 by adding paragraph (g) to read as follows:

§ 61.43 Practical tests: General procedures.

* * * * *

(g) A practical test for an airline transport pilot (ATP) certificate with category and class rating (if a class rating is required) in an aircraft that requires a type rating or in a flight simulation training device that represents an aircraft that requires a type rating includes the same tasks and maneuvers as a practical test for a type rating.

■ 17. Amend § 61.47 by revising the section heading and adding paragraph (d) to read as follows:

§ 61.47 Status and responsibilities of an examiner who is authorized by the Administrator to conduct practical tests.

* * * * *

(d) An examiner may not conduct a practical test for the issuance of an initial category and class rating (if a class rating is required) at the private, commercial, or airline transport pilot certificate level in an aircraft that requires a type rating or a flight simulator or flight training device that represents an aircraft that requires a type rating unless:

(1) The applicant meets the eligibility requirements for a type rating in that aircraft or already holds that type rating on their certificate; and

(2) The practical test contains the tasks and maneuvers for a type rating specified in the areas of operation at the airline transport pilot certification level.

■ 18. Amend § 61.51 by revising paragraph (f)(2) to read as follows:

§ 61.51 Pilot logbooks.

* * * * *

(f) * * *

(2) Holds the appropriate category, class, and instrument rating (if a class or instrument rating is required) for the aircraft being flown, and more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is being conducted; or

* * * * *

■ 19. Amend § 61.55 by revising paragraph (a) to read as follows:

§ 61.55 Second-in-command qualifications.

(a) A person may serve as a second-in-command of an aircraft type certificated for more than one required pilot flight crewmember or in operations requiring a second-in-command pilot flight crewmember only if that person meets the following requirements:

(1) Holds at least a private pilot certificate with the appropriate category and class rating;

(2) Holds an instrument rating or privilege that applies to the aircraft being flown if the flight is under IFR;

(3) Holds at least a pilot type rating for the aircraft being flown unless the flight will be conducted as domestic flight operations within the United States airspace; and

(4) If serving as second-in-command of a powered-lift, satisfies the requirements specified in § 194.209(a) of this chapter.

* * * * *

■ 20. Amend § 61.57 by revising paragraphs (a)(1)(ii), (b)(1)(ii), and (g)(1) and (4) to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

(a) * * *

(1) * * *

(ii) The required takeoffs and landings were performed in an aircraft of the same category, class, and type (if a class or type rating is required), and, if the aircraft to be flown is an airplane with a tailwheel, the takeoffs and landings must have been made to a full stop in an airplane with a tailwheel.

* * * * *

(b) * * *

(1) * * *

(ii) The required takeoffs and landings were performed in an aircraft of the same category, class, and type (if a class or type rating is required).

* * * * *

(g) * * *

(1) An Examiner who is qualified to perform night vision goggle operations in that same aircraft category and class (if a class rating is required);

* * * * *

(4) An authorized flight instructor who is qualified to perform night vision goggle operations in that same aircraft category and class (if a class rating is required);

* * * * *

§ 61.63 [Amended]

■ 21. Amend § 61.63 by removing and reserving paragraph (h).

■ 22. Amend § 61.64 by revising paragraphs (a)(1) and (e), (f) introductory text, and (g)(1) to read as follows:

§ 61.64 Use of a flight simulator and flight training device.

(a) * * *

(1) Must represent the category, class, and type (if a class or type rating is applicable) for the rating sought, except that a person may not use a flight simulator or flight training device representing an aircraft requiring a type rating for any portion of the practical test without seeking a type rating for that aircraft; and

* * * * *

(e) Except as provided in paragraph (f) of this section, if a powered-lift is not used during the practical test for a type rating in a powered-lift (except for preflight inspection), an applicant must accomplish the entire practical test in a Level C or higher flight simulator and have 500 hours of flight time in the type of powered-lift for which the rating is sought.

(f) If the applicant does not meet one of the experience requirements of paragraphs (b)(1) through (5), paragraphs (c)(1) through (5), paragraphs (d)(1) through (4), or paragraph (e) of this section, as appropriate to the type rating sought, then—

* * * * *

(g) * * *

(1) Performs 25 hours of flight time in an aircraft of the appropriate category, class, and type for which the limitation applies under the direct observation of the pilot in command who holds a category, class (if a class rating is required), and type rating, without limitations, for the aircraft;

* * * * *

■ 23. Amend § 61.109 by revising paragraph (e)(5) introductory text to read as follows:

§ 61.109 Aeronautical experience.

* * * * *

(e) * * *

(5) 10 hours of solo flight time in a powered-lift consisting of at least—

* * * * *

■ 24. Amend § 61.163 by adding paragraphs (c), (d), and (e) to read as follows:

§ 61.163 Aeronautical experience: Powered-lift category rating.

* * * * *

(c) Flight time logged under § 61.159(c) may be counted toward the 1,500 hours of total time as a pilot required by paragraph (a) of this section and the flight time requirements of paragraphs (a)(1), (2), and (4) of this section.

(d) An applicant who credits time under paragraph (c) of this section is issued an airline transport pilot certificate with the limitation ''Holder does not meet the pilot in command aeronautical experience requirements of ICAO,'' as prescribed under Article 39 of the Convention on International Civil Aviation.

(e) An applicant is entitled to an airline transport pilot certificate without the ICAO limitation specified under paragraph (d) of this section when the applicant presents satisfactory evidence of having met the ICAO requirements under paragraph (d) of this section and otherwise meets the aeronautical experience requirements of this section.

§ 61.165 [Amended]

■ 25. Amend § 61.165 by removing paragraph (g).

■ 26. Amend § 61.167 by revising the introductory text of paragraph (a)(2) to read as follows:

§ 61.167 Airline transport pilot privileges and limitations.

(a) * * *

(2) A person who holds an airline transport pilot certificate and has met the aeronautical experience requirements of § 61.159, § 61.161, or § 61.163, and the age requirements of § 61.153(a)(1) may instruct—

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 27. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 28. Amend § 91.1 by revising paragraph (d) and adding paragraph (g) to read as follows:

§ 91.1 Applicability.

* * * * *

(d) This part also establishes requirements for operators to take actions to support the continued airworthiness of each aircraft.

* * * * *

(g) Additional requirements for powered-lift operations are set forth in part 194 of this chapter.

§ 91.205 [Amended]

■ 29. Amend § 91.205 by removing the word ''category'' after the word ''standard'' wherever it appears.

■ 30. Amend § 91.903 by revising paragraph (a) to read as follows:

§ 91.903 Policy and procedures.

(a) The Administrator may issue a certificate of waiver authorizing the operation of aircraft in deviation from any rule listed in this subpart or any rule listed in this subpart as modified by subpart C of part 194 of this chapter if the Administrator finds that the proposed operation can be safely conducted under the terms of that certificate of waiver.

* * * * *

■ 31. Amend § 91.1053 by revising paragraph (a)(2)(i) to read as follows:

§ 91.1053 Crewmember experience.

(a) * * *

(2) * * *

(i) Pilot in command—Airline transport pilot and applicable type ratings not limited to VFR only.

* * * * *

§ 91.1115 [Amended]

■ 32. Amend § 91.1115(b)(1) by removing the word ''airplane'' and adding in its place the word ''aircraft''.

PART 97—STANDARD INSTRUMENT PROCEDURES

■ 33. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, and 44721–44722.

■ 34. Amend § 97.1 by adding paragraph (c) to read as follows:

§ 97.1 Applicability.

* * * * *

(c) Additional applicability of copter procedures for powered-lift is set forth in part 194 of this chapter.

PART 111—PILOT RECORDS DATABASE

■ 35. The authority citation for part 111 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40113, 44701, 44703, 44711, 46105, 46301.

■ 36. Amend § 111.1 by revising paragraph (b)(4) introductory text and adding paragraph (b)(4)(iii) to read as follows:

§ 111.1 Applicability.

* * * * *

(b) * * *

(4) Each operator that operates two or more aircraft described in paragraph (b)(4)(i), (ii), or (iii) of this section, in furtherance of or incidental to a business, solely pursuant to the general operating and flight rules in part 91 of this chapter, or that operates aircraft pursuant to a Letter of Deviation Authority issued under § 125.3 of this chapter.

* * * * *

(iii) Large powered-lift.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 37. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 41706, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730).

■ 38. Amend § 135.1 by adding paragraph (d) to read as follows:

§ 135.1 Applicability.

* * * * *

(d) Additional requirements for powered-lift operations, training, checking, and testing, are set forth in part 194 of this chapter.

■ 39. Amend § 135.100 by:

■ a. Adding paragraph (d); and

■ b. Removing the note at the end of the section.

The addition reads as follows:

§ 135.100 Flight crewmember duties.

* * * * *

(d) For purposes of this section, *taxi* is defined as ''movement of an aircraft under its own power on the surface of an airport''.

■ 40. Amend § 135.152 by revising paragraph (j) to read as follows:

§ 135.152 Flight data recorders.

* * * * *

(j) For all turbine-engine-powered airplanes with a seating configuration, excluding any required crewmember seat, of 10 to 30 passenger seats, that are manufactured after August 19, 2002, the parameters listed in paragraphs (h)(1) through (88) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix F to this part.

* * * * *

■ 41. Amend § 135.179 by revising paragraph (b)(1) to read as follows:

§ 135.179 Inoperable instruments and equipment.

* * * * *

(b) * * *

(1) Instruments and equipment that are either specifically or otherwise required by the airworthiness requirements under which the aircraft is type certificated and which are essential for safe operations under all operating conditions.

* * * * *

■ 42. Amend § 135.243 by:

■ a. Revising paragraph (a)(1);

■ b. Adding paragraph (a)(3);

■ c. Revising paragraphs (b)(1) and (4);

■ d. Adding paragraph (b)(5);

■ e. Revising paragraphs (c)(1) and (4); and

■ f. Adding paragraph (c)(5).

The revisions and additions read as follows:

§ 135.243 Pilot in command qualifications.

(a) * * *

(1) Of a turbojet airplane, of an airplane having a passenger-seat configuration, excluding each crewmember seat, of 10 seats or more, or of a multiengine airplane in a commuter operation as defined in part 110 of this chapter, unless that person holds an airline transport pilot certificate with appropriate category and

class ratings and, if required, an appropriate type rating for that airplane.

* * * * *

(3) Of a turbojet-powered powered-lift, of a powered-lift having a passenger-seat configuration, excluding each crewmember seat, of 10 seats or more, or of a powered-lift in a commuter operation as defined in part 110 of this chapter, unless that person holds an airline transport pilot certificate with appropriate category rating, and appropriate type rating not limited to VFR for that powered-lift.

(b) * * *

(1) Holds at least a commercial pilot certificate with appropriate category and class ratings, an appropriate type rating for that aircraft, if required, and for a powered-lift, a type rating for that aircraft not limited to VFR; and

* * * * *

(4) For helicopter operations conducted VFR over-the-top, holds a helicopter instrument rating, or an airline transport pilot certificate with a category and class rating for that aircraft, not limited to VFR; or

(5) For a powered-lift, holds an instrument-powered-lift rating or an airline transport pilot certificate with a powered-lift category rating.

(c) * * *

(1) Holds at least a commercial pilot certificate with appropriate category and class ratings, an appropriate type rating for that aircraft, if required, and for a powered-lift, a type rating for that aircraft not limited to VFR; and

* * * * *

(4) For a helicopter, holds a helicopter instrument rating, or an airline transport pilot certificate with a category and class rating for that aircraft, not limited to VFR; or

(5) For a powered-lift, holds an instrument-powered-lift rating or an airline transport pilot certificate with a powered-lift category rating.

* * * * *

§ 135.244 [Amended]

■ 43. Amend § 135.244 by removing the number ''119'' in the introductory text of paragraph (a) and adding in its place the number ''110''.

■ 44. Amend § 135.245 by revising the introductory text of paragraph (c)(1) to read as follows:

§ 135.245 Second in command qualifications.

* * * * *

(c) * * *

(1) *Use of an airplane, powered-lift, or helicopter for maintaining instrument experience.* Within the 6 calendar months preceding the month of the flight, that person performed and logged at least the following tasks and iterations in-flight in an airplane, powered-lift, or helicopter, as appropriate, in actual weather conditions, or under simulated instrument conditions using a view-limiting device:

* * * * *

■ 45. Amend § 135.293 by:

■ a. Revising paragraphs (a)(9), (b), and (c); and

■ b. Removing and reserving paragraph (h).

The revisions read as follows:

§ 135.293 Initial and recurrent pilot testing requirements.

(a) * * *

(9) For rotorcraft and powered-lift pilots, procedures for aircraft handling in flat-light, whiteout, and brownout conditions, including methods for recognizing and avoiding those conditions.

(b) No certificate holder may use a pilot, nor may any person serve as a pilot, in any aircraft unless, since the beginning of the 12th calendar month before that service, that pilot has passed a competency check given by the Administrator or an authorized check pilot in that class of aircraft, if single-engine airplane other than turbojet, or that type of aircraft, if helicopter, multiengine airplane, turbojet airplane, or powered-lift to determine the pilot's competence in practical skills and techniques in that aircraft or class of aircraft. The extent of the competency check shall be determined by the Administrator or authorized check pilot conducting the competency check. The competency check may include any of the maneuvers and procedures currently required for the original issuance of the particular pilot certificate required for the operations authorized and appropriate to the category, class and type of aircraft involved. For the purposes of this paragraph (b), type, as to an airplane means any one of a group of airplanes determined by the Administrator to have a similar means of propulsion, the same manufacturer, and no significantly different handling or flight characteristics. For the purposes of this paragraph (b), type, as to a helicopter, means a basic make and model.

(c) Each competency check given in a rotorcraft or powered-lift must include a demonstration of the pilot's ability to maneuver the rotorcraft or powered-lift solely by reference to instruments. The check must determine the pilot's ability to safely maneuver the rotorcraft or powered-lift into visual meteorological conditions following an inadvertent encounter with instrument meteorological conditions. For competency checks in non-IFR-certified rotorcraft or powered-lift, the pilot must perform such maneuvers as are appropriate to the rotorcraft's or powered-lift's installed equipment, the certificate holder's operations specifications, and the operating environment.

* * * * *

■ 46. Amend § 135.297 by revising paragraphs (c)(1)(i) and (ii) and (g)(3) to read as follows:

§ 135.297 Pilot in command: Instrument proficiency check requirements.

* * * * *

(c) * * *

(1) * * *

(i) For a pilot in command of an aircraft under § 135.243(a), include the procedures and maneuvers for an airline transport pilot certificate in the particular type of aircraft, if appropriate; and

(ii) For a pilot in command of an aircraft under § 135.243(c), include the procedures and maneuvers for a commercial pilot certificate with an instrument rating and, if required, for the appropriate type rating.

* * * * *

(g) * * *

(3) Each pilot taking the autopilot check must show that, while using the autopilot:

(i) The airplane or powered-lift can be operated as proficiently as it would be if a second in command were present to handle air-ground communications and air traffic control instructions. The autopilot check need only be demonstrated once every 12 calendar months during the instrument proficiency check required under paragraph (a) of this section.

(ii) On and after [DATE 6 MONTHS AFTER THE EFFECTIVE DATE OF FINAL RULE], rotorcraft can be operated as proficiently as it would be if a second in command were present to handle air-ground communications and air traffic control instructions. The autopilot check need only be demonstrated once every 12 calendar months during the instrument proficiency check required under paragraph (a) of this section.

■ 47. Effective [DATE 6 MONTHS AFTER THE EFFECTIVE DATE OF FINAL RULE], further amend § 135.297 by revising paragraph (g)(3) to read as follows:

§ 135.297 Pilot in command: Instrument proficiency check requirements.

* * * * *

(g) * * *

(3) Each pilot taking the autopilot check must show that, while using the autopilot, the aircraft can be operated as proficiently as it would be if a second in command were present to handle air-ground communications and air traffic control instructions. The autopilot check need only be demonstrated once every 12 calendar months during the instrument proficiency check required under paragraph (a) of this section.

PART 136—COMMERCIAL AIR TOURS AND NATIONAL PARKS AIR TOUR MANAGEMENT

■ 48. The authority citation for part 136 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

■ 49. Amend § 136.1 by adding paragraph (f) to read as follows:

§ 136.1 Applicability and definitions.

* * * * *

(f) Additional requirements for powered-lift operations are set forth in part 194 of this chapter.

PART 141—PILOT SCHOOLS

■ 50. The authority citation for part 141 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709, 44711, 45102–45103, 45301–45302.

■ 51. Revise § 141.1 to read as follows:

§ 141.1 Applicability.

This part prescribes the requirements for issuing pilot school certificates, provisional pilot school certificates, and associated ratings, and the general operating rules applicable to a holder of a certificate or rating issued under this part. Additional requirements for pilot schools seeking to provide training courses for powered-lift certification and ratings are set forth in part 194 of this chapter.

PART 142—TRAINING CENTERS

■ 52. The authority citation for part 142 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 40119, 44101, 44701–44703, 44705, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 53. Amend § 142.1 by adding paragraph (d) to read as follows:

§ 142.1 Applicability.

* * * * *

(d) Additional requirements for training centers seeking to provide curriculums for powered-lift certification and ratings are set forth in part 194 of this chapter.

■ 54. Amend § 142.11 by revising paragraph (d)(2)(iii) to read as follows:

§ 142.11 Application for issuance or amendment.

* * * * *

(d) * * *

(2) * * *

(iii) For each flight simulator or flight training device, the make model, and series of aircraft or the set of aircraft being simulated and the qualification level assigned;

* * * * *

■ 55. Amend § 142.47 by revising paragraphs (a)(5)(ii) and (c)(2)(ii) to read as follows:

§ 142.47 Training center instructor eligibility requirements.

(a) * * *

(5) * * *

(ii) If instructing in flight simulator or flight training device that represents an aircraft requiring a type rating or if instructing in a curriculum leading to the issuance of an airline transport pilot certificate or an added rating to an airline transport pilot certificate, meets the aeronautical experience requirements of § 61.159, § 61.161, or § 61.163 of this chapter, as applicable. A person employed as an instructor and instructing in a flight simulator or flight training device that represents a rotorcraft requiring a type rating is not required to meet the aeronautical experience requirements of this paragraph (a)(5)(ii) if:

(A) The person is not instructing in a curriculum leading to the issuance of an airline transport pilot certificate or an added rating to an airline transport pilot certificate; and

(B) The person was employed and met the remaining requirements of this section on [EFFECTIVE DATE OF FINAL RULE]; or

* * * * *

(c) * * *

(2) * * *

(ii) That is accepted by the Administrator as being of equivalent difficulty, complexity, and scope as the tests provided by the Administrator for the applicable flight instructor and instrument flight instructor knowledge tests to the aircraft category in which they are instructing.

§ 142.53 [Amended]

■ 56. Amend § 142.53 in paragraphs (b)(2)(i) and (b)(3)(i) by removing the word ''airplane'' and adding in its place the word ''aircraft''.

§ 142.57 [Amended]

■ 57. Amend § 142.57(c) by removing the word ''Airplanes'' and adding in its place the word ''Aircraft''.

■ 58. Under the authority of 49 U.S.C. 106(f), add subchapter L, consisting of part 194, to read as follows:

Subchapter L—Other Special Federal Aviation Regulations

PART 194—SPECIAL FEDERAL AVIATION REGULATION NO. 120—POWERED-LIFT: PILOT CERTIFICATION AND TRAINING; OPERATIONS REQUIREMENTS

Sec.

Subpart A—General

Subpart B—Certification, Training, and Qualification Requirements for Pilots and Flight Instructors

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 106(g), 40113, 44701–44705, 44707, 44712, 44713, 44715, 44716, and 44722.

Subpart A—General

§ 194.101 Applicability.

(a) The Special Federal Aviation Regulation (SFAR) in this part prescribes:

(1) Certain requirements for that may be satisfied in lieu of the requirements of part 61 of this chapter for persons seeking a powered-lift pilot certificate and rating, the conditions under which those certificates and ratings are necessary, and the privileges and limitations of those certificates and ratings;

(2) The general operating rules applicable to all persons operating powered-lift, including those an operator must meet to conduct powered-lift operations under parts 91, 135, and 136 of this chapter;

(3) The requirements for persons conducting training, testing, and checking utilizing a powered-lift or flight simulation training device (FSTD) representing a powered-lift under parts 135, 141, and 142 of this chapter; and

(4) The requirements for persons conducting maintenance, preventative maintenance, rebuilds, alterations, or inspections on powered-lift pursuant to part 43 of this chapter.

(b) In addition to the requirements in this part, the following parts continue to apply to those persons described in paragraph (a) of this section unless otherwise specified in this part: parts 43, 60, 61, 91, 97, 135, 136, 141, and 142 of this chapter.

§ 194.103 Definitions.

For the purpose of this part:

Extended over-water operation means a powered-lift operation over water at a horizontal distance of more than 50 nautical miles from the nearest shoreline and more than 50 nautical miles from an off-shore heliport structure under part 91 or 135 of this chapter.

Heliport means an area of land, water, or structure used or intended to be used for the landing and takeoff of helicopters and powered-lift.

Instructor pilot means a pilot employed or used by a manufacturer of a powered-lift to conduct operations of the powered-lift for the purpose of developing a proposed training curriculum and providing crew training.

Manufacturer means any person who holds, or is an applicant for, a type or production certificate for an aircraft. An amateur builder under § 21.191(g) of this chapter, builder of a kit aircraft under § 21.191(h) of this chapter, or the holder of a restricted category type certificate are not considered manufacturers for the purpose of this part.

Test pilot means a pilot employed or used by a manufacturer of a powered-lift to conduct operations of the powered-lift for the purpose of research and development and showing compliance with this chapter.

§ 194.105 Qualification of powered-lift FSTDs.

For flight simulation training devices (FSTDs) representing powered-lift for which qualification standards have not been issued under part 60 of this chapter, the applicable requirements will be the portions of the flight simulation training device qualification performance standards contained in appendices A through D to part 60 of this chapter that are found by the Federal Aviation Administration (FAA) Administrator (Administrator) to be appropriate for the powered-lift and applicable to a specific type design, or such FSTD qualification criteria as the Administrator may find provide an equivalent level of safety to those FSTD qualification standards.

§ 194.107 Expiration.

This part, consisting of Special Federal Aviation Regulation (SFAR) No. 120, will remain in effect until [10 YEARS FROM THE FINAL RULE EFFECTIVE DATE]. The FAA may amend, rescind, or extend the SFAR as necessary.

§ 194.109 Incorporation by reference.

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. All approved incorporation by reference (IBR) material is available for inspection at the FAA and at the National Archives and Records Administration (NARA). Contact the FAA's Office of Rulemaking, 800 Independence Avenue SW, Washington,

DC 20590; phone: (202) 267–9677. 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:

(a) RTCA, Inc., 1150 18th St. NW, Suite 910, Washington, DC 20036; phone: (202) 833–9339; website: *www.rtca.org/products*.

(1) Section 2 of RTCA DO–309, Minimum Operational Performance Standards (MOPS) for Helicopter Terrain Awareness and Warning System (HTAWS) Airborne Equipment (Mar. 13, 2008); into §§ 194.302; 194.307; and 194.308.

(2) [Reserved]

(b) U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse M30, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785; phone (301) 322–5377; *www.faa.gov/aircraft/air_cert/design_approvals/tso/* (select the link ''Search Technical Standard Orders'').

(1) Technical Standard Order (TSO)-C194, Helicopter Terrain Awareness and Warning System (Dec. 17, 2008); into §§ 194.302; 194.307; and 194.308.

(2) [Reserved]

Subpart B—Certification, Training, and Qualification Requirements for Pilots and Flight Instructors

§ 194.201 Alternate definition of cross-country time.

Notwithstanding the cross-country time definitions in § 61.1(b) of this chapter, a person may log flight time in a powered-lift as cross-country time provided the time was acquired during a flight—

(a) That includes a point of landing that was at least a straight-line distance of more than 25 nautical miles from the original point of departure; and

(b) That involves the use of dead reckoning, pilotage, electronic navigation aids, radio aids, or other navigation systems to navigate to the landing point.

§ 194.203 Alternate qualification requirements for certain flight instructors.

(a) *Instructor pilots at a manufacturer.* In addition to the provisions specified in § 61.3(d)(3) of this chapter, a flight instructor certificate issued under part 61 of this chapter is not necessary to conduct flight training if the training is given by an instructor pilot in a powered-lift at the manufacturer, provided the training is conducted in accordance with the manufacturer's training curriculum and is given to either—

(1) A test pilot; or

(2) A person authorized by the Administrator to serve as an initial check pilot, chief instructor, assistant chief instructor, or training center evaluator for the purpose of initiating training in a powered-lift under an approved training program under part 135, 141, or 142 of this chapter, as appropriate.

(b) *Flight instructors under part 135 of this chapter.* Notwithstanding the requirement in § 61.3(d)(3)(ii) of this chapter, a person must hold a flight instructor certificate with the appropriate powered-lift ratings to conduct training in accordance with a training curriculum approved to meet the requirements of § 194.243(a)(1).

§ 194.205 Limitations on flight training privileges for holders of airline transport pilot certificates under a part 135 of this chapter approved training program.

Notwithstanding the privileges in § 61.167(a)(2) of this chapter, a person who holds an airline transport pilot certificate with powered-lift ratings must hold a flight instructor certificate with the appropriate powered-lift ratings to instruct pilots in accordance with a training curriculum approved to meet the requirements of § 194.243(a)(1).

§ 194.207 Alternate requirement for practical tests and training in a powered-lift.

(a) *Required equipment for the practical test.* Notwithstanding the equipment requirement in § 61.45(b)(1)(ii) of this chapter and the limitation specified in § 61.45(b)(2) of this chapter, an applicant for a certificate or rating may use a powered-lift that is precluded from performing all of the tasks required for the practical test without receiving a limitation on the applicant's certificate or rating, as appropriate.

(b) *Waiver authority for a practical test conducted in a powered-lift.* An Examiner who conducts a practical test in a powered-lift may waive any task for which the FAA has provided waiver authority.

(c) *Flight training on waived tasks.* Notwithstanding the requirements in §§ 61.107(a) and 61.127(a) of this chapter for training to include the areas of operation listed in § 61.107(b)(5) or § 61.127(b)(5) of this chapter, as applicable, an applicant seeking a private pilot certificate or commercial pilot certificate with a powered-lift category rating concurrently with a powered-lift type rating is not required to receive and log flight training on a task specified in an area of operation if the powered-lift is not capable of performing the task, provided the FAA has issued waiver authority for that task in accordance with paragraph (b) of this section.

§ 194.209 Additional qualification requirements for certain pilots serving as second-in-command.

(a) A person who obtains at least a private pilot certificate with a powered-lift category rating by satisfactorily completing the practical test in a powered-lift that is precluded from performing each task required by § 61.43(a)(1) of this chapter may not serve as second-in-command of a powered-lift that is capable of performing the tasks that were waived on the person's practical test until the person has—

(1) Received and logged ground and flight training from an authorized instructor on the specific tasks that were waived on the person's practical test; and

(2) Received a logbook or training record endorsement from an authorized instructor certifying the person has satisfactorily demonstrated proficiency of those tasks.

(b) The training and endorsement required by paragraph (a) of this section are not required if, prior to serving as second-in-command, a person meets one of the following requirements—

(1) Successfully completes the practical test for a powered-lift type rating, and the practical test includes each task required by § 61.43(a)(1) of this chapter; or

(2) Has received ground and flight training under an approved training program and has satisfactorily completed a competency check under § 135.293 or § 91.1065 of this chapter in a powered-lift, and the approved training and checking include each task that was previously waived in accordance with § 194.207(b).

§ 194.211 Alternate eligibility requirements for a person seeking a powered-lift type rating.

(a) *General applicability.* The requirements specified in paragraphs (b) and (c) of this section apply only to persons seeking a type rating in a powered-lift that is capable of performing instrument maneuvers and procedures.

(b) *Obtaining an initial powered-lift type rating without concurrently obtaining the instrument-powered-lift rating.* (1) Notwithstanding the requirement to hold or concurrently obtain an appropriate instrument rating in § 61.63(d)(1) of this chapter, a person who applies for an initial powered-lift type rating to be completed

concurrently with a powered-lift category rating may apply for the type rating without holding or concurrently obtaining a powered-lift instrument rating, but the type rating will be limited to ''visual flight rules (VFR) only.''

(2) Notwithstanding the requirement in § 61.63(d)(4) of this chapter, a person who applies for a powered-lift type rating pursuant to paragraph (b)(1) of this section is not required to perform the type rating practical test in actual or simulated instrument conditions.

(3) Except as specified in paragraph (b)(6) of this section, a person who obtains a powered-lift type rating with a ''VFR only'' limitation pursuant to paragraph (b)(1) of this section must remove the limitation in accordance with paragraph (b)(4) of this section within 2 calendar months from the month in which the person passes the type rating practical test.

(4) The ''VFR only'' limitation may be removed after the person—

(i) Passes an instrument rating practical test in a powered-lift in actual or simulated instrument conditions; and

(ii) Passes a practical test in the powered-lift type for which the ''VFR only'' limitation applies on the appropriate areas of operation listed in § 61.157(e)(3) of this chapter that consist of performing instrument maneuvers and procedures in actual or simulated instrument conditions.

(5) Except as specified in paragraph (b)(6) of this section, if a person who obtains a powered-lift type rating with a ''VFR only'' limitation pursuant to paragraph (b)(1) of this section does not remove the limitation within 2 calendar months from the month in which the person completed the type rating practical test, the powered-lift type rating for which the ''VFR only'' limitation applies will become invalid for use until the person removes the limitation in accordance with paragraph (b)(4) of this section.

(6) A person holding a private pilot certificate is not required to remove the ''VFR only'' limitation if the limitation applies to a powered-lift type that is not a large aircraft or turbojet-powered.

(c) *Obtaining an additional powered-lift type rating with a ''VFR only'' limitation.* (1) Notwithstanding the requirement to hold or concurrently obtain an appropriate instrument rating in § 61.63(d)(1) of this chapter, a person holding a private pilot certificate may apply for a powered-lift type rating for a powered-lift that is not a large aircraft or turbojet-powered without holding or concurrently obtaining a powered-lift instrument rating, but the type rating will be limited to ''VFR only.''

(2) Notwithstanding the requirement in § 61.63(d)(4) of this chapter, a person who applies for a powered-lift type rating pursuant to paragraph (c)(1) of this section is not required to perform the type rating practical test in actual or simulated instrument conditions.

(3) A person who obtains a powered-lift type rating with a ''VFR only'' limitation pursuant to paragraph (c)(1) of this section may remove the ''VFR only'' limitation for that powered-lift type as specified in paragraph (b)(4) of this section.

(d) *Concurrent practical tests for removal of ''VFR only'' limitation.* If a task required for the practical test specified in paragraph (b)(4)(i) of this section overlaps with a task required for the practical test specified in paragraph (b)(4)(ii) of this section, a person may perform the task a single time provided the task is performed to the highest standard required for the task.

§ 194.213 Alternate endorsement requirements for certain persons seeking a powered-lift rating.

(a) Notwithstanding the requirements in part 61 of this chapter for an authorized instructor to provide endorsements for certificates and ratings, including endorsements for solo flight, the following persons may provide the required logbook or training record endorsements under part 61 and this part for a commercial pilot certificate with a powered-lift category rating, an instrument-powered-lift rating, a powered-lift type rating, or a flight instructor certificate with powered-lift ratings—

(1) An instructor pilot, provided the applicant is either—

(i) A test pilot for the manufacturer of an experimental powered-lift; or

(ii) A person authorized by the Administrator to serve as an initial check pilot, chief instructor, assistant chief instructor, or training center evaluator for the purpose of initiating training in a powered-lift under an approved training program under part 135, 141, or 142 of this chapter, as appropriate; or

(2) A management official within the manufacturer's organization, provided the applicant is an instructor pilot for the manufacturer of an experimental powered-lift.

(b) The endorsements for training time under this section must include a description of the training given, length of training lesson, and the endorsement provider's signature and identifying information, including certificate number and expiration date, if applicable.

§ 194.215 Applicability of alternate aeronautical experience and logging requirements for commercial pilot certification and a powered-lift instrument rating.

(a) The alternate requirements set forth in §§ 194.217 through 194.231 apply only to persons who hold at least a commercial pilot certificate with the following ratings:

(1) An airplane category rating with a single-engine or multi-engine class rating and an instrument-airplane rating; or

(2) A rotorcraft category rating with a helicopter class rating and an instrument-helicopter rating.

(b) If no alternate aeronautical experience or logging requirement is provided under this part, the person must meet the applicable requirements under part 61 of this chapter, as appropriate.

§ 194.217 Test pilots: Alternate aeronautical experience and logging requirements for a commercial pilot certificate with a powered-lift category rating.

(a) *General applicability.* An applicant for a commercial pilot certificate with a powered-lift category rating who is a test pilot for the manufacturer of an experimental powered-lift may satisfy the alternate aeronautical experience and logging requirements set forth in paragraphs (b) and (c) of this section, provided—

(1) The flights are conducted in an experimental powered-lift at the manufacturer; and

(2) The applicant is authorized by the Administrator to act as pilot in command of the experimental powered-lift.

(b) *Alternate aeronautical experience requirements.* Notwithstanding the eligibility requirement specified in § 61.123(f) of this chapter, a test pilot may meet the requirements in paragraphs (b)(1) through (4) of this section in lieu of the aeronautical experience requirements of § 61.129(e)(3) and (4) of this chapter.

(1) A test pilot may receive 20 hours of flight training on the areas of operation listed in § 61.127(b)(5) of this chapter from an instructor pilot for the manufacturer of an experimental powered-lift in lieu of an authorized instructor, provided—

(i) The training is conducted in accordance with the manufacturer's proposed training curriculum in the experimental powered-lift; and

(ii) The test pilot receives a logbook or training record endorsement from the instructor pilot certifying that the test pilot satisfactorily completed the

training curriculum specified in paragraph (b)(1)(i) of this section.

(2) A test pilot may accomplish the practical test preparation requirements in § 61.129(e)(3)(iv) of this chapter with a pilot who serves as an instructor pilot for the manufacturer of the experimental powered-lift.

(3) A test pilot may satisfy the aeronautical experience requirement in § 61.129(e)(4) of this chapter by logging at least 10 hours of solo flight time under an endorsement from an instructor pilot or performing the duties of pilot-in-command in an experimental powered-lift with one of the following individuals onboard (which may be credited towards the flight time requirement in § 61.129(e)(2) of this chapter)—

(i) Another test pilot for the manufacturer of the powered-lift who is authorized by the Administrator to act as pilot-in-command of the experimental powered-lift; or

(ii) An instructor pilot for the manufacturer of the powered-lift who is authorized by the Administrator to act as pilot-in-command of the experimental powered-lift.

(4) A test pilot may satisfy the alternate requirements in § 194.233 in lieu of the cross-country aeronautical experience requirements specified in § 61.129(e)(3)(ii) and (iii) and (e)(4)(i) of this chapter.

(c) *Alternate logging requirement.* Notwithstanding the logging requirements in § 61.51(e)(1) of this chapter, an applicant for a commercial pilot certificate with a powered-lift category rating may log pilot-in-command flight time for the purpose of satisfying the aeronautical experience requirements in § 61.129(e)(2)(i) and (ii) of this chapter for flights when the pilot is the sole manipulator of the controls of an experimental powered-lift for which the pilot is not rated, provided—

(1) The test pilot is acting as pilot-in-command of the experimental powered-lift in accordance with a letter of authorization issued by the Administrator; and

(2) The flight is conducted for the purpose of research and development or showing compliance with the regulations in this chapter in accordance with the experimental certificate issued to the powered-lift pursuant to § 21.191 of this chapter.

§ 194.219 Instructor pilots: Alternate aeronautical experience and logging requirements for a commercial pilot certificate with a powered-lift category rating.

(a) *General applicability.* An applicant for a commercial pilot certificate with a powered-lift category rating who is an instructor pilot for the manufacturer of an experimental powered-lift may satisfy the alternate aeronautical experience and logging requirements set forth in paragraphs (b) and (c) of this section, provided—

(1) The flights are conducted in an experimental powered-lift at the manufacturer; and

(2) The applicant is authorized by the Administrator to act as pilot-in-command of the experimental powered-lift.

(b) *Alternate aeronautical experience requirements.* Notwithstanding the eligibility requirement specified in § 61.123(f) of this chapter, an instructor pilot may meet the requirements in paragraphs (b)(1) through (4) of this section in lieu of the aeronautical experience requirements of § 61.129(e)(3) and (4) of this chapter.

(1) An instructor pilot may meet the requirements of paragraphs (b)(1)(i) and (ii) of this section in lieu of the 20 hours of training with an authorized instructor required by § 61.129(e)(3) of this chapter.

(i) The instructor pilot provided the manufacturer's proposed training curriculum to a test pilot in the experimental powered-lift, which includes 20 hours of training on the areas of operation listed in § 61.127(b)(5) of this chapter; and

(ii) The instructor pilot receives a logbook or training record endorsement from a management official within the manufacturer's organization certifying that the instructor pilot provided the training specified in paragraph (b)(1)(i) of this section.

(2) An instructor pilot may accomplish the practical test preparation requirements in § 61.129(e)(3)(iv) of this chapter with a pilot who serves as an instructor pilot for the manufacturer of the experimental powered-lift.

(3) An instructor pilot may satisfy the aeronautical experience requirement in § 61.129(e)(4) of this chapter by logging at least 10 hours of solo flight time under an endorsement from another instructor pilot or performing the duties of pilot-in-command in an experimental powered-lift with one of the following individuals onboard (which may be credited towards the flight time requirement in § 61.129(e)(2) of this chapter)—

(i) A test pilot for the manufacturer of the powered-lift who is authorized by the Administrator to act as pilot-in-command of the experimental powered-lift; or

(ii) Another instructor pilot for the manufacturer of the powered-lift who is authorized by the Administrator to act as pilot-in-command of the experimental powered-lift.

(4) An instructor pilot may satisfy the alternate requirements in § 194.233 in lieu of the cross-country aeronautical experience requirements specified in § 61.129(e)(3)(ii) and (iii) and (e)(4)(i) of this chapter.

(c) *Alternate logging requirement.* Notwithstanding the logging requirements in § 61.51(e)(3) of this chapter, an applicant for a commercial pilot certificate with a powered-lift category rating may log pilot-in-command flight time for the purpose of satisfying the aeronautical experience requirements in § 61.129(e)(2)(i) and (ii) of this chapter for flights when the pilot is serving as an instructor pilot for the manufacturer of an experimental powered-lift for which the pilot is not rated, provided—

(1) The pilot is acting as pilot-in-command of the experimental powered-lift in accordance with a letter of authorization issued by the Administrator; and

(2) The flight is conducted for the purpose of crew training in accordance with the experimental certificate issued to the powered-lift pursuant to § 21.191 of this chapter.

§ 194.221 Initial cadre of instructors: Alternate aeronautical experience and logging requirements for a commercial pilot certificate with a powered-lift category rating.

(a) *General applicability.* An applicant for a commercial pilot certificate with a powered-lift category rating may satisfy the alternate aeronautical experience and logging requirements set forth in paragraphs (b) and (c) of this section, provided—

(1) The applicant is authorized by the Administrator to serve as an initial check pilot, chief instructor, assistant chief instructor, or training center evaluator for the purpose of initiating training in a powered-lift under an approved training program under part 135, 141, or 142 of this chapter, as appropriate; and

(2) The flights are conducted in type-certificated powered-lift at the manufacturer.

(b) *Alternate aeronautical experience requirements.* Notwithstanding the eligibility requirement specified in § 61.123(f) of this chapter, an applicant may meet the requirements in paragraphs (b)(1) through (4) of this section in lieu of the aeronautical experience requirements of § 61.129(e)(3) and (4) of this chapter.

(1) An applicant may receive 20 hours of flight training on the areas of

operation listed in § 61.127(b)(5) of this chapter from an instructor pilot for the manufacturer of the powered-lift in lieu of an authorized instructor, provided—

(i) The training is conducted in accordance with the manufacturer's training curriculum in the powered-lift; and

(ii) The applicant receives a logbook or training record endorsement from the instructor pilot certifying that the test pilot satisfactorily completed the training curriculum specified in paragraph (b)(1)(i) of this section.

(2) An applicant may accomplish the practical test preparation requirements in § 61.129(e)(3)(iv) of this chapter with a pilot who serves as an instructor pilot for the manufacturer of the powered-lift.

(3) An applicant may satisfy the aeronautical experience requirement in § 61.129(e)(4) of this chapter by logging at least 10 hours of solo flight time in a powered-lift under an endorsement from an instructor pilot or performing the duties of pilot-in-command in a powered-lift with a person onboard who serves as an instructor pilot for the manufacturer of the powered-lift (which may be credited towards the flight time requirement in § 61.129(e)(2) of this chapter).

(4) An applicant may satisfy the alternate requirements in § 194.233 in lieu of the cross-country aeronautical experience requirements specified in § 61.129(e)(3)(ii) and (iii) and (e)(4)(i) of this chapter.

(c) *Alternate logging requirements.* Notwithstanding the logging requirements in § 61.51(e)(1) of this chapter, an applicant for a commercial pilot certificate with a powered-lift category rating may log up to 40 hours of pilot-in-command flight time for the purpose of satisfying the aeronautical experience requirements in § 61.129(e)(2)(i) and (ii) of this chapter for flights when the pilot is the sole manipulator of the controls of a powered-lift for which the pilot is not rated, provided—

(1) The applicant is manipulating the controls of the powered-lift with a person onboard who serves as an instructor pilot for the manufacturer;

(2) The applicant is performing the duties of pilot-in-command; and

(3) The flight is conducted in accordance with the manufacturer's training curriculum for the powered-lift.

§ 194.223 Pilots receiving training under an approved training program: Alternate requirements for a commercial pilot certificate with a powered-lift category rating.

(a) *General applicability.* An applicant for a commercial pilot certificate with a powered-lift category rating may satisfy the alternate requirements set forth in paragraphs (b) through (d) of this section, provided the applicant is receiving training under an approved training program under part 135, 141, or 142 of this chapter for the purpose of obtaining a powered-lift category.

(b) *Alternate aeronautical experience requirements.* An applicant may satisfy the alternate requirements in § 194.233 in lieu of the cross-country aeronautical experience requirements specified in § 61.129(e)(3)(ii) and (iii) and (e)(4)(i) of this chapter.

(c) *Alternate logging requirement.* Notwithstanding the logging requirements in § 61.51(e)(1) of this chapter, an applicant for a commercial pilot certificate with a powered-lift category rating may log up to 40 hours of pilot-in-command time towards the aeronautical experience requirement in § 61.129(e)(2)(i) of this chapter for flights when the applicant is the sole manipulator of the controls of a powered-lift for which the pilot is not rated, provided—

(1) The applicant is manipulating the controls of the powered-lift with an authorized instructor onboard;

(2) The applicant is performing the duties of pilot-in-command; and

(3) The flight is conducted in accordance with an approved training program under part 135, 141, or 142 of this chapter.

(d) *Use of full flight simulators.* In addition to the permitted credit for use of a full flight simulator in § 61.129(i) of this chapter, an applicant for a commercial pilot certificate with a powered-lift category rating may credit a maximum of 15 hours toward the 50-hour pilot-in-command flight time requirement in § 61.129(e)(2)(i) of this chapter, provided—

(1) The aeronautical experience was obtained performing the duties of pilot-in-command in a Level C or higher full flight simulator that represents the powered-lift category; and

(2) The full flight simulator sessions are conducted in accordance with an approved training program under part 135, 141, or 142 of this chapter.

§ 194.225 Test pilots: Alternate aeronautical experience and logging requirements for an instrument-powered-lift rating.

(a) *General applicability.* An applicant for an instrument-powered-lift rating who is test pilot for the manufacturer of an experimental powered-lift may satisfy the alternate aeronautical experience and logging requirements set forth in paragraphs (b) and (c) of this section, provided—

(1) The flights are conducted in an experimental powered-lift at the manufacturer; and

(2) The applicant is authorized by the Administrator to act as pilot-in-command of the experimental powered-lift.

(b) *Alternate aeronautical experience requirements.* A test pilot may meet the aeronautical experience requirements of paragraphs (b)(1) through (4) of this section in lieu of the aeronautical experience requirements of § 61.65(f)(2) of this chapter.

(1) Notwithstanding the eligibility requirement in § 61.65(a)(5) of this chapter, a test pilot may receive 15 hours of instrument training on the areas of operation listed in § 61.65(c) of this chapter from an instructor pilot for the manufacturer of an experimental powered-lift in lieu of an authorized instructor, provided—

(i) The training is conducted in accordance with the manufacturer's proposed training curriculum in the experimental powered-lift; and

(ii) The test pilot receives a logbook or training record endorsement from the instructor pilot certifying that the applicant satisfactorily completed the training curriculum specified in paragraph (b)(1)(i) of this section.

(2) A test pilot may accomplish the practical test preparation requirements in § 61.65(f)(2)(i) of this chapter with an instructor pilot for the manufacturer of the experimental powered-lift.

(3) A test pilot may accomplish the cross-country flight specified in § 61.65(f)(2)(ii) of this chapter for an instrument-powered-lift rating without an authorized instructor, provided the test pilot—

(i) Completes the cross-country flight specified in § 61.65(f)(2)(ii) of this chapter with a pilot who serves as an instructor pilot for the manufacturer of the experimental powered-lift; and

(ii) Obtains a logbook or training record endorsement from the instructor pilot certifying that the person completed the cross-country flight.

(4) A test pilot may satisfy the alternate requirements in § 194.235 in lieu of the cross-country aeronautical experience requirements specified in § 61.65(f)(2)(ii) of this chapter.

(c) *Alternate logging requirement.* Notwithstanding the logging requirements in § 61.51(e)(1) of this chapter, a test pilot may log pilot-in-command flight time for the purpose of satisfying the 10-hour cross-country requirement in § 61.65(f)(1) of this chapter for flights when the pilot is the sole manipulator of the controls of an experimental powered-lift for which the pilot is not rated, provided—

(1) The test pilot is acting as pilot-in-command of the experimental powered-lift in accordance with a letter of authorization issued by the Administrator; and

(2) The flight is conducted for the purpose of research and development or showing compliance with the regulations in this chapter in accordance with the experimental certificate issued to the powered-lift pursuant to § 21.191 of this chapter.

§ 194.227 Instructor pilots: Alternate aeronautical experience and logging requirements for an instrument-powered-lift rating.

(a) *General applicability.* An applicant for an instrument-powered-lift rating who is an instructor pilot for the manufacturer of an experimental powered-lift may satisfy the alternate aeronautical experience and logging requirements set forth in paragraphs (b) and (c) of this section, provided—

(1) The flights are conducted in an experimental powered-lift at the manufacturer; and

(2) The applicant is authorized by the Administrator to act as pilot-in-command of the experimental powered-lift.

(b) *Alternate aeronautical experience requirements.* An instructor pilot may meet the aeronautical experience requirements of paragraphs (b)(1) through (4) of this section in lieu of the aeronautical experience requirements of § 61.65(f)(2) of this chapter.

(1) Notwithstanding the eligibility requirement in § 61.65(a)(5) of this chapter, an instructor pilot may meet the requirements of paragraphs (b)(1)(i) and (ii) of this section in lieu of the 15 hours of training with an authorized instructor required by § 61.65(f)(2) of this chapter.

(i) The instructor pilot provided the manufacturer's proposed training curriculum in the experimental powered-lift, which includes 15 hours of training on the areas of operation listed in § 61.65(c) of this chapter; and

(ii) The instructor pilot receives a logbook or training record endorsement from a management official within the manufacturer's organization certifying that the instructor pilot provided the training specified in paragraph (b)(1)(i) of this section.

(2) An instructor pilot may accomplish the practical test preparation requirements in § 61.65(f)(2)(i) of this chapter with another pilot who serves as an instructor pilot for the manufacturer of the experimental powered-lift.

(3) An instructor pilot may accomplish the cross-country flight specified in § 61.65(f)(2)(ii) of this chapter for an instrument-powered-lift rating without an authorized instructor, provided the instructor pilot—

(i) Completes the cross-country flight specified in § 61.65(f)(2)(ii) of this chapter with another pilot who serves as an instructor pilot for the manufacturer of the experimental powered-lift; and

(ii) Obtains a logbook or training record endorsement from the instructor pilot certifying that the person completed the cross-country flight.

(4) An instructor pilot may satisfy the alternate requirements in § 194.235 in lieu of the cross-country aeronautical experience requirements specified in § 61.65(f)(2)(ii) of this chapter.

(c) *Alternate logging requirement.* Notwithstanding the logging requirements in § 61.51(e)(3) of this chapter, an instructor pilot may log pilot-in-command flight time for the purpose of satisfying the 10-hour cross-country requirement in § 61.65(f)(1) of this chapter for flights when the pilot is serving as an instructor pilot for the manufacturer of an experimental powered-lift for which the pilot is not rated, provided the pilot—

(1) Is acting as pilot-in-command of the experimental powered-lift in accordance with a letter of authorization issued by the Administrator; and

(2) The flight is conducted for the purpose of crew training in accordance with the experimental certificate issued to the powered-lift pursuant to § 21.191 of this chapter.

§ 194.229 Initial cadre of instructors: Alternate aeronautical experience and logging requirements for an instrument-powered-lift rating.

(a) *General applicability.* An applicant for an instrument-powered-lift rating may satisfy the alternate aeronautical experience and logging requirements set forth in paragraphs (b) and (c) of this section, provided—

(1) The applicant is authorized by the Administrator to serve as an initial check pilot, chief instructor, assistant chief instructor, or training center evaluator for the purpose of initiating training in a powered-lift under an approved training program under part 135, 141, or 142 of this chapter, as appropriate; and

(2) The flights are conducted in type-certificated powered-lift at the manufacturer.

(b) *Alternate aeronautical experience requirements.* Notwithstanding the instrument rating requirements of § 61.65 of this chapter, an applicant may meet the requirements in paragraphs (b)(1) through (4) of this section in lieu of the aeronautical experience requirements of § 61.65(f)(2) of this chapter.

(1) Notwithstanding the eligibility requirement in § 61.65(a)(5) of this chapter, an applicant may receive 15 hours of instrument training on the areas of operation listed in § 61.65(c) of this chapter from an instructor pilot for the manufacturer of a powered-lift in lieu of an authorized instructor, provided—

(i) The training is conducted in accordance with the manufacturer's training curriculum in the powered-lift; and

(ii) The applicant receives a logbook or training record endorsement from the instructor pilot certifying that the applicant satisfactorily completed the training curriculum specified in paragraph (b)(1)(i) of this section.

(2) An applicant may accomplish the practical test preparation requirements in § 61.65(f)(2)(i) of this chapter with a pilot who serves as an instructor pilot for the manufacturer of the powered-lift.

(3) An applicant may accomplish the cross-country flight specified in § 61.65(f)(2)(ii) of this chapter for an instrument-powered-lift rating without an authorized instructor, provided the applicant—

(i) Completes the cross-country flight specified in § 61.65(f)(2)(ii) of this chapter with a pilot who serves as an instructor pilot for the manufacturer of the powered-lift; and

(ii) Obtains a logbook or training record endorsement from the instructor pilot certifying that the person completed the cross-country flight.

(4) An applicant may satisfy the alternate requirements in § 194.235 in lieu of the cross-country aeronautical experience requirements specified in § 61.65(f)(2)(ii) of this chapter.

(c) *Alternate logging requirement.* Notwithstanding the logging requirements in § 61.51(e)(1) of this chapter, an applicant for an instrument-powered-lift rating may log pilot-in-command flight time for the purpose of satisfying the 10-hour cross-country requirement in § 61.65(f)(1) of this chapter for flights when the applicant is the sole manipulator of the controls of a powered-lift for which the pilot is not rated, provided—

(1) The applicant is manipulating the controls of the powered-lift with a person onboard who serves as an instructor pilot for the manufacturer;

(2) The applicant is performing the duties of pilot-in-command; and

(3) The flight is conducted in accordance with the manufacturer's training curriculum for the powered-lift.

§ 194.231 Pilots receiving training under an approved training program: Alternate requirements for an instrument-powered-lift rating.

(a) *General applicability.* An applicant for an instrument-powered-lift rating may satisfy the alternate requirements set forth in paragraphs (b) and (c) of this section, provided the applicant is receiving training under an approved training program under part 135, 141, or 142 of this chapter for the purpose of obtaining an instrument-powered-lift rating.

(b) *Alternate aeronautical experience requirements.* An applicant may satisfy the alternate requirements in § 194.235 in lieu of the cross-country aeronautical experience requirements specified in § 61.65(f)(2)(ii) of this chapter.

(c) *Use of full flight simulators.* In addition to the permitted credit for use of a full flight simulator in § 61.65(h) of this chapter, an applicant for an instrument-powered-lift rating may credit a maximum of 4 hours toward the aeronautical experience requirement in § 61.65(f)(1) of this chapter that requires 10 hours of cross-country time in a powered-lift, provided—

(1) The aeronautical experience was obtained performing the duties of pilot-in-command during a simulated cross-country flight in a Level C or higher full flight simulator that represents the powered-lift category;

(2) The cross-country flight includes the performance of instrument procedures under simulated instrument conditions; and

(3) The sessions are conducted in accordance with an approved training program under part 135, 141, or 142 of this chapter.

§ 194.233 Alternate means to satisfy the cross-country aeronautical experience requirements for a commercial pilot certificate with a powered-lift category rating.

Notwithstanding the eligibility requirement in § 61.123(f) of this chapter, an applicant who does not meet the cross-country aeronautical experience requirements specified in § 61.129(e) of this chapter will be considered eligible for a commercial pilot certificate with a powered-lift category rating as specified in paragraphs (a) and (b) of this section.

(a) An applicant who does not meet the cross-country aeronautical experience requirements specified in § 61.129(e)(3)(ii) and (iii) of this chapter will be considered eligible for a commercial pilot certificate with a powered-lift category rating, provided the applicant has logged at least three cross-country flights consisting of—

(1) One 2-hour cross-country flight in a powered-lift in daytime conditions that consists of a total straight-line distance of more than 50 nautical miles from the original point of departure;

(2) One 2-hour cross-country flight in a powered-lift in nighttime conditions that consists of a total straight-line distance of more than 50 nautical miles from the original point of departure; and

(3) An additional cross-country flight with landings at a minimum of three points, with one segment consisting of a straight-line distance of at least 50 nautical miles from the original point of departure. Except for the original point of departure, this additional cross-country flight must include landings at different points than the cross-country flights specified in paragraphs (a)(1) and (2) of this section.

(b) An applicant who does not have the cross-country aeronautical experience specified in § 61.129(e)(4)(i) of this chapter will be considered eligible for a commercial pilot certificate with a powered-lift category, provided the applicant has logged at least two cross-country flights with landings at a minimum of three points, with one segment consisting of a straight-line distance of at least 50 nautical miles from the original point of departure. Except for the original point of departure, the second cross-country flight must include landings at different points than the first cross-country flight.

§ 194.235 Alternate means to satisfy the cross-country aeronautical experience requirements for an instrument-powered-lift rating.

(a) An applicant who does not meet the cross-country aeronautical experience requirements specified in § 61.65(f)(2)(ii) of this chapter will be considered eligible for an instrument-powered-lift rating, provided the applicant has logged instrument time that includes instrument flight training on cross-country flight procedures, including two cross-country flights in a powered-lift, provided each cross-country flight—

(1) Is conducted with either an authorized instructor or an instructor pilot; and

(2) Involves—

(i) A flight of 100 nautical miles along airways or by directed routing from an air traffic control facility;

(ii) An instrument approach at each airport; and

(iii) Three different kinds of approaches with the use of navigation systems.

(b) Notwithstanding the requirements in § 61.65(f)(2)(ii) of this chapter for the cross-country flight in a powered-lift, an applicant for an instrument-powered-lift rating is not required to file a flight plan and perform the cross-country flight under instrument flight rules, provided—

(1) The powered-lift is not certificated for instrument flight; and

(2) The applicant holds one of the following—

(i) An instrument-airplane rating;

(ii) An instrument-helicopter rating; or

(iii) An airline transport pilot certificate.

§ 194.237 Alternate means to satisfy the cross-country aeronautical experience requirements for a private pilot certificate with a powered-lift category rating.

Notwithstanding the eligibility requirement in § 61.103(g) of this chapter, an applicant who does not meet the cross-country aeronautical experience requirements specified in § 61.109(e) of this chapter will be considered eligible for a private pilot certificate with a powered-lift category rating as specified in paragraphs (a) and (b) of this section.

(a) *Cross-country aeronautical experience at night.* An applicant who does not meet the cross-country aeronautical experience specified in § 61.109(e)(2)(i) of this chapter will be considered eligible for a private pilot certificate with a powered-lift category rating, provided the applicant has received 3 hours of night flight training that includes two cross-country flights that are each over 50 nautical miles total distance.

(b) *Solo cross-country aeronautical experience.* An applicant who does not meet the solo cross-country aeronautical experience specified in § 61.109(e)(5)(ii) of this chapter will be considered eligible for a private pilot certificate with a powered-lift category rating, provided the applicant has completed—

(1) One solo cross-country flight of 100 nautical miles total distance, with landings at three points, and one segment of the flight being a straight-line distance of more than 25 nautical miles between the takeoff and landing locations; and

(2) An additional solo cross-country flight in a powered-lift with landings at a minimum of three points, with one segment consisting of a straight-line distance of at least 50 nautical miles from the original point of departure. Except for the original point of departure, the additional cross-country flight must include landings at different points than the first cross-country flight.

§ 194.239 Alternate means to satisfy minimum curriculum content in certain appendices to part 141 of this chapter.

(a) *Flight training minimum curriculum content.* Notwithstanding the minimum curriculum requirements in § 141.55(a) of this chapter, a training course for which approval is requested is not required to consist of training on a task specified in an area of operation listed in the applicable appendix to part 141, provided—

(1) The training course for which approval is requested is for a powered-lift course;

(2) The powered-lift to be used in the course is not capable of performing the task specified in an area of operation listed in the applicable appendix to part 141; and

(3) The FAA has issued waiver authority for that task in accordance with § 194.207(b).

(b) *Cross-country minimum curriculum content.* Notwithstanding the minimum curriculum requirements in § 141.55(a) of this chapter, a training course for which approval is requested is not required to meet the minimum curriculum content specified in appendices B, C, and D to part 141, provided—

(1) The training course for which approval is requested is for a powered-lift course.

(2) The minimum curriculum content that is not met may consist of the training specified in—

(i) Appendix B, paragraph 4.(b)(5)(ii)(A);

(ii) Appendix B, paragraph 5.(e)(1);

(iii) Appendix C, paragraph 4.(c)(3)(ii);

(iv) Appendix D, paragraph 4.(b)(5)(ii) and (iii);

(v) Appendix D, paragraph 5.(e)(2); or

(vi) Appendix M, paragraphs 4.(b)(4)(ii)(A), 4.(b)(4)(iii)(A), and 5.(d)(1).

(3) For each provision of training specified in paragraph (b)(2) of this section that is not met, the training course must include an additional cross-country flight consistent with the requirements of §§ 194.233, 194.235, and 194.237.

§ 194.241 Alternate qualification requirements for chief instructors, assistant chief instructors, and check instructors.

(a) Notwithstanding the qualification requirements in §§ 141.35(a)(1), 141.36(a)(1), and 141.37(a)(2)(ii) of this chapter, for a course of training under part 141 of this chapter that uses a powered-lift, a person seeking designation as a chief instructor, an assistant chief instructor, or a check instructor for checks and tests that relate to flight training must meet the following requirements—

(1) Hold a commercial pilot certificate or an airline transport pilot certificate with the following ratings—

(i) A powered-lift category rating;

(ii) A type rating for the powered-lift used in the course; and

(iii) An instrument-powered-lift rating, if an instrument rating is required for the course.

(2) Hold a current flight instructor certificate with the following ratings—

(i) A powered-lift category rating; and

(ii) An instrument-powered-lift rating, if an instrument rating is required for the course.

(b) Notwithstanding the qualification requirements in § 141.37(a)(3)(ii) of this chapter, for a course of training under part 141 of this chapter that uses a powered-lift, a person seeking designation as a check instructor for checks and tests that relate to ground training must hold a current flight instructor certificate or ground instructor certificate with a powered-lift category rating.

§ 194.243 Pilot certification through completion of training, testing, and checking part 135 of this chapter.

(a) *Part 135 airman certification training program.* (1) Subject to the requirements in subpart H of part 135, a certificate holder under part 119 of this chapter authorized to conduct part 135 operations may obtain approval under § 135.325 of this chapter to establish and implement a training curriculum to satisfy the following:

(i) Ground training, flight training, and aeronautical experience requirements in §§ 61.65 of this chapter and 194.231 for the addition of an instrument-powered-lift rating to a commercial pilot certificate;

(ii) Ground training, flight training, and aeronautical experience requirements in § 61.63(b) of this chapter for the addition of an aircraft category rating to a commercial pilot certificate; and

(iii) Ground and flight training requirements in § 61.63(d) of this chapter to add a type rating to a commercial pilot certificate.

(2) No certificate holder may use a person, nor may any person serve, as an instructor in a training curriculum approved to meet the requirements of paragraph (a)(1) of this section unless, in addition to being qualified under §§ 135.338 and 135.340 of this chapter, the person holds a flight instructor certificate with a powered-lift category rating and instrument-powered-lift rating issued under part 61 of this chapter.

(3) A certificate holder may train a pilot in a training curriculum approved to meet the requirements of paragraph (a)(1) of this section only if the pilot is employed by the certificate holder under part 119 of this chapter and holds at least the certificates and ratings set forth by § 194.215(a).

(4) In addition to § 135.327 of this chapter, any curriculum approved under paragraphs (a)(1)(i) through (iii) of this section must include the applicable aeronautical knowledge areas, areas of operation, and flight training required by part 61 of this chapter. If an alternative requirement is provided in this part, that alternative may be used.

(b) *Part 135 airman certification and checking.* (1) A pilot who is employed by a certificate holder under part 119 of this chapter authorized to conduct operations under part 135 who completes the approved curricula in paragraphs (a)(1)(i) through (iii) of this section may apply to add a powered-lift category rating concurrently with a powered-lift instrument rating and an initial powered-lift type rating to a commercial pilot certificate if the person meets the following requirements:

(i) Meets the requirements of §§ 61.63(b) and 61.65(f) of this chapter, or if an alternative requirement is provided in this part, that alternative may be used;

(ii) Has a training record endorsement from the certificate holder certifying that the pilot satisfactorily completed the applicable ground and flight training curricula in the approved part 135 airman certification training program; and

(iii) Successfully completes the written or oral testing under § 135.293(a)(2) and (3) of this chapter, a competency check under § 135.293(b) of this chapter, and an instrument proficiency check under § 135.297 of this chapter provided the following conditions are met:

(A) The competency check includes the maneuvers and procedures required for the issuance of a commercial pilot certificate with a powered-lift category rating, for the issuance of an instrument-powered-lift rating and for the issuance of a powered-lift type rating.

(B) The instrument proficiency check meets the requirements of § 135.297 of this chapter as applicable to a pilot in command (PIC) holding a commercial pilot certificate except that the instrument approaches to be included in the check must include all instrument approaches required for the issuance of an instrument-powered-lift rating and not only those for which the pilot is to

be authorized to perform in part 135 operations.

(2) Sections 135.293(d) and 135.301(b) of this chapter are not applicable to the competency check and instrument proficiency check required by paragraph (b)(1)(iii) of this section.

(3) A pilot who meets paragraph (b)(1) of this section will be issued a commercial pilot certificate with a powered-lift category rating, an instrument-powered-lift rating, and a powered-lift type rating.

(c) *Part 135 certification testing and checking personnel.* The testing, competency checks, and instrument proficiency checks required by paragraph (b) of this section must be administered by one of the following:

(1) An FAA Aviation Safety Inspector.

(2) An Aircrew Program Designee who is authorized to perform competency checks and instrument proficiency checks for the certificate holder whose approved ground and flight training curricula has been satisfactorily completed by the pilot applicant.

(3) A Training Center Evaluator with appropriate certification authority who is also authorized to perform competency checks and instrument proficiency checks for the certificate holder whose approved ground and flight training curricula has been satisfactorily completed by the pilot applicant.

§ 194.245 Pilot qualification and program management requirements to operate powered-lift under subpart K of part 91 of this chapter.

(a) Section 91.1055(a) of this chapter applies to powered-lift operating under subpart K of part 91.

(b) Reference to class of aircraft in § 91.1055(b)(2) of this chapter is inapplicable when a powered-lift is used for the operation under subpart K of part 91.

§ 194.247 Pilot qualification requirements to operate powered-lift under part 135 of this chapter.

(a) Unless otherwise directed in this chapter, powered-lift must continue to comply with rules applicable to aircraft specified in part 135.

(b) To comply with § 135.3 of this chapter, each certificate holder that conducts commuter operations under part 135 with powered-lift in which two pilots are required by the aircraft flight manual must:

(1) Comply with subpart Y of part 121 of this chapter instead of the requirements of subparts G and H of part 135; and

(2) Include in initial ground training for pilots in command and upgrade ground training, instruction and facilitated discussion on the following:

(i) Leadership and command; and

(ii) Mentoring, including techniques for instilling and reinforcing the highest standards of technical performance, airmanship, and professionalism in newly hired pilots.

(3) Include the training required by paragraph (b)(2)(ii) of this section in recurrent ground training for pilots in command every 36 calendar months.

(4) Include in initial flight training for pilots in command and upgrade flight training, sufficient scenario-based training incorporating crew resource management and leadership and command skills, to ensure the pilot's proficiency as pilot in command.

(c) In lieu of compliance with the operating experience requirements listed in § 135.244(a)(1) through (4) of this chapter, no certificate holder may use a person, nor may any person serve, as pilot in command of a powered-lift unless that person possesses 20 hours of operating experience in each make and basic model of powered-lift to be flown.

(d) To comply with § 135.345 of this chapter, initial, transition, and upgrade ground training for powered-lift pilots must include instruction in § 135.345(b)(6)(iv) of this chapter, as applicable.

§ 194.249 References to class in parts 135, 141, and 142 of this chapter.

(a) References to class of aircraft in §§ 135.4(b)(2), 135.247(a)(1) and (2), and 135.603 of this chapter are inapplicable when a powered-lift is used for the operation under part 135.

(b) Notwithstanding the course content contained in the appendices to part 141, references to a class rating or a class of aircraft in those appendices is inapplicable when a powered-lift is used for the course of training.

(c) References to class of aircraft in §§ 142.11(d)(2)(ii), 142.49(c)(3)(iii), 142.53(b)(1), and 142.65(b)(1) of this chapter are inapplicable when a powered-lift or flight simulation device representing a powered-lift is used for the operation under part 142.

§ 194.251 Alternate means to satisfy minimum curriculum content in training courses under part 142 of this chapter.

A training course for which approval is requested is not required to consist of training on a task specified in an area of operation if the powered-lift is not capable of performing the task, provided the FAA has issued waiver authority for that task in accordance with § 194.207(b).

Subpart C—Requirements for Persons Operating Powered-lift

§ 194.301 Applicability.

Unless otherwise specified by this part, persons operating powered-lift must continue to comply with rules applicable to all aircraft in parts 91, 135, and 136 of this chapter, as applicable to the operation.

§ 194.302 Airplane provisions under part 91 of this chapter applicable to powered-lift.

No person may operate a powered-lift under part 91 unless that person complies with the regulations listed in the first column of table 1 to this section, notwithstanding their applicability to airplanes, subject to the applicability provisions in the second column, and any additional requirements specified in the third column:

TABLE 1 TO § 194.302

Regulation	Applicability	Additional requirements
(a) Section 91.9(a) and (b) ..	Applies to all powered-lift	The requirement for an approved Aircraft Flight Manual is set forth in the airworthiness criteria established under § 21.17(b) of this chapter.
(b) Section 91.103(b)(1)	Applies to powered-lift for which an approved Aircraft Flight Manual containing takeoff and landing distance data is required.	
(c) Section 91.107(a)(3)(i) through (iii).	Applies to all powered-lift	The exception under § 91.107(a)(3) for seaplane and float equipped rotorcraft operations during movement on the surface applies to persons pushing off a powered-lift from the dock or persons mooring the powered-lift at the dock.

TABLE 1 TO § 194.302—Continued

Regulation	Applicability	Additional requirements
(d) Section 91.113(d)(2) and (3).	Applies to all powered-lift.	
(e) Section 91.126(b)(1)	Applies to powered-lift operating in wing-borne flight mode.	If the powered-lift is operating in vertical-lift flight mode, see § 194.303(a).
(f) Section 91.129(e)(1) and (2), (g)(2), and (h).	Applies to large or turbine-powered powered-lift.	
(g) Section 91.129(e)(3)	Applies to powered-lift preparing to land in wing-borne flight mode.	
(h) Section 91.129(f)(1)	Applies to powered-lift operating in wing-borne flight mode.	(1) If the powered-lift is operating in vertical-lift flight mode, see § 194.303(b). (2) Section 91.129(f)(1) does not apply when the operator of a powered-lift is conducting a circling approach under part 97 of this chapter or when otherwise requested by air traffic control (ATC).
(i) Section 91.131(a)(2)	Applies to large powered-lift.	
(j) Section 91.151(a)	Applies to all powered-lift.	
(k) Section 91.155(b)(2)	Applies to all powered-lift.	
(l) Section 91.175(f)(4)(i)	Applies to powered-lift operators required to comply with subpart I of part 135 of this chapter.	
(m) Section 91.205(b)(11) and (14).	Applies to small powered-lift	Position and anti-collision lights must meet § 23.2530(b) of this chapter.
(n) Section 91.205(d)(3)(i) ...	Applies to powered-lift certified for instrument flight rules operations.	
(o) Section 91.207	Applies to all powered-lift.	
(p) Section 91.219	Applies to all powered-lift.	
(q) Section 91.223(a) and (c)	Applies to powered-lift configured with 6 or more passenger seats, excluding any pilot seat.	Instead of terrain awareness and warning system (TAWS), powered-lift must be equipped with a helicopter terrain awareness and warning system (HTAWS) that meets the requirements in Technical Standard Order (TSO)–C194 and Section 2 of RTCA DO–309 (incorporated by reference, see § 194.109) or a FAA-approved TAWS A/HTAWS hybrid system.
(r) Section 91.313(g)	Applies to restricted category small powered-lift.	
(s) Section 91.409(e) through (h).	Applies to technically-advanced powered-lift which are powered-lift equipped with an electronically advanced system in which the pilot interfaces with a multi-computer system with increasing levels of automation in order to aviate, navigate, or communicate.	(1) Unless otherwise authorized by the Administrator, a technically advanced powered-lift must be equipped with an electronically advanced multi-computer system that includes one or more of the following installed components: (i) An electronic Primary Flight Display (PFD) that includes, at a minimum, an airspeed indicator, turn coordinator, attitude indicator, heading indicator, altimeter, and vertical speed indicator; (ii) An electronic Multifunction Display (MFD) that includes, at a minimum, a moving map using Global Positioning System (GPS) navigation with the aircraft position displayed; (iii) A multi-axis autopilot integrated with the navigation and heading guidance system; and (iv) Aircraft design with advanced fly-by-wire-flight control system that utilizes electronically operated controls with no direct mechanical link from the pilot to the control surfaces. (2) The display elements described in paragraphs (s)(1)(i) and (ii) of this section must be continuously visible.
(t) Section 91.411	Applies to all powered-lift.	
(u) Section 91.501	Applies to large powered-lift.	
(v) Section 91.503	Applies to all powered-lift subject to the requirements of subpart F of part 91.	Powered-lift may comply with § 91.503(a)(5) by having the appropriate engine or multiple-engines inoperative climb performance data available at the pilot station of the aircraft.
(w) Section 91.505	Applies to all powered-lift subject to the requirements of subpart F of part 91.	
(x) Section 91.507	Applies to all powered-lift subject to the requirements of subpart F of part 91.	

TABLE 1 TO § 194.302—Continued

Regulation	Applicability	Additional requirements
(y) Section 91.509	Applies to all powered-lift subject to the requirements of subpart F of part 91.	(1) Powered-lift operating over water under § 91.509(a) or (b) may use either the nearest shore or the nearest off-shore heliport structure by which to measure the nautical mile limits provided in § 91.509(a) and (b). (2) The lifeline required by § 91.509(b)(5) must be stored in accordance with § 25.1411(g) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(z) Section 91.511	Applies to all powered-lift subject to the requirements of subpart F of part 91.	Powered-lift operating over water under § 91.511(a) may use either the nearest shore or the nearest off-shore heliport structure by which to measure the nautical mile limits provided in § 91.511(a).
(aa) Section 91.513	Applies to all powered-lift subject to the requirements of subpart F of part 91.	
(bb) Section 91.515	Applies to all powered-lift subject to the requirements of subpart F of part 91.	
(cc) Section 91.517	Applies to all powered-lift subject to the requirements of subpart F of part 91.	
(dd) Section 91.519	Applies to all powered-lift subject to the requirements of subpart F of part 91.	
(ee) Section 91.521	Applies to large powered-lift subject to the requirements of subpart F of part 91.	The safety belt and shoulder harness required by § 91.521 must comply with § 25.785 of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(ff) Section 91.523	Applies to powered-lift having a seating capacity of more than 19 passengers subject to the requirements of subpart F of part 91.	The carry-on baggage required by § 91.523 must be stowed such that it can withstand the inertia forces specified in § 25.561(b)(3) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(gg) Section 91.525	Applies to all powered-lift subject to the requirements of subpart F of part 91.	
(hh) Section 91.527(a)	Applies to all powered-lift subject to the requirements of subpart F of part 91.	(1) Powered-lift critical surfaces, as outlined in the aircraft flight manual for that aircraft, must also be determined to be free of frost, ice, or snow. (2) Powered-lift critical surfaces under this section are determined by the manufacturer.
(ii) Section 91.527(b)(2) and (3).	Applies to all powered-lift subject to the requirements of subpart F of part 91.	Instead of § 91.527(b)(2) and (3), to operate instrument flight rules (IFR) into known light or moderate icing conditions or VFR into known light or moderate icing conditions, an operator must comply with § 194.308(i).
(jj) Section 91.531(a)(1) and (2), (b), and (c).	Applies to powered-lift subject to the requirements of subpart F of part 91 and that meet the additional requirements as set forth in each paragraph of § 91.531.	
(kk) Section 91.533	Applies to all powered-lift subject to the requirements of subpart F of part 91.	
(ll) Section 91.603	Applies to large powered-lift	The aural speed warning device required by § 91.603 must comply with § 25.1303(c)(1) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(mm) Section 91.605(b)(1)	Applies to large powered-lift	The Aircraft Flight Manual must contain the takeoff weight performance information.
(nn) Section 91.605(b)(2)	Applies to large powered-lift	The Aircraft Flight Manual must contain the landing performance information.
(oo) Section 91.605(b)(3), (b)(4)(ii), and (c).	Applies to large powered-lift that execute takeoff operations using wing-borne lift and that have takeoff performance information contained in the aircraft flight manual.	

TABLE 1 TO § 194.302—Continued

Regulation	Applicability	Additional requirements
(pp) Section 91.609(c), (d), (e), (i), and (j).	Section 91.609(c) applies to powered-lift with a passenger seating configuration of 10 or more seats; paragraph (e) of § 91.609 applies to powered-lift with a passenger seating configuration of six or more seats and for which two pilots are required by type certification or operating rule; paragraphs (d), (i), and (j) of § 91.609 apply to all powered-lift required to comply with § 91.609.	(1) Operators of powered-lift having a passenger seating configuration, excluding any pilot seat, of 10 or more must comply with § 194.312 or § 194.313 in lieu of the appendices referenced in § 91.609(c)(1). (2) For compliance with § 91.609(c)(3), (e)(1), and (i), powered-lift must comply with the certification provisions listed in those paragraphs or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter. (3) Under § 91.609(d), the flight recorder must operate continuously from the earlier of when the powered-lift begins the takeoff roll or begins lift-off until the later of when the powered-lift completes the landing roll or lands at its destination.
(qq) Section 91.613(b)(2)	Applies to large powered-lift	The thermal/acoustic installation materials required by § 91.613(b)(2) must meet the requirements of § 25.856 of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(rr) Section 91.1037	Applies to large powered-lift subject to the requirements of subpart K of part 91 that are certificated to conduct landing operations in wing-borne flight mode as indicated in the aircraft flight manual.	(i) If a powered-lift operator is required to comply with this section, the operator must also comply with § 91.1025(o)(7).
(ss) Section 91.1041(b) and (d).	Applies to all powered-lift subject to the requirements of subpart K of part 91.	
(tt) Section 91.1045(a)	Applies to powered-lift subject to the requirements of subpart K of part 91 with a passenger-seat configuration of more than 30 seats or a payload capacity of more than 7,500 pounds.	Under § 91.1045(a)(3), instead of TAWS, powered-lift must be equipped with a helicopter terrain awareness and warning system (HTAWS) that meets the requirements in Technical Standard Order (TSO)–C194 and Section 2 of RTCA DO–309 or a FAA-approved TAWS A/HTAWS hybrid system.
(uu) Section 91.1045(b)	Applies to powered-lift subject to the requirements of subpart K of part 91 with a passenger-seat configuration of 30 seats or fewer, excluding each crewmember, and a payload capacity of 7,500 pounds or less.	Compliance with § 91.1045(b)(3) requires a helicopter terrain awareness and warning system that complies with § 194.307(q).

§ 194.303 Rotorcraft and helicopter provisions under part 91 of this chapter applicable to powered-lift.

No person may operate a powered-lift under part 91 unless that person complies with the regulations listed in the first column of table 1 to this section, notwithstanding their applicability to rotorcraft or helicopters, subject to the applicability provisions in the second column and any additional requirements specified in the third column.

TABLE 1 TO § 194.303

Regulation	Applicability	Additional requirements
(a) Section 91.126(b)(2)	(1) Applies to powered-lift operating in vertical-lift flight mode.	If the powered-lift is operating in wing-borne flight mode, see § 194.302(e).
(b) Section 91.129(f)(2)	Applies to powered-lift operating in vertical-lift flight mode.	(1) If the powered-lift is operating in wing-borne flight mode, see § 194.302(h). (2) Section 91.129(f)(2) does not apply when the operator of a powered-lift is conducting a circling approach under part 97 of this chapter or when otherwise requested by ATC.

§ 194.304 IFR takeoff, approach, and landing minimums.

Section 91.1039(c) of this chapter applies to all powered-lift operated under subpart K of part 91 of this chapter regardless of powerplant type.

§ 194.305 ATC transponder and altitude reporting equipment and use.

The exceptions outlined in § 91.215(b)(3) and (5) of this chapter for aircraft not certificated with an engine-driven electrical system do not apply to powered-lift.

§ 194.306 Applicability of copter procedures under part 97 of this chapter to powered-lift.

Persons operating powered-lift may use copter procedures as defined in § 97.3 of this chapter if the aircraft is certified for instrument flight rule operations and does not contain a limitation prohibiting use of such procedures in its Aircraft Flight Manual.

§ 194.307 Airplane provisions under part 135 of this chapter applicable to powered-lift.

No person may operate a powered-lift under part 135 unless that person complies with the regulations listed in the first column of table 1 to this section, notwithstanding their applicability to airplanes, subject to the applicability provisions in the second column and any additional requirements specified in the third column.

TABLE 1 TO § 194.307

Regulation	Applicability	Additional requirements
(a) Section 135.23(r)(7)	Applies to powered-lift required to comply with § 135.385 as set forth in paragraphs (qq) and (rr) of this section.	
(b) Section 135.93(a) through (f).	Applies to all powered-lift.	
(c) Section 135.128(a)	Applies to all powered-lift	The exception under § 135.128(a) for seaplane and float equipped rotorcraft operations during movement on the surface applies to persons pushing off a powered-lift from the dock or persons mooring the powered-lift at the dock.
(d) Section 135.145(b)	Applies to all powered-lift unless the certificate holder has previously proven a powered-lift under part 135.	
(e) Section 135.145(d)(1)	Applies to all powered-lift unless a powered-lift of the same make or similar design has been proven or validated by that certificate holder under part 135.	
(f) Section 135.150(a)(7)	Applies to large powered-lift with a passenger seating configuration, excluding any pilot seat, of more than 19.	The public address system required by § 135.150(a)(7) must comply with § 25.1423 of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(g) Section 135.150(b)(7)	Applies to large powered-lift with a passenger seating configuration, excluding any pilot seat, of more than 19.	(i) The crewmember interphone system must comply with the requirements of § 135.150(b)(7) or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(h) Section 135.151(a)	Applies to powered-lift with a passenger seating configuration of six or more seats and for which two pilots are required by certification or operating rules.	The cockpit voice recorder must be installed and equipped in accordance with the certification provisions listed in § 135.151(a)(1) or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(i) Section 135.151(b)	(A) Applies to powered-lift with a passenger seating configuration of 20 or more seats.	The cockpit voice recorder must be installed and equipped in accordance with the certification provisions listed in § 135.151(b)(1) or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(j) Section 135.151(d)	(B) Applies to large powered-lift or powered-lift equipped with a cockpit voice recorder.	The cockpit voice recorder required by § 135.151(d) must record the uninterrupted audio signal received by a boom or mask microphone in accordance with § 25.1457(c)(5) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(k) Section 135.151(g)(1)	(C) Applies to powered-lift with a passenger seating configuration of six or more seats, for which two pilots are required by certification or operating rules, and that are required to have a flight data recorder under § 135.152.	The cockpit voice recorder must be installed and equipped in accordance with the appropriate certification provisions listed in § 135.151(g)(1)(i) and (iv) or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(l) Section 135.151(g)(2)	(D) Applies to powered-lift with a passenger seating configuration of 20 or more seats and that is required to have a flight data recorder under § 135.152.	The cockpit voice recorder must be installed and equipped in accordance with the appropriate certification provisions listed in § 135.151(g)(2)(i) and (iv) or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(m) Section 135.151(h)	(E) Applies to powered-lift required to have a cockpit voice recorder and a flight data recorder with installed datalink communication equipment.	
(n) Section 135.152(c), (d), (f), and (j).	(1) Applies to powered-lift with a passenger seating configuration, excluding crewmember seats, of 10 to 30.	(1) The flight recorder must be installed and equipped in accordance with the appropriate certification provisions listed in § 135.152 or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.

TABLE 1 TO § 194.307—Continued

Regulation	Applicability	Additional requirements
		(2) Certificate holders must keep the recorded data until the powered-lift has been operating for at least 25 hours. (3) The powered-lift flight recorder must be operated continuously from the instant the powered-lift begins the takeoff roll or lift-off until the landing is completed.
(o) Section 135.152(a)	Paragraph (a) of § 135.152 applies to powered-lift with a passenger seating configuration of 10 to 19 seats.	Powered-lift operators must comply with § 194.314 or § 194.315 in lieu of the appendices referenced in § 135.152.
(p) Section 135.152(b) introductory text and (b)(3).	Paragraphs (b) introductory text and (b)(3) of § 135.152 apply to powered-lift with a passenger seating configuration of 20 to 30 seats.	
(q) Section 135.154(a) and (c).	Applies to powered-lift configured with 6 or more passenger seats, excluding any pilot seat.	Instead of TAWS, powered-lift must be equipped with a helicopter terrain awareness and warning system (HTAWS) that meets the requirements in Technical Standard Order (TSO)–C194 and Section 2 of RTCA DO–309 (incorporated by reference, see § 194.109) or a FAA-approved TAWS A/HTAWS hybrid system.
(r) Section 135.158	Applies to powered-lift equipped with a flight instrument pitot heating system.	
(s) Section 135.159(a)(1)	Applies to powered-lift with a third attitude instrument system that meets the requirements of paragraph (a)(1) of § 135.159.	
(t) Section 135.165(d)	Applies to powered-lift having a passenger seat configuration, excluding any pilot seat, of 10 seats or more, or a powered-lift in a commuter operation, as defined in part 119 of this chapter.	
(u) Section 135.165(g)(1)	Applies to powered-lift for purposes of approving a single long-range navigation system and a single long-range communication system for extended over-water operations.	
(v) Section 135.169(a)	Applies to large powered-lift	(i) Powered-lift must comply with appropriate certification provisions listed in § 135.169(a) or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(w) Section 135.169(b)(8)	Applies to small powered-lift with a passenger seating configuration of 10 seats or more.	(i) Small powered-lift with a passenger seating configuration of 10 seats or more must comply with the applicable requirements under part 23 of this chapter referenced in § 135.169(b)(8) or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(x) Section 135.169(d)	(1) Applies to large powered-lift with a cargo or baggage compartment of 200 cubic feet or greater.	The cargo and baggage compartments required by § 135.169(d) must comply with the certification provisions listed in that paragraph or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(y) Section 135.170(b)(1)	Applies to large powered-lift and paragraph (b)(1)(ii) of § 135.170 applies to large powered-lift with a passenger capacity of 20 or more.	Powered-lift must comply with appropriate certification provisions listed in § 135.170(b)(1) or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(z) Section 135.170(b)(2)	Applies to large powered-lift	The seat cushions required by § 135.170(b)(2) must comply with § 25.853 of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(aa) Section 135.170(c)(2) ...	Applies to large powered-lift	The seat cushions required by § 135.170(c)(2) must comply with § 25.856 of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(bb) Section 135.178	Applies to powered-lift having a passenger-seating configuration of more than 19 seats.	The additional emergency equipment must comply with appropriate certification provisions listed in § 135.178 or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.

TABLE 1 TO § 194.307—Continued

Regulation	Applicability	Additional requirements
(cc) Section 135.180	Applies to powered-lift with a passenger seat configuration, excluding any pilot seat, of 10 to 30 seats.	The aircraft flight manual must contain the information outlined in § 135.180(b).
(dd) Section 135.203(a)	Applies to all powered-lift.	
(ee) Section 135.205(a)	Applies to all powered-lift.	
(ff) Section 135.209(a)	Applies to all powered-lift.	
(gg) Section 135.225(e)	Applies to all powered-lift.	
(hh) Section 135.227(b)(1) through (3).	Applies to all powered-lift	(1) Powered-lift critical surfaces, as outlined in the aircraft flight manual for that aircraft, must also be determined to be free of frost, ice, or snow. (2) Powered-lift critical surfaces under this section are determined by the manufacturer. (3) For IFR and VFR flight into certain icing conditions, see § 194.308(i).
(ii) Section 135.361(a)	As applicable to each powered-lift considering size and certification basis.	
(jj) Section 135.363(a) through (e).	As applicable to each powered-lift, regardless of power plant type, considering size and certification basis.	
(kk) Section 135.363(f)	Applies to powered-lift that must comply with §§ 135.365 through 135.387 as set forth in paragraphs (mm) through (ss) of this section.	
(ll) Section 135.379(a) and (d).	Applies to large powered-lift	The Aircraft Flight Manual must contain the takeoff weight performance information.
(mm) Section 135.379(c), (e), (f), and (g).	Applies to large powered-lift certificated to conduct takeoff operations that utilize wing-borne lift as indicated in the aircraft flight manual.	The accelerate-stop distance required by § 135.179(c)(1) must comply with § 25.109 of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(nn) Section 135.381	Applies to large powered-lift.	
(oo) Section 135.383(c)	Applies to large powered-lift.	
(pp) Section 135.385(a)	Applies to large powered-lift	The Aircraft Flight Manual must contain the landing weight performance information.
(qq) Section 135.385(b), (d), (e), and (f).	Applies to large powered-lift certificated to conduct landing operations that utilize wing-borne lift and that have landing performance information contained in the aircraft flight manual.	Paragraph (f) of § 135.385 only applies to eligible on-demand operators.
(rr) Section 135.387(a) and (b).	Applies to large powered-lift certificated to conduct landing operations that utilize wing-borne lift and that have landing performance information contained in the aircraft flight manual.	(1) Powered-lift operating under § 135.387(a) must be able to complete a full stop landing within 60 percent of the effective length of the runway. (2) Paragraph (b) of § 135.387 only applies to eligible on-demand operators.
(ss) Section 135.397(b)	Applies to small powered-lift having a passenger-seating configuration of more than 19 seats and that utilize wing-borne lift during takeoff and landing.	The Aircraft Flight Manual must contain the takeoff and landing weight performance information.

§ 194.308 Rotorcraft and helicopter provisions under part 135 of this chapter applicable to powered-lift.

No person may operate a powered-lift under part 135 unless that person complies with the regulations listed in the first column of table 1 to this section, notwithstanding their applicability to rotorcraft or helicopters, subject to the applicability provisions in the second column and any additional requirements specified in the third column.

TABLE 1 TO § 194.308

Regulation	Applicability	Additional requirements
(a) Section 135.1(a)(9)	Applies to powered-lift conducting operations in accordance with subpart L of part 135.	
(b) Section 135.117(a)(9)	Applies to powered-lift conducting operations beyond the autorotational distance from the shoreline, as defined in § 135.168(a), or gliding distance of a shoreline.	
(c) Section 135.160	Applies to all powered-lift	
(d) Section 135.163(g)	Applies to all powered-lift	The two required generators may be mounted on a drivetrain that is driven by two separate powerplants as outlined in § 135.163(g) for multi-engine helicopters.
(e) Section 135.168	Applies to powered-lift operating beyond autorotational distance or gliding distance from the shoreline.	
(f) Section 135.181(b)	Applies to powered-lift conducting offshore passenger operations.	

TABLE 1 TO § 194.308—Continued

Regulation	Applicability	Additional requirements
(g) Section 135.183(d)	Applies if the powered-lift is equipped with flotation devices and carrying passengers over water.	
(h) Section 135.207	Applies if the powered-lift does not have the flight instrumentation listed in § 135.159 installed and operable.	
(i) Section 135.227(d)	Applies to powered-lift that are type certificated and appropriately equipped for operations in certain icing conditions.	For critical surfaces requirements, see § 194.307(ii).
(j) Section 135.229(b)(2)(ii) ..	Applies to powered-lift taking off or landing in vertical-lift flight mode and equipped with landing lights oriented in a direction that enables the pilot to see a landing area marked by reflective material.	If a powered-lift is not landing in vertical flight mode and not equipped with landing lights oriented in a direction that enables the pilot to see a landing area marked by reflective material, the powered-lift must land at an airport with boundary or runway marker lights.
(k) Section 135.271	Applies to powered-lift conducting operations in accordance with subpart L of part 135.	
(l) Section 135.429(d)	Applies to powered-lift that operate in remote areas or sites.	
(m) Section 135.601	Applies to powered-lift conducting operations in accordance with subpart L of part 135.	
(n) Section 135.603	Applies to powered-lift conducting operations in accordance with subpart L of part 135.	See § 194.221 for references to class in part 135.
(o) Section 135.605	Applies to powered-lift conducting operations in accordance with subpart L of part 135.	Powered-lift must be equipped with a helicopter terrain awareness and warning system (HTAWS) that meets the requirements in Technical Standard Order (TSO)-C194 and Section 2 of RTCA DO–309 (incorporated by reference, see § 194.109) or a FAA-approved TAWS A/HTAWS hybrid system.
(p) Section 135.607	Applies to powered-lift conducting operations in accordance with subpart L of part 135.	
(q) Section 135.609	Applies to powered-lift conducting operations in accordance with subpart L of part 135.	(1) For nonmountainous local flying areas, powered-lift must comply with the following weather minimums: (ii) During day operations, a ceiling of 800 feet and visibility of 2 SM; and (iii) During night operations, a ceiling of 1500 feet and visibility of 3 SM. (2) For nonmountainous, non-local flying areas, powered-lift must comply with the following weather minimums: (i) During day operations, a ceiling of 800 feet and visibility of 3 SM; and (ii) During night operations, a ceiling of 1500 feet and visibility of 3 SM. (3) For mountainous local flying areas, powered-lift must comply with the following weather minimums: (i) During day operations, a ceiling of 800 feet and visibility of 3 SM; and (ii) During night operations, a ceiling of 2500 feet and visibility of 3 SM. (4) For mountainous non-local flying areas, powered-lift must comply with the following weather minimums: (i) During day operations, a ceiling of 1000 feet and visibility of 3 SM; and (ii) During night operations, a ceiling of 2500 feet and visibility of 5 SM.
(r) Section 135.611	Applies to powered-lift conducting operations in accordance with subpart L of part 135.	
(s) Section 135.613	Applies to powered-lift conducting operations in accordance with subpart L of part 135.	(1) Section 135.613(a)(1) only applies to powered-lift equipped and certified to conduct PinS approaches annotated with a ''Proceed VFR'' segment. (2) The applicable weather minimums under § 135.613(a)(2) are: (i) For Day Operations: No less than a 1000-foot ceiling and 2 statute miles flight visibility; and (ii) For Night Operations: No less than a 1500-foot ceiling and 3 statute miles flight visibility. (3) Under § 135.613, the VFR weather minimums outlined in paragraphs (b)(1)(ii)(A) and (B) apply.

TABLE 1 TO § 194.308—Continued

Regulation	Applicability	Additional requirements
(t) Section 135.615	Applies to powered-lift conducting operations in accordance with subpart L of part 135.	(1) Under § 135.615, the minimums outlined in paragraphs (a)(3)(ii)(A) and (B) apply. (2) Under § 135.615(b)(1) and (2), while conducting VFR operations, the pilot in command must ensure that all terrain and obstacles along the route of flight are cleared vertically by no less than the following: (i) During the day, 500 feet above the surface or 500 feet horizontally from any obstacle; or (ii) At night, at an altitude of 1,000 feet above the highest obstacle within a horizontal distance of 5 miles from the course intended to be flown or, in designated mountainous terrain, 2,000 feet above the highest obstacle within a horizontal distance of 5 miles from the course intended to be flown.
(u) Section 135.617	Applies to powered-lift conducting operations in accordance with subpart L this part 135.	
(v) Section 135.619	Applies to powered-lift operators with 10 or more powered-lift, helicopters, or any combination thereof, assigned to the certificate holder's operations specifications for air ambulance operations.	
(w) Section 135.621	Applies to powered-lift conducting operations in accordance with subpart L of part 135.	

§ 194.309 Applicability of rules for eligible on-demand operations.

No person may operate a powered-lift in an eligible on-demand operation under part 135 of this chapter without complying with the requirements specified for the second in command of a fixed-wing aircraft contained in § 135.4(a)(3) of this chapter.

§ 194.310 Applicability of national air tour safety standards under part 136 of this chapter to powered-lift.

(a) No person may operate a powered-lift under part 136 without complying with the requirements specified for airplanes contained in the following regulations in part 136:

(1) Section 136.9(b)(2) applies to powered-lift operating in wing-borne flight mode within power-off gliding distance to the shoreline.

(2) [Reserved]

(b) No person may operate a powered-lift under part 136 without complying with the requirements specified for helicopter or rotorcraft contained in the following regulations in part 136:

(1) *Suitable landing area,* as defined in § 136.1, applies to powered-lift conducting commercial air tours;

(2) Section 136.11(a)(2), (b), and (c) apply to powered-lift operating in vertical-lift flight mode while conducting commercial air tours over water beyond the auto-rotational or gliding distance from the shoreline;

(3) Section 136.13; and

(4) Appendix A to part 136 as follows:

(i) Section 3 applies to all powered-lift operators conducting air tours in Hawaii beyond the shore of any island;

(ii) Section 4; and

(iii) Section 5 applies to powered-lift with aircraft flight manuals containing height velocity information.

§ 194.311 Applicability of flight instruction; Simulated instrument flight.

The requirement to hold the appropriate category and class rating in § 91.109(c)(1)(i) of this chapter is not applicable to operations conducted to meet alternate aeronautical experience requirements set forth in §§ 194.225, 194.227, and 194.229.

§ 194.312 Powered-lift in vertical-lift flight mode, flight recorder specifications under part 91 of this chapter.

TABLE 1 TO § 194.312

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution 3 read out
Relative Time (From Recorded on Prior to Takeoff).	4 hr minimum	±0.125% per hour	1	1 sec.
Indicated Airspeed	VM in to VD (KIAS) (minimum airspeed signal attainable with installed pilot-static system).	±5% or ±10 kts., whichever is greater.	1	1 kt.
Altitude	−1,000 ft. to 20,000 ft. pressure altitude.	±100 to ±700 ft. (see Table 1, TSO C51–a).	1	25 to 150 ft.
Magnetic Heading	360°	±5°	1	1°.
Vertical Acceleration	−3g to + 6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.05g.
Longitudinal Acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.03g.
Pitch Attitude	100% of usable range	±2°	1	0.8°.
Roll Attitude	±60 or 100% of usable range, whichever is greater.	±2°	1	0.8°.
Altitude Rate	±8,000 fpm	±10% Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm below 12,000.
Engine Power, Each Engine:				
Main Rotor Speed	Maximum Range	±5%	1	1%.[2]

TABLE 1 TO § 194.312—Continued

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution 3 read out
Free or Power Turbine	Maximum Range	±5%	1	1%.[2]
Engine Torque	Maximum Range	±5%	1	1%.[2]
Flight Control Hydraulic Pressure:				
Primary (Discrete)	High/Low		1.	
Secondary—if applicable (Discrete)	High/Low		1.	
Radio Transmitter Keying (Discrete)	On/Off		1.	
Autopilot Engaged (Discrete)	Engaged or Disengaged		1.	
SAS Status—Engaged (Discrete)	Engaged or Disengaged		1.	
SAS Fault Status (Discrete)	Fault/OK		1.	
Flight Controls:				
Pilot Inputted—Primary Controls (*i.e.,* Ascent, descent, acceleration and deceleration, heading and directional control for all axis).	Full range	±3%	2	1%.[2]
Controllable Stabilator Position	Full range	±3%	2	1%.[2]

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.
[2] Percent of full range.

§ 194.313 Powered-lift in wing-borne flight mode, flight recorder specifications under part 91 of this chapter.

TABLE 1 TO § 194.313

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution read out
Relative Time (From Recorded on Prior to Takeoff).	8 hr minimum	±0.125% per hour	1	1 sec.
Indicated Airspeed	Vso to VD (KIAS)	±5% or ±10 kts., whichever is greater. Resolution 2 kts. below 175 KIAS.	1	1%.[3]
Altitude	−1,000 ft. to max cert. alt. of A/C.	±100 to ±700 ft. (see Table 1, TSO C51–a).	1	25 to 150 ft.
Magnetic Heading	360°	±5°	1	1°.
Vertical Acceleration	−3g to + 6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.03g.
Longitudinal Acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.01g.
Pitch Attitude	100% of usable	±2°	1	0.8°.
Roll Attitude	±60° or 100% of usable range, whichever is greater.	±2°	1	0.8°.
Stabilizer Trim Position, or Pitch Control Position.	Full Range	±3% unless higher uniquely required.	1	1%.[3]
Engine Power, Each Engine	Full Range	±3% unless higher uniquely required.	1	1%.[3]
Fan or N1 Speed or EPR or Cockpit indications Used for Aircraft Certification OR.	Maximum Range	±5%	1	1%.[3]
Prop. speed and Torque (Sample Once/Sec as Close together as Practicable).			1 (prop Speed) 1 (torque)	1%.[3] 1%.[3]
Altitude Rate [2] (need depends on altitude resolution).	±8,000 fpm	±10%. Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm. below 12,000.
Angle of Attack [2] (need depends on altitude resolution).	−20° to 40° or 100% of usable range.	±2°	1	0.8%.[3]
Radio Transmitter Keying (Discrete)	On/Off		1.	
TE Flaps (Discrete or Analog)	Each discrete position (U, D, T/O, AAP) OR.		1.	
LE Flaps (Discrete or Analog)	Analog 0–100% range Each discrete position (U, D, T/O, AAP) OR.	±3%	1 1.	1%.[3]
Thrust Reverser, Each Engine (Discrete)	Analog 0–100% range Stowed or full reverse	±3°	1	1%.[3]
Spoiler/Speedbrake (Discrete)	Stowed or out		1.	
Autopilot Engaged (Discrete)	Engaged or Disengaged		1.	

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.
[2] If data from the altitude encoding altimeter (100 ft. resolution) is used, then either one of these parameters should also be recorded. If, however, altitude is recorded at a minimum resolution of 25 feet, then these two parameters can be omitted.
[3] Percent of full range.

§ 194.314 Powered-lift in vertical-lift flight mode, flight recorder specifications under part 135 of this chapter.

TABLE 1 TO § 194.314

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution read out
Relative time (from recorded on prior to take-off).	25 hr minimum	±0.125% per hour	1	1 sec.
Indicated airspeed	V_m in to V_D (KIAS) (minimum airspeed signal attainable with installed pilot-static system).	±5% or ±10 kts., whichever is greater.	1	1 kt.
Altitude	−1,000 ft. to 20,000 ft. pressure altitude.	±100 to ±700 ft. (see Table 1, TSO C51–a).	1	25 to 150 ft.
Magnetic heading	360°	±5°	1	1°.
Vertical acceleration	−3g to + 6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.05g.
Longitudinal acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.03g.
Pitch attitude	100% of usable range	±2°	1	0.8°.
Roll attitude	±60° or 100% of usable range, whichever is greater.	±2°	1	0.8°.
Altitude rate	±8,000 fpm	±10% Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm below 12,000.
Engine Power, Each Engine:				
Main rotor speed	Maximum range	±5%	1	1%.[2]
Free or power turbine	Maximum range	+5%	1	1%.[2]
Engine torque	Maximum range	±5%	1	1%.[2]
Flight Control—Hydraulic Pressure:				
Primary (discrete)	High/low		1	
Secondary—if applicable (discrete)	High/low		1	
Radio transmitter keying (discrete)	On/off		1	
Autopilot engaged (discrete)	Engaged or disengaged		1	
SAS status—engaged (discrete)	Engaged/disengaged		1	
SAS fault status (discrete)	Fault/OK		1	
Flight Controls:				
Primary Controls (I.E. Ascent, descent, acceleration and deceleration, heading and directional control for all axis) [3].	Full range	±3%	2	1%.[2]
Controllable Stabilator Position [3]	Full range	±3%	2	1%.[2]

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.
[2] Percent of full range.
[3] For all aircraft manufactured on or after December 6, 2010, the sampling interval per second is 4.

§ 194.315 Powered-lift in wing-borne flight mode, flight recorder specification under part 135 of this chapter.

TABLE 1 TO § 194.315

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution read out
Relative time (from recorded on prior to take-off).	25 hr minimum	±0.125% per hour	1	1 sec.
Indicated airspeed	V_{so} to V_D (KIAS)	±5% or ±10 kts., whichever is greater. Resolution 2 kts. below 175 KIAS.	1	1%.[3]
Altitude	−1,000 ft. to max cert. alt. of A/C.	±100 to ±700 ft. (see Table 1, TSO C51–a).	1	25 to 150.
Magnetic heading	360°	±5°	1	1°.
Vertical acceleration	−3g to + 6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.03g.
Longitudinal acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.01g.
Pitch attitude	100% of usable	±2°	1	0.8°.
Roll attitude	±60° or 100% of usable range, whichever is greater.	±2°	1	0.8°.
Stabilizer trim position; Or	Full range	±3% unless higher uniquely required.	1	1%.[3]
Pitch control position	Full range	±3% unless higher uniquely required.	1	1%.[3]
Engine Power, Each Engine:				
Fan or N_1 speed or EPR or cockpit indications used for aircraft certification; Or	Maximum range	±5%	1	1%.[3]

TABLE 1 TO § 194.315—Continued

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution read out
Prop. speed and torque (sample once/sec as close together as practicable).			1 (prop speed), 1 (torque)	
Altitude rate [2] (need depends on altitude resolution).	±8,000 fpm	±10%. Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm Below 12,000.
Angle of attack [2] (need depends on altitude resolution).	−20° to 40° or of usable range.	±2°	1	0.8%.[3]
Radio transmitter keying (discrete)	On/off		1	
TE flaps (discrete or analog)	Each discrete position (U, D, T/O, AAP); Or		1	
	Analog 0–100% range	±3°	1	1%.[3]
LE flaps (discrete or analog)	Each discrete position (U, D, T/O, AAP); Or		1	
	Analog 0–100% range	±3°	1	1%.[3]
Thrust reverser, each engine (Discrete)	Stowed or full reverse		1	
Spoiler/speedbrake (discrete)	Stowed or out		1	
Autopilot engaged (discrete)	Engaged or disengaged		1	

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.
[2] If data from the altitude encoding altimeter (100 ft. resolution) is used, then either one of these parameters should also be recorded. If, however, altitude is recorded at a minimum resolution of 25 feet, then these two parameters can be omitted.
[3] Percent of full range.

Subpart D—Maintenance, Preventive Maintenance, Rebuilding, and Alteration Requirements for Powered-lift under Part 43 of this Chapter

§ 194.401 Applicability.

Unless otherwise specified by this part, powered-lift must continue to comply with rules applicable to all aircraft in part 43 of this chapter.

§ 194.402 Maintenance provisions.

The following maintenance provisions under part 43 of this chapter that pertain to rotorcraft also apply to powered-lift:

(a) Section 43.3(h) of this chapter applies to certificate holders operating powered-lift under part 135 of this chapter in a remote area; and

(b) In lieu of complying with § 43.15(b) of this chapter, each person performing an inspection required by part 91 of this chapter on a powered-lift shall inspect critical parts in accordance with the maintenance manual or Instruction for Continuous Airworthiness, or as otherwise approved by the Administrator.

(1) A ''critical part'' has the same meaning as provided in §§ 27.602 and 29.602 of this chapter.

(2) [Reserved]

Issued under authority provided by 49 U.S.C. 106(f), 40113, 44701–44705, 44707, 44712, 44713, 44715, 44722, and 44730 in Washington, DC, on May 22, 2023.

David H. Boulter,

Acting Associate Administrator for Aviation Safety.

[FR Doc. 2023–11497 Filed 6–7–23; 11:15 am]

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FEDERAL REGISTER

Vol. 88 Wednesday,
No. 114 June 14, 2023

Part III

The President

Notice of June 12, 2023—Continuation of the National Emergency With Respect to Belarus

Federal Register
Vol. 88, No. 114
Wednesday, June 14, 2023

Presidential Documents

Title 3—

The President

Notice of June 12, 2023

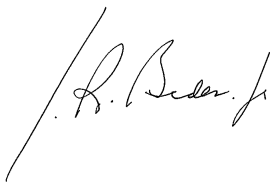
Continuation of the National Emergency With Respect to Belarus

On June 16, 2006, by Executive Order 13405, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Belarus and other persons to undermine Belarus's democratic processes or institutions, manifested in the fundamentally undemocratic March 2006 elections; to commit human rights abuses related to political repression, including detentions and disappearances; and to engage in public corruption, including by diverting or misusing Belarusian public assets or by misusing public authority.

On August 9, 2021, by Executive Order 14038, I expanded the scope of the national emergency declared in Executive Order 13405, finding that the Belarusian regime's harmful activities and long-standing abuses aimed at suppressing democracy and the exercise of human rights and fundamental freedoms in Belarus—including illicit and oppressive activities stemming from the August 9, 2020, fraudulent Belarusian presidential election and its aftermath, such as the elimination of political opposition and civil society organizations and the regime's disruption and endangering of international civil air travel—constituted an unusual and extraordinary threat to the national security and foreign policy of the United States.

The actions and policies of certain members of the Government of Belarus and other persons, and the Belarusian regime's harmful activities and long-standing abuses, continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13405, which was expanded in scope in Executive Order 14038, must continue in effect beyond June 16, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13405.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
June 12, 2023.

[FR Doc. 2023–12873
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