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Presidential Documents

Title 3—

The President

Executive Order 14100 of June 9, 2023

Advancing Economic Security for Military and Veteran Spouses, Military Caregivers, and Survivors

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

Section 1. *Policy.* Military-connected families are American working families. Military and veteran families, military caregivers, and survivors face many of the same challenges as their neighbors, but they can carry the additional strains of multiple deployments; frequent moves with little control over their geographic location; caring for wounded, ill, and injured service members or veterans; time apart for training and other demands of military life; and more. The unique demands of military life continue to affect veteran families, military caregivers, and survivors for years after a service member's time in uniform.

Military families, like their civilian counterparts, increasingly look to rely upon dual incomes; however, the 21 percent unemployment rate experienced by active-duty military spouses in the workforce makes that a difficult goal to achieve and maintain. Nearly one in five military families cite challenges with spousal employment as a reason when considering leaving active-duty service. The challenges associated with the military lifestyle, including permanent change-of-station moves every 2 to 3 years on average for active-duty families, mean that military spouses often struggle to find options for work that are portable or allow them to build a sustainable long-term career. Employment challenges are not limited to active-duty spouses, as Reserve and National Guard spouses must balance their careers against the unpredictable nature of the service member's schedule, activations, and deployments. Employment challenges can continue to affect the employability and career trajectory of veteran spouses well after a service member leaves the service.

Recognizing the importance of military family economic well-being to the all-volunteer force, the Federal Government employs more than 16,000 military, veteran, and surviving spouses. As the Nation's largest employer, we must be a model for diversity, equity, inclusion, and accessibility, and, in doing so, we recognize that military spouses are an underserved community. Whether they choose public service, employment in the private sector, or entrepreneurship through building a small business, it is the policy of my Administration to advance economic opportunity for military spouses. My Administration also recognizes the imperative of promoting economic security for military spouses—the vast majority of whom are women—under the National Strategy on Gender Equity and Equality.

In addition, my Administration understands that access to high-quality, affordable child care is a necessity for working families, and a military readiness issue. While the Department of Defense offers the largest employer-sponsored child care network in the country, military families still face challenges related to capacity and non-traditional work schedules. Many military families seeking care outside of the gates of our military bases struggle to find care they can afford. Because access to child care should not be an impediment to service, I have directed the Secretary of Defense to ensure the Fourteenth Quadrennial Review of Military Compensation, undertaken in January 2023, includes an assessment of child care access and cost in its review of military benefits and pay, along with consideration

of factors such as the challenge of military spouse unemployment, frequent military moves, and periods of geographic separation between service members and their spouses, including dual military couples.

Military spouses can also be service members themselves, wearing the Nation's uniform in our Active Components, National Guard, or Reserve forces, with a higher percentage of women service members in a dual military marriage than their male counterparts. As we recognize the 75th anniversary of women's integration into the Armed Forces, my Administration is committed to removing barriers to women's ability to serve, including difficulty in accessing child care, which poses a challenge for both spouses, but disproportionately affects retention for women, especially women in dual military couples, and can play a factor in women's early separation from the Armed Forces.

As we commemorate the 50th anniversary of the all-volunteer force, we must appreciate now more than ever that the commitment and resilience of military-connected families are essential to the recruitment, retention, and readiness of our Armed Forces and the enduring strength of our Nation. Meeting the economic, social, and emotional needs of our military and veteran families, military caregivers, and survivors is a national security imperative. In times of peace and of war, military and veteran families, military caregivers, and survivors have sacrificed much for our country, answering the call to duty time and again. We owe them nothing less than the dignity of a meaningful career and the opportunity to build economic security for their families.

Sec. 2. *Government-wide Military and Veteran Spouse, Military Caregiver, and Survivor Hiring and Retention Strategic Plan and Training.* Given the considerable Federal footprint around many military installations, military spouses are often interested in pursuing careers in the Federal civil service. To ensure that the Federal Government is an employer of choice for military and veteran spouses, military caregivers, and survivors, executive departments and agencies (agencies) must strengthen their ability to recruit, hire, develop, promote, and retain this skilled and diverse pool of talent. To that end:

(a) The Director of the Office of Personnel Management (OPM) and the Deputy Director for Management of the Office of Management and Budget, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Labor, the Secretary of Veterans Affairs, and the Secretary of Homeland Security, shall develop and issue a Government-wide Military and Veteran Spouse, Military Caregiver, and Survivor Hiring and Retention Strategic Plan (Military-Connected Plan) within 180 days of the date of this order that builds upon the Government-wide plans required by Executive Order 13583 of August 18, 2011 (Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce), and Executive Order 14035 of June 25, 2021 (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce). The Military-Connected Plan shall be updated as appropriate and at a minimum every 4 years. The Military-Connected Plan shall:

(i) define measures of success for the recruitment, hiring, and retention of military and veteran spouses, military caregivers, and survivors based on leading policies and practices in the public, private, and nonprofit sectors;

(ii) include plans for OPM to consult with the Department of Defense and the Department of Homeland Security in developing enhanced support for the retention of military spouses in Federal careers, consistent with merit system principles as defined in 5 U.S.C. 2301;

(iii) consistent with merit system principles, identify strategies—including pursuing development of a legislative proposal, as appropriate—to eliminate, where applicable, barriers to the employment of military and veteran spouses, military caregivers, and survivors in the Federal workforce, including with respect to recruitment; hiring, including an assessment of whether

to pursue expanded eligibility for derivative preference; promotion; retention; performance evaluations and awards; professional development programs; mentoring programs or sponsorship initiatives; internship, fellowship, and registered apprenticeship programs; employee resource group and affinity group programs; and training, learning, and onboarding programs;

(iv) identify strategies for marketing the talent, experience, and diversity of military and veteran spouses, military caregivers, and survivors to agencies; and

(v) develop a data-driven approach to increasing transparency and accountability in hiring and retention—including by encouraging agencies to set goals for hiring under the Military Spouse Noncompetitive Appointment Authority established by 5 U.S.C. 3330d and hiring individuals eligible for derivative preference, to use data internally to improve performance, and to use data to publicly report on progress—which would build upon, as appropriate, the reporting requirements of Executive Order 13832 of May 9, 2018 (Enhancing Noncompetitive Civil Service Appointments of Military Spouses).

(b) Beginning with Fiscal Year 2025, the Director of OPM shall revise the title of the ''Employment of Veterans in the Federal Executive Branch'' annual report to ''Employment of Veterans and Military-Connected Spouses and Survivors in the Federal Executive Branch,'' and shall include in the report the existing data previously reported in the ''Employment of Veterans in the Federal Executive Branch'' report, including statistics on the hiring of military and veteran spouses and survivors in a manner that allows for comparison and analysis of the distinct populations and hiring mechanisms.

(c) The Secretary of Veterans Affairs and the Director of OPM shall collaborate on opportunities to better share Federal employee survey data to enable analysis and reporting relevant to the employment of military and veteran spouses and survivors.

(d) In collaboration with the Director of OPM and consistent with 5 U.S.C. 4103, agencies shall provide annual training for agency human resources personnel and hiring managers concerning the employment of military and veteran spouses, military caregivers, and survivors, including training on special authorities for the hiring of military spouses and survivors, and the provision of tools to build the agencies' capacity to make use of applicable hiring authorities, including distribution of the Joining Forces military spouse hiring toolkit, which OPM shall publish on the FedsHireVets website.

(e) The Office of Science and Technology Policy (OSTP) National Science and Technology Council Subcommittee on Equitable Data, as designated by Executive Order 14091 of February 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), shall develop recommendations on ways in which agencies can expand Federal datasets to track outcomes for military and veteran spouses, military caregivers, and survivors. Such recommendations shall be included in the Director of OSTP's reports to the White House Steering Committee on Equity under section 9 of Executive Order 14091.

(f) The Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security shall work together through existing interagency collaborations, including the Transition Assistance Program, to increase training and employment opportunities for military spouses in the workforce through the transition to veteran spouse status.

Sec. 3. *Updates to Federal Training and Hiring Authorities.* To strengthen the ability of the Federal Government to train, develop, and hire military and veteran spouses and survivors:

(a) Beginning with Fiscal Year 2025, agencies shall list the Military Spouse Noncompetitive Appointment Authority established by 5 U.S.C. 3330d when

soliciting applications from outside of their workforce for positions announced on USAJOBS or other job posting sites. This requirement applies when using merit promotion procedures to fill competitive service positions.

(b) The Secretary of Labor shall examine the eligibility of military and veteran spouses for programs that provide education, job training, employment services, employer engagement, and other relevant programs, and, as appropriate, shall work to reduce barriers that military and veteran spouses may face in accessing those programs.

(c) The Director of OPM shall examine the eligibility criteria for the Recent Graduates Program established by section 2 of Executive Order 13562 of December 27, 2010 (Recruiting and Hiring Students and Recent Graduates), and, as appropriate, including by recommending Presidential action as necessary, shall work to reduce barriers that military spouses may face in accessing the Program.

Sec. 4. *Retention of Military and Veteran Spouses and Military Caregivers, Including Those Employed by the Federal Government.* In order to support military and veteran spouses and military caregivers, including those who are employed by the Federal Government:

(a) The Director of OPM shall issue guidance to agencies:

(i) reinforcing existing telework and remote work flexibility options pursuant to 5 U.S.C. 6502 for Federal employees, including military spouses and military caregivers, and encouraging agency leaders to consider these as options for retaining Federal employee military spouses and military caregivers;

(ii) encouraging agencies to support the policies set forth in section 1 of this order by granting up to 5 days of administrative leave to military spouses during a geographic relocation occurring as directed by a service member's orders; and

(iii) encouraging agencies to collaborate so that a military spouse or military caregiver Federal employee may be placed in another Federal agency position when arrangements to retain a military spouse or military caregiver—including following changes to support continuity of care or relocation due to permanent change-of-station orders for the active-duty service member—are unavailable to allow them to continue in their existing position.

(b) The Secretary of State and the Secretary of Defense, when reevaluating or entering agreements with host nations, shall consider work options for military spouses who are performing remote work for non-Department of Defense entities, so as to reduce barriers for military spouses seeking to continue their private sector- or self-employment.

(c) The Secretary of Defense shall coordinate with the heads of the Military Departments, and the Secretary of Homeland Security shall coordinate with the Commandant of the United States Coast Guard, to amend their respective legal assistance instructions to allow for consultation, advice, and assistance to military families on Status of Forces Agreements and other agreements with host nations affecting family employment, so as to provide support for military spouses navigating complex employment requirements related to working remotely while their active-duty service member spouse is stationed overseas. Those amendments shall specify that legal assistance is limited to the personal civil legal affairs of military dependents affected by employment restrictions related to a Status of Forces Agreement or other host nation agreement, and does not extend to their employers or the establishment, management, or taxation of small business organizations.

Sec. 5. *Domestic Employees Teleworking Overseas Policy.* In order to ensure that military spouses are able to equitably and reasonably access opportunities for remote work in their Federal jobs when their service-member spouse receives orders overseas, promote togetherness for military families, and enable agencies that employ military spouses—resilient and talented civil servants—to retain them, the following improvements shall be made to the

Domestic Employees Teleworking Overseas (DETO) program implemented by agencies pursuant to the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81):

(a) The Secretary of State and the Secretary of Defense shall enter into a Memorandum of Understanding (MOU) to address residential security and safety requirements for military spouses employed by the Federal Government and working overseas through the DETO program. The MOU shall be communicated to sponsoring agencies, and the Secretaries of State and Defense shall develop appropriate guidance to communicate the provisions of the MOU to military spouses who are civilian employees of the Federal Government.

(b) To promote consistency and effective coordination in the implementation of the DETO program across the executive branch, agencies shall:

(i) develop common standards for DETO policies, including identification of points of contact and creation of guidelines to ensure that such policies are communicated and advertised in a manner accessible to military spouse employees;

(ii) establish a DETO application system and develop a method to track DETO applications received and processed, as well as application processing timelines; and

(iii) establish time frames for DETO application processing and approvals, considering the time-sensitive nature of decisions for applications by military spouses due to permanent change-of-station moves and other factors unique to military families.

Sec. 6. *Expanding Support for Military and Veteran Spouse Entrepreneurs.* Many military spouses start their own businesses because of a need for flexibility or inability to find or maintain other employment. When military spouses must discontinue their businesses, however, they often cite military moves, rather than lack of profitability, as the reason. To support military spouse entrepreneurs in starting and sustaining their businesses, the Administrator of the Small Business Administration shall:

(a) expand access to resources tailored to military and veteran spouses who are interested in starting or growing a small business, including guidance to help military spouses with relocating a business following a military move; and

(b) evaluate access to capital gaps for military spouse entrepreneurs.

Sec. 7. *Child Care for Military Families.* The Department of Defense operates the largest employer-sponsored child care program in the United States in order to provide military families with support that is essential to overall mission readiness, retention, and recruitment. To build on the existing support and ensure that military families have access to affordable, high-quality child care allowing both the service member and the spouse to pursue professional opportunities, the Secretary of Defense shall:

(a) in coordination with the Director of OPM, establish flexible spending accounts for the care of military dependents, available to military personnel no later than January 1, 2024; and

(b) expand pathways for military spouses to provide certified, home-based child care on military installations, including by providing them with support in seeking licensure and achieving government-mandated quality benchmarks.

Sec. 8. *Definitions.* For the purposes of this order:

(a) The term ''active duty'' has the meaning set forth in 10 U.S.C. 101(d)(1), except that the term also includes ''active Guard and Reserve duty,'' as defined in 10 U.S.C. 101(d)(6)(a).

(b) The term ''agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(c) The term ''derivative preference'' means those who are ''preference eligible,'' as defined in 5 U.S.C. 2108(3), because they are eligible spouses and parents who use a veteran's preference when the veteran is unable to do so.

(d) The term ''military caregiver'' means the spouse, child, parent, or next of kin of a veteran who is the primary caregiver for a veteran undergoing medical treatment, recuperation, or therapy for a serious injury or illness who was a member of the Armed Forces (including a member of the National Guard or Reserves) and who was discharged or released under conditions other than dishonorable.

(e) The term ''military spouse'' means an individual married to a member of the Armed Forces who is performing active duty.

(f) The term ''survivor'' means the spouse, child, parent, or next of kin of a service member who died while on active duty, or from a service-connected disability following discharge or release under conditions other than dishonorable.

(g) The term ''veteran spouse'' means an individual married to a retired or separated member of the Armed Forces who was discharged or released under conditions other than dishonorable, so long as the marriage occurred prior to or during the service member's active service.

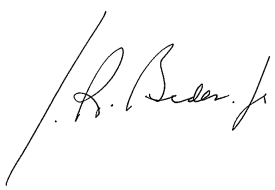
Sec. 9. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,
June 9, 2023.

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–SC–22–0068]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Assessment Rate Increase

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Cherry Industry Administrative Board (Board) to increase the assessment rate established for the 2022–23 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective July 17, 2023.

FOR FURTHER INFORMATION CONTACT: Delaney Fuhrmeister, Marketing Specialist, or Christian D. Nissen, Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Delaney.Fuhrmeister@usda.gov* or *Christian.Nissen@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 930 as amended (7 CFR part 930), regulating the handling of tart cherries grown in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Part 930 (referred to as ''the Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Board locally administers the Order and is comprised of producers and handlers of tart cherries operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all 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, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, tart cherry handlers are subject to assessments. Funds to administer the Order are derived from such assessments. The assessment rate established herein will be applicable to all assessable tart cherries for the 2022–23 crop year, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule increases the assessment rate for the 2022–23 and subsequent fiscal periods from $0.00575 to $0.0075 per pound of tart cherries. This rule also increases the portion of the assessment rate allocated to research and promotion from $0.00275 to $0.0055 per pound and decrease the portion allocated to administrative expenses from $0.003 to $0.002 per pound.

The Order authorizes the Board, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are familiar with the Board's needs and with the costs for goods and services in their local area and can formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2020–21 and subsequent fiscal periods, the Board recommended, and AMS approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Board or other information available to AMS.

The Board met on September 8, 2022, and unanimously recommended 2022–23 expenditures of $1,667,000 and an assessment rate of $0.0075 per pound, of which $0.0055 is for research and promotion expenses, and $0.002 is for administrative expenses. In comparison, last year's budgeted expenditures were $1,086,500. The assessment rate of

$0.0075 is $0.00175 higher than the rate currently in effect.

The Board recommended increasing the assessment rate to allow for more spending on health benefits research, increased spending on promotion, and to add funds to Board reserves, which have been depleted due to reduced production in previous seasons. The production during the 2022–23 fiscal period was 242,352,172 pounds, an increase from the 172,354,783 pounds produced the previous year. However, at the current assessment rate, assessment income would equal $1,393,525, which does not meet the Board's anticipated expenditures of $1,667,000. By increasing the assessment rate by $0.00175, assessment income would be $1,817,641. This amount should provide sufficient funds to meet 2022–23 anticipated expenses.

Major expenditures recommended by the Board for the 2022–23 year include $850,000 for promotion, $250,000 for health benefits research, and $200,000 for salaries. Budgeted expenses for these items in 2021–22 were $600,000, $0, and $258,000, respectively.

The assessment rate recommended by the Board was derived by reviewing anticipated expenses, production of tart cherries, and the level of funds in reserve. The 2022–23 crop produced 242,352,172 pounds of tart cherries, which should provide $1,817,641 in assessment income (242,352,172 pounds multiplied by $0.0075). However, the Board anticipates that due to approved exemptions and loss adjustments, the actual income from assessments will be closer to $1,784,641. Income derived from handler assessments at the rate established by this rule, along with reserve funds and interest income, should be adequate to cover budgeted expenses. Funds in the reserve (currently about $262,732) are expected to be kept within the maximum permitted by the Order (approximately one fiscal period's expenses as authorized in § 930.42).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. Dates and times of Board meetings are available from the Board or AMS. Board meetings are open to the public and interested persons may express their views at these meetings. AMS evaluates Board recommendations and other available information to determine whether modification of the assessment rate is needed, and further rulemaking would be undertaken as necessary. The Board's 2022–23 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by AMS.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 400 tart cherry growers in the production area and approximately 40 handlers subject to regulation under the Order. The Small Business Administration (SBA) standard for small agricultural producers applicable to tart cherries is annual receipts of less than $3,500,000 (Other Noncitrus Fruit Farming, NAICS 111339). Small agricultural service firms are defined as those having annual receipts of less than $34,000,000 (NAICS 115114, Postharvest Crop Activities) (13 CFR 121.201).[1]

The National Agricultural Statistics Service (NASS) reported that the 2021–22 value of the tart cherry crop for processed utilization was approximately $83 million. Production utilized for processing was 171.0 million pounds and the season average grower price for processed tart cherries was $0.485 per pound. Dividing the crop value by the estimated number of producers (400) yields an estimated average annual receipts per producer of $207,500 ($83 million divided by 400 producers). This is well below the SBA threshold for small producers.

An estimate of the season average price per pound received by handlers for processed tart cherries was derived from USDA's purchases of dried tart cherries for feeding programs in the 2021–2022 season at an average price of $4.70 per pound. The dried cherry price was converted to a raw product equivalent price of $0.94 per pound at an industry recognized ratio of five to one. Multiplying this price by 2021 total processed utilization of 171.0 million pounds results in an estimated handler-level tart cherry value of $160.7 million. Dividing this figure by the number of handlers ($160.7 million divided by 40 handlers) yields estimated average annual receipts per handler of approximately $4 million, which is well below the SBA threshold of $34 million for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

This final rule increases the assessment rate established for the Board and collected from handlers for the 2022–23 and subsequent fiscal periods from $0.00575 to $0.0075 per pound of tart cherries. This change also increases the portion of the assessment rate allocated to research and promotion from $0.00275 to $0.0055 per pound and decreases the portion allocated to administrative expenses from $0.003 to $0.002 per pound. The Board unanimously recommended 2022–23 expenditures of $1,667,000 and the assessment rate of $0.0075 per pound. The assessment rate of $0.0075 is $0.00175 higher than the current rate. The 2022–23 crop produced 242,352,172 pounds of tart cherries, which should provide $1,817,641 in assessment income (242,352,172 pounds multiplied by $0.0075). However, the Board anticipates that due to approved exemptions and loss adjustments the actual income from assessments will be closer to $1,784,641. Income derived from handler assessments and funds from the Board's authorized reserve, should be adequate to cover budgeted expenses.

Major expenditures recommended by the Board for the 2022–23 year include $850,000 for promotion, $250,000 for health benefits research, and $200,000 for salaries. Budgeted expenses for promotion and salaries in 2021–22 was $600,000 and $258,000, respectively. There were no budgeted expenses for health benefits research in 2021–2022.

The Board voted to increase the assessment rate to allow for more spending on health benefits research,

[1] The proposed rule used a SBA size standard for a small agricultural producer and service firm with annual receipts less than $3 million and $30 million respectively. This was an error, since in December 2022 the size standard was revised upward to $3.5 million and $34 million. This final rule uses the updated $3.5 million and $34 million standard for a small agricultural producer and service firm. The determination that the majority of producers and handlers of tart cherries may be classified as small entities has not changed from the proposed rule.

increased spending on promotion, and to add funds to Board reserves, which have been depleted due to reduced production in previous seasons. At the current assessment rate of $0.00575 and with the 2022–23 crop production at 242,352,172 pounds, assessment income would equal $1,393,525 ($0.00575 multiplied by 242,352,172), an amount insufficient to cover the Committee's anticipated expenditures of $1,667,000. By increasing the assessment rate by $0.00175, assessment income would be approximately $1,817,641 ($0.0075 multiplied by 242,352,172). This amount, along with interest income, and funds from the reserve, should provide sufficient funds to meet 2022–23 anticipated expenses.

Prior to arriving at this budget and assessment rate, the Board considered the level of production, projected expenditures, and the amount in the authorized reserve. The Board discussed alternatives, including maintaining the current assessment rate of $0.00575. However, leaving the assessment unchanged would not generate sufficient revenue to meet Board expenses for the 2022–23 fiscal period. Consequently, the Board determined that the assessment rate should be increased to $0.0075 per pound to generate sufficient revenue to meet expenses. Therefore, the Committee rejected the idea of maintaining the current assessment rate.

A review of historical information and preliminary information pertaining to the upcoming season indicates the producer price for the 2022–23 season should be approximately $0.23 per pound of tart cherries. The assessment rate of $0.0075 per pound represents 3.26 percent of the $0.23 revenue for the 2021–22 fiscal period as a percentage of total producer revenue ($0.0075 divided by $0.23 multiplied by 100).

This rule increases the assessment obligation imposed on handlers. While assessments impose additional costs on handlers, the costs are minimal and uniform on all handlers, and some of the costs may be passed on to growers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Board's meeting was widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 8, 2022, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. In addition, interested persons were invited to submit comments on the proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581–0177, Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. No changes in those requirements would be necessary because of this rule. If any changes become necessary, they would be submitted to OMB for approval.

This rule does not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on February 24, 2023 (88 FR 11822). Copies of the proposed rule were also mailed or sent via email to all tart cherry handlers. A copy of the proposed rule was made available through the internet by AMS via *https://www.regulations.gov.* A 30-day comment period ending March 27, 2023, was provided for interested persons to respond to the proposal.

No comments were received. Accordingly, no changes have been made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board and other available information, AMS has determined that this rule tends to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 930 as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 930.200 is revised to read as follows:

§ 930.200 Assessment rate.

On and after October 1, 2022, the assessment rate imposed on handlers shall be $0.0075 per pound of tart cherries grown in the production area and utilized in the production of tart cherry products. Included in this rate is $0.0055 per pound of tart cherries to cover the cost of the research and promotion program and $0.002 per pound of tart cherries to cover administrative expenses.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–12770 Filed 6–14–23; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2023–0050]

RIN 3150–AK93

List of Approved Spent Fuel Storage Casks: TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System Certificate of Compliance No. 1042, Amendment No. 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of July 17, 2023, for the direct final rule that was published in the **Federal Register** on May 2, 2023. The direct final rule amended the TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System listing within the ''List of approved spent fuel

storage casks'' to include Amendment No. 3 to Certificate of Compliance No. 1042.

DATES: The effective date of July 17, 2023, for the direct final rule published May 2, 2023 (88 FR 27397), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2023–0050 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0050. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The Amendment No. 3 of certificate of compliance No. 1042 and associated changes to the technical specifications, and safety evaluation report can also be viewed in ADAMS under Package Accession No. ML23137A409.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Caylee Kenny, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7150, email: *Caylee.Kenny@nrc.gov.*

SUPPLEMENTARY INFORMATION: On May 2, 2023 (88 FR 27397), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* to revise the TN Americas LLC, NUHOMS® EOS Dry Spent Fuel Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 3 to Certificate of Compliance No. 1042.

Amendment No. 3 revises the certificate of compliance to: add three new heat load zone configurations (HLZCs) for the EOS–89BTH Dry Shielded Canister (DSC) with increased heat load up to 1.7 kW per fuel assembly, which reduces the minimum cooling time to 1 year; add a variable-lead thickness EOS–TC125 for transfer with the EOS–89BTH DSC; add ATRIUM 11 fuel as an allowable content in the EOS–89BTH DSC and rerun the limiting GNF2 and ABB–10–C cases to reduce the statistical uncertainties and increase the enrichment limits; update the criticality evaluation to allow short-loading the EOS–89BTH DSC with less than 89 fuel assemblies to increase the enrichment limits; revise the technical specifications (TS) to allow for phased array automated ultrasonic testing and to utilize a single pass high amperage gas tungsten arc weld or multipass gas tungsten arc weld on the outer top cover plate; revise the TS to reduce EOS–37PTH HLZC 1 and 2 time limit for transfer to eight hours; incorporate a method to determine new loading patterns based on the maximum allowable heat load per DSC and per location specified in the TS and move all HLZCs and time limits for transfer for the EOS–89BTH DSC transferred in the EOS–TC125 from the technical specifications to Updated Final Safety Analysis Report (UFSAR) Chapter 2; waive the fabrication pressure test requirement for the single bottom forging EOS–DSCs; and make minor changes to TS and UFSAR for consistency among DSC types and terminology clarification. Amendment No. 3 also revises the certificate of compliance with three scope changes including: UFSAR revisions associated with transfer cask lifting heights and consideration of severe weather; UFSAR revisions associated with maintaining water in the annulus; and design changes to the Matrix Loading Crane.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on July 17, 2023. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated: June 9, 2023.

For the Nuclear Regulatory Commission.

Krupskaya T. Castellon,

Acting Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–12709 Filed 6–14–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

[NRC–2021–0024]

RIN 3150–AK58

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2023

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, special project, and annual fees charged to its applicants and licensees. These amendments are necessary to comply with the Nuclear Energy Innovation and Modernization Act, which requires the NRC to recover, to the maximum extent practicable, approximately 100 percent of its annual budget less certain amounts excluded from this fee-recovery requirement.

DATES: This final rule is effective on August 14, 2023.

ADDRESSES: Please refer to Docket ID NRC–2021–0024 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0024. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209 or

301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anthony Rossi, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7341; email: *Anthony.Rossi@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background; Statutory Authority

The NRC's fee regulations are primarily governed by two laws: (1) the Independent Offices Appropriation Act, 1952 (IOAA) (31 U.S.C. 9701), and (2) the Nuclear Energy Innovation and Modernization Act (NEIMA) (42 U.S.C. 2215). The IOAA authorizes and encourages Federal agencies to recover, to the fullest extent possible, costs attributable to services provided to identifiable recipients. Under NEIMA, the NRC must recover, to the maximum extent practicable, approximately 100 percent of its annual budget, less the budget authority for excluded activities. Under section 102(b)(1)(B) of NEIMA, ''excluded activities'' include any fee-relief activity as identified by the Commission, generic homeland security activities, waste incidental to reprocessing activities, Nuclear Waste Fund activities, advanced reactor regulatory infrastructure activities, Inspector General services for the Defense Nuclear Facilities Safety Board, research and development at universities in areas relevant to the NRC's mission, and a nuclear science and engineering grant program. In fiscal year (FY) 2023, the fee-relief activities identified by the Commission are consistent with prior fee rules, which are listed in Table 1—Excluded Activities.

Under NEIMA, the NRC must use its IOAA authority first to collect service fees for NRC work that provides specific benefits to identifiable recipients (such as licensing work, inspections, and special projects). The NRC's regulations in part 170 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended,'' explain how the agency collects service fees from specific beneficiaries. Because the NRC's fee recovery under the IOAA (10 CFR part 170) will not equal 100 percent of the agency's total budget authority for the fiscal year (less the budget authority for excluded activities), the NRC also assesses ''annual fees'' under 10 CFR part 171, ''Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC,'' to recover the remaining amount necessary to comply with NEIMA.

II. Discussion

FY 2023 Fee Collection—Overview

The NRC is issuing this FY 2023 final fee rule based on the Consolidated Appropriations Act, 2023 (the enacted budget). The final fee rule reflects a total budget authority in the amount of $927.2 million, which is an increase of $39.5 million from FY 2022. As explained previously, certain portions of the NRC's total budget authority for the fiscal year are excluded from NEIMA's fee-recovery requirement under section 102(b)(1)(B) of NEIMA. Based on the FY 2023 enacted budget, these exclusions total $137.0 million, which is an increase of $6.0 million from FY 2022. These excluded activities consist of $97.1 million for fee-relief activities, $23.8 million for advanced reactor regulatory infrastructure activities, $13.4 million for generic homeland security activities, $1.2 million for waste incidental to reprocessing activities, and $1.5 million for Inspector General services for the Defense Nuclear Facilities Safety Board. Table I summarizes the excluded activities for the FY 2023 final fee rule. The FY 2022 amounts are provided for comparison purposes.

TABLE I—EXCLUDED ACTIVITIES

[Dollars in millions]

	FY 2022 final rule	FY 2023 final rule
Fee-Relief Activities:		
International activities	25.5	28.8
Agreement State oversight	11.1	11.9
Medical isotope production infrastructure	3.7	3.5
Fee exemption for nonprofit educational institutions	11.6	13.5
Costs not recovered from small entities under 10 CFR 171.16(c)	7.4	8.9
Regulatory support to Agreement States	12.1	14.2
Generic decommissioning/reclamation activities (not related to the operating power reactors and spent fuel storage fee classes)	15.9	12.5
Uranium recovery program and unregistered general licensees	3.0	2.7
Potential Department of Defense remediation program Memorandum of Understanding activities	0.9	0.9
Non-military radium sites	0.3	0.2
Subtotal Fee-Relief Activities	91.5	97.1
Activities under section 102(b)(1)(B)(ii) of NEIMA (Generic Homeland Security activities, Waste Incidental to Reprocessing activities, and the Defense Nuclear Facilities Safety Board)	16.5	16.1

TABLE I—EXCLUDED ACTIVITIES—Continued

[Dollars in millions]

	FY 2022 final rule	FY 2023 final rule
Advanced reactor regulatory infrastructure activities	23.0	23.8
Total Excluded Activities	131.0	137.0

After accounting for the exclusions from the fee-recovery requirement and net billing adjustments (*i.e.,* for FY 2023 invoices that the NRC estimates will not be paid during the fiscal year, less payments received in FY 2023 for prior-year invoices), the NRC must recover approximately $790.6 million in fees in FY 2023. Of this amount, the NRC estimates that $195.0 million will be recovered through 10 CFR part 170 service fees and approximately $595.6 million will be recovered through 10 CFR part 171 annual fees. Table II summarizes the fee-recovery amounts for the FY 2023 final fee rule using the FY 2023 enacted budget and takes into account the budget authority for excluded activities and net billing adjustments. For all information presented in the following tables in this final rule, individual values may not sum to totals due to rounding. Please see the work papers, available as indicated in the ''Availability of Documents'' section of this document, for actual amounts.

In FY 2023, the explanatory statement associated with the Consolidated Appropriations Act, 2023 included direction for the NRC to use $16.0 million in prior-year unobligated carryover funds for the University Nuclear Leadership Program. Consistent with the requirements of NEIMA, the NRC does not assess fees in the current fiscal year for any carryover funds because fees are calculated based on the budget authority enacted for the current fiscal year. Fees were already assessed in the fiscal year in which the carryover funds were appropriated. The FY 2022 amounts are provided for comparison purposes.

TABLE II—BUDGET AND FEE RECOVERY AMOUNTS

[Dollars in millions]

	FY 2022 final rule	FY 2023 final rule
Total Budget Authority	$887.7	$927.2
Less Budget Authority for Excluded Activities:	−131.0	−137.0
Balance	756.7	790.2
Fee Recovery Percent	100.0	100.0
Total Amount to be Recovered:	756.7	790.2
Less Estimated Amount to be Recovered through 10 CFR part 170 Fees	−198.8	−195.0
Estimated Amount to be Recovered through 10 CFR part 171 Fees	557.9	595.2
10 CFR part 171 Billing Adjustments:		
Unpaid Current Year Invoices (estimated)	2.0	3.7
Less Payments Received in Current Year for Previous Year Invoices (estimated)	−6.0	−3.3
Adjusted 10 CFR part 171 Annual Fee Collections Required	553.9	595.6
Adjusted Amount to be Recovered through 10 CFR parts 170 and 171 Fees	752.7	790.6

FY 2023 Fee Collection—Professional Hourly Rate

The NRC uses a professional hourly rate to assess fees under 10 CFR part 170 for specific services it provides. The professional hourly rate also helps determine flat fees (which are used for the review of certain types of license applications). This rate is applicable to all activities for which fees are assessed under §§ 170.21 and 170.31.

The NRC's professional hourly rate is derived by adding budgeted resources for (1) mission-direct program salaries and benefits, (2) mission-indirect program support, and (3) agency support (corporate support and the Inspector General (IG)). The NRC then subtracts certain offsetting receipts and divides this total by the mission-direct full-time equivalent (FTE) converted to hours (the mission-direct FTE converted to hours is the product of the mission-direct FTE multiplied by the estimated annual mission-direct FTE productive hours). The only budgeted resources excluded from the professional hourly rate are those for mission-direct contract resources, which are generally billed to licensees separately. The following shows the professional hourly rate calculation:

$$\text{Professional Hourly Rate} = \frac{\text{Budgeted Resources}}{\text{Mission-Direct FTE Converted to Hours}} = \frac{\$777.5 \text{ million}}{1{,}672.2 \times 1{,}551} = \$300$$

For FY 2023, the NRC is increasing the professional hourly rate from $290 to $300. The 3.4 percent increase in the professional hourly rate is primarily due to increase in budgeted resources of approximately $34.1 million. The increase in budgeted resources is primarily due to the 4.6 percent increase in salaries and benefits to support

Federal pay raises for NRC employees. The anticipated decline in the number of mission-direct FTE compared to FY 2022 also contributed to the increase in the professional hourly rate. The professional hourly rate is inversely related to the mission-direct FTE amount; therefore, as the number of mission-direct FTE decrease, the professional hourly rate may increase. The number of mission-direct FTE declined by approximately 24, primarily due to: (1) the closure of the Palisades Nuclear Plant (Palisades); and (2) a reduction in resources for development of the operating reactors licensing action infrastructure for process improvements and special projects.

The FY 2023 estimate for annual mission-direct FTE productive hours is 1,551 hours, which is an increase from 1,510 hours in FY 2022. This estimate, also referred to as the ''Productive Hours Assumption,'' reflects the average number of hours that a mission-direct employee spends on mission-direct work in a given year. This estimate, therefore, excludes hours charged to annual leave, sick leave, holidays, training, and general administrative tasks. Table III shows the professional hourly rate calculation methodology. The FY 2022 amounts are provided for comparison purposes.

TABLE III—PROFESSIONAL HOURLY RATE CALCULATION

[Dollars in millions, except as noted]

	FY 2022 final rule	FY 2023 final rule
Mission-Direct Program Salaries & Benefits	$349.3	$359.2
Mission-Indirect Program Support	115.1	118.8
Agency Support (Corporate Support and the IG)	278.9	299.5
Subtotal	743.3	777.5
Less Offsetting Receipts [1]	0.0	0.0
Total Budgeted Resources Included in Professional Hourly Rate	743.3	777.5
Mission-Direct FTE	1,696.1	1,672.2
Annual Mission-Direct FTE Productive Hours (Whole numbers)	1,510	1,551
Mission-Direct FTE Converted to Hours (Mission-Direct FTE multiplied by Annual Mission-Direct FTE Productive Hours)	2,561,111	2,593,582
Professional Hourly Rate (Total Budgeted Resources Included in Professional Hourly Rate Divided by Mission-Direct FTE Converted to Hours) (Whole Numbers)	290	300

[1] The fees collected by the NRC for Freedom of Information Act (FOIA) services and indemnity fees (financial protection required of all licensees for public liability claims at 10 CFR part 140) are subtracted from the budgeted resources amount when calculating the 10 CFR part 170 professional hourly rate, per the guidance in the Office of Management and Budget Circular A–25, ''User Charges.'' The budgeted resources for FOIA activities are allocated under the product for Information Services within the Corporate Support business line. The budgeted resources for indemnity activities are allocated under the Licensing Actions and Research and Test Reactors products within the Operating Reactors business line.

FY 2023 Fee Collection—Flat Application Fee Changes

The NRC is amending the flat application fees it charges in its schedule of fees in § 170.31 to reflect the revised professional hourly rate of $300. The NRC charges these fees to applicants for materials licenses and other regulatory services, as well as to holders of materials licenses. The NRC calculates these flat fees by multiplying the average professional staff hours needed to process the licensing actions by the professional hourly rate for FY 2023. As part of its calculations, the NRC analyzes the actual hours spent performing licensing actions and estimates the five-year average of professional staff hours that are needed to process licensing actions as part of its biennial review of fees. These actions are required by section 205(a) of the Chief Financial Officers Act of 1990 (31 U.S.C. 902(a)(8)). The NRC performed this review for the FY 2023 fee rule and will perform this review again for the FY 2025 fee rule. The biennial review adjustments and the higher professional hourly rate of $300 is the primary reason for the increase in flat application fees. Additional information can be found in the work papers.

In order to simplify billing, the NRC rounds these flat fees to a minimal degree. Specifically, the NRC rounds these flat fees (up or down) in such a way that ensures both convenience for its stakeholders and minimal effects due to rounding. Accordingly, fees under $1,000 are rounded to the nearest $10, fees between $1,000 and $100,000 are rounded to the nearest $100, and fees greater than $100,000 are rounded to the nearest $1,000.

The flat fees are applicable for certain materials licensing actions (see fee categories 1.C. through 1.D., 2.B. through 2.F., 3.A. through 3.S., 4.B. through 5.A., 6.A. through 9.D., 10.B., 15.A. through 15.L., 15.R., and 16 of § 170.31). Applications filed on or after the effective date of the FY 2023 final fee rule will be subject to the revised fees in the final rule. Since international activities are an excluded activity, fees are not assessed for import and export licensing actions under 10 CFR parts 170 and 171.

FY 2023 Fee Collection—Low-Level Waste Surcharge

The NRC is assessing a generic low-level waste (LLW) surcharge of $4.023 million. Disposal of LLW occurs at commercially-operated LLW disposal facilities that are licensed by either the NRC or an Agreement State. Four existing LLW disposal facilities in the United States accept various types of LLW. All are located in Agreement States and, therefore, are regulated by an Agreement State, rather than the NRC. The NRC allocates this surcharge to its licensees based on data available in the U.S. Department of Energy's (DOE) Manifest Information Management System (MIMS). This database contains information on total LLW volumes disposed of by four generator classes: academic, industrial, medical, and utility. The ratio of waste volumes disposed of by these generator classes to total LLW volumes disposed over a period of time is used to estimate the portion of this surcharge that will be allocated to the power reactors, fuel facilities, and the materials users fee classes. The materials users fee class portion is adjusted to account for the

large percentage of materials licensees that are licensed by the Agreement States rather than the NRC.

The LLW surcharge amounts have changed since publication of the proposed fee rule. The DOE updated MIMS with 2023 data; as a result of the update, the LLW surcharge for operating power reactors decreased from $3.556 million to $3.496 million; and the LLW surcharge increased from $0.370 million to $0.418 million for fuel facilities and from $0.097 to $0.109 million for materials users.

Table IV shows the allocation of the LLW surcharge and its allocation across the various fee classes.

TABLE IV—ALLOCATION OF LLW SURCHARGE FY 2023

[Dollars in millions]

Fee classes	LLW surcharge	
	Percent	$
Operating Power Reactors	86.9	3.496
Spent Fuel Storage/Reactor Decommissioning	0.0	0.000
Non-Power Production or Utilization Facilities	0.0	0.000
Fuel Facilities	10.4	0.418
Materials Users	2.7	0.109
Transportation	0.0	0.000
Rare Earth Facilities	0.0	0.000
Uranium Recovery	0.0	0.000
Total	100.0	4.023

FY 2023 Fee Collection—Revised Annual Fees

In accordance with SECY–05–0164, ''Annual Fee Calculation Method,'' the NRC rebaselines its annual fees every year. ''Rebaselining'' entails analyzing the budget in detail and then allocating the FY 2023 budgeted resources to various classes or subclasses of licensees. It also includes updating the number of NRC licensees in its fee calculation methodology. The NRC is revising its annual fees in §§ 171.15 and 171.16 to recover approximately 100 percent of the NRC's FY 2023 enacted budget (less the budget authority for excluded activities and the estimated amount to be recovered through 10 CFR part 170 fees). Table V shows the rebaselined fees for FY 2023 for a sample of licensee categories. The FY 2022 amounts are provided for comparison purposes.

TABLE V—REBASELINED ANNUAL FEES

[Actual dollars]

Class/category of licenses	FY 2022 final annual fee	FY 2023 final annual fee
Operating Power Reactors	5,165,000	5,492,000
+ Spent Fuel Storage/Reactor Decommissioning	227,000	261,000
Total, Combined Fee	5,392,000	5,753,000
Spent Fuel Storage/Reactor Decommissioning	227,000	261,000
Non-Power Production or Utilization Facilities	90,100	96,300
High Enriched Uranium Fuel Facility (Category 1.A.(1)(a))	4,334,000	5,156,000
Low Enriched Uranium Fuel Facility (Category 1.A.(1)(b))	1,469,000	1,747,000
Uranium Enrichment (Category 1.E)	1,888,000	2,247,000
UF_6 Conversion and Deconversion Facility (Category 2.A.(1)	436,000	1,095,000
Basic *In Situ* Recovery Facilities (Category 2.A.(2)(b))	42,000	52,200
Typical Users:		
Radiographers (Category 3O)	29,600	37,900
All Other Specific Byproduct Material Licensees (Category 3P)	9,900	12,300
Medical Other (Category 7C)	17,000	18,000
Device/Product Safety Evaluation—Broad (Category 9A)	18,100	24,100

The work papers that support this final rule show in detail how the NRC allocates the budgeted resources and calculates the fees for each class of licensees.

Paragraphs a. through h. of this section describe the budgeted resources allocated to each class of licensees and the calculations of the rebaselined fees. For more information about detailed fee calculations for each class, please consult the accompanying work papers for this final rule.

a. Operating Power Reactors

The NRC will collect $510.7 million in annual fees from the operating power reactors fee class in FY 2023, as shown in Table VI. The FY 2022 operating power reactors fees are shown for comparison purposes.

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS

[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 final rule
Total budgeted resources	$645.4	$665.3
Less estimated 10 CFR part 170 receipts	−165.8	−158.9
Net 10 CFR part 171 resources	479.6	506.4
Allocated generic transportation	0.4	0.5
Allocated LLW surcharge	3.8	3.5
Billing adjustment	−3.4	0.3
Total required annual fee recovery	480.3	510.7
Total operating reactors	93	93
Annual fee per operating reactor	5.165	5.492

In comparison to FY 2022, the FY 2023 annual fee for the operating power reactors fee class is increasing primarily due to the following: (1) an increase in budgeted resources; (2) a decrease in 10 CFR part 170 estimated billings; and (3) an increase in the 10 CFR part 171 billing adjustment. These components are discussed in the following paragraphs.

The budgeted resources for the operating power reactors fee class increased primarily as a result of an increase in the fully-costed FTE rate compared to FY 2022 due to an increase in salaries and benefits. The increase in the fully-costed FTE rate is offset by a reduction in FTEs associated with workload changes, including but not limited to the following: (1) the closure of Palisades; (2) delays to planned new reactor design and licensing applications; (3) a reduction in resources for the development of operating reactors licensing action infrastructure for process improvements and special projects. In addition, there was a reduction in contract support resources for baseline inspections in the reactor safety program, which are now being performed in-house.

The annual fee is increasing due to a reduction in the 10 CFR part 170 estimated billings resulting from: (1) a decrease in hours associated with the closure of Palisades and (2) delays to planned new reactor design and licensing applications, topical reports, and white papers.

The annual fee increase is also affected by these contributing factors: (1) an increase in the10 CFR part 171 billing adjustment (moving from a credit to a surcharge) due to the timing of invoices issued in FY 2022, and (2) an increase in the generic transportation surcharge due to an increase in the overall budgeted resources for certificates of compliance (CoCs) for the operating power reactors fee class.

The fee-recoverable budgeted resources are divided equally among the 93 licensed operating power reactors, including the anticipated assessment of annual fees for Vogtle Electric Generating Plant, Unit 3, and results in an annual fee of $5,492,000 per reactor. Additionally, each licensed operating power reactor will be assessed the FY 2023 spent fuel storage/reactor decommissioning annual fee of $261,000 (see Table VII and the discussion that follows). The combined FY 2023 annual fee for each operating power reactor is $5,753,000.

Section 102(b)(3)(B)(i) of NEIMA established a cap for the annual fees charged to operating reactor licensees; under this provision, the annual fee for an operating reactor licensee, to the maximum extent practicable, shall not exceed the annual fee amount per operating reactor licensee established in the FY 2015 final fee rule (80 FR 37432; June 30, 2015), adjusted for inflation. The NRC included an estimate of the operating power reactors fee class annual fee in Appendix C, ''Estimated Operating Power Reactors Annual Fee,'' of the FY 2023 Congressional Budget Justification (CBJ) (NUREG–1100, Volume 38) to increase transparency for stakeholders. The NRC developed this estimate based on the staff's allocation of the FY 2023 CBJ to fee classes under 10 CFR part 170, and allocations within the operating power reactors fee class under 10 CFR part 171. The fee estimate included in the FY 2023 CBJ assumed 94 operating power reactors in FY 2023 and applied various data assumptions from the FY 2021 final fee rule. Based on these allocations and assumptions, the operating power reactors annual fee included in the FY 2023 CBJ was estimated to be $5.2 million, approximately $0.5 million below the FY 2015 operating power reactors annual fee amount adjusted for inflation of $5.7 million. The assumptions made between budget formulation and the development of this final rule have changed, including the change in the number of operating power reactors from 94 to 93. Nonetheless, the FY 2023 annual fee of $5,492,000 remains below the FY 2015 operating power reactors annual fee amount, as adjusted for inflation.

In FY 2016, the NRC amended its licensing, inspection, and annual fee regulations to establish a variable annual fee structure for light-water small modular reactors (SMRs) (81 FR 32617; May 24, 2016). Under the variable annual fee structure, an SMR annual fee would be assessed as a function of its bundled licensed thermal power rating. Currently, there are no operating SMRs; therefore, the NRC will not assess an annual fee in FY 2023 for this type of licensee.

b. Spent Fuel Storage/Reactor Decommissioning

The NRC will collect $32.1 million in annual fees from 10 CFR part 50 and 10 CFR part 52 power reactor licensees, and from 10 CFR part 72 licensees that do not hold a 10 CFR part 50 license or a 10 CFR part 52 combined license, to recover the budgeted resources for the spent fuel storage/reactor decommissioning fee class in FY 2023, as shown in Table VII. The FY 2022 spent fuel storage/reactor decommissioning fees are shown for comparison purposes.

TABLE VII—ANNUAL FEE SUMMARY CALCULATIONS FOR SPENT FUEL STORAGE/REACTOR DECOMMISSIONING

[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 final rule
Total budgeted resources	$40.4	$42.9
Less estimated 10 CFR part 170 receipts	−13.8	−12.4
Net 10 CFR part 171 resources	26.6	30.5
Allocated generic transportation costs	1.3	1.6
Billing adjustments	−0.2	0.0
Total required annual fee recovery	27.7	32.1
Total spent fuel storage facilities	122	123
Annual fee per facility	0.227	0.261

In comparison to FY 2022, the FY 2023 annual fee for the spent fuel storage/reactor decommissioning fee class is increasing primarily due to the following: (1) an increase in the budgeted resources and (2) a decrease in the 10 CFR part 170 estimated billings. These components are discussed in the following paragraphs.

The budgeted resources for the spent fuel storage/reactor decommissioning fee class increased primarily due to the following: (1) an increase in the fully-costed FTE rate compared to FY 2022 due to an increase in salaries and benefits; (2) an increase in licensing and oversight activities for one additional power reactor in decommissioning; and (3) an increased number of power reactors transitioning to accelerated decommissioning schedule status. This increase in the budgeted resources is offset by a decline in contract support due to the completion of research activities related to accident tolerant fuel (ATF), the assessment of gross ruptures in high burnup fuel, and standardized computer analysis for licensing evaluation code verification and validation.

The 10 CFR part 170 estimated billings for the spent fuel storage/reactor decommissioning fee class decreased primarily due to the following: (1) a reduction in hours and contract support associated with the staff's review of applications for renewals, amendments, exemptions, and inspections for independent spent fuel storage installation (ISFSI) licenses and dry cask storage CoCs; (2) the completion of the safety and environmental review of the Holtec HI–STORE consolidated interim storage facility application; (3) the completion of the staff's review of the Interim Storage Partners consolidated interim storage facility application and issuance of the license; (4) the completion of decommissioning transition activities for the Duane Arnold Energy Center and the site entering a period of dormancy; (5) the termination of the licenses for La Crosse Boiling Water Reactor and Humboldt Bay Nuclear Power Plant; and (6) the decrease in decommissioning licensing and inspection activities at multiple sites.

The annual fee increase is also affected by an increase in the generic transportation surcharge due to an increase in the generic transportation budgeted resources.

The required annual fee recovery amount is divided equally among 123 licensees, resulting in a FY 2023 annual fee of $261,000 per licensee.

c. Fuel Facilities

The NRC will collect $19.7 million in annual fees from the fuel facilities fee class in FY 2023, as shown in Table VIII. The FY 2023 fuel facilities fees are shown for comparison purposes.

TABLE VIII—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 final rule
Total budgeted resources	$22.4	$26.6
Less estimated 10 CFR part 170 receipts	−8.0	−9.2
Net 10 CFR part 171 resources	14.4	17.4
Allocated generic transportation	1.7	1.9
Allocated LLW surcharge	0.4	0.4
Billing adjustments	−0.1	0.0
Total remaining required annual fee recovery	16.4	19.7

In comparison to FY 2022, the FY 2023 annual fee for the fuel facilities fee class is increasing primarily due to the increase in budgeted resources. This increase is offset by an increase in 10 CFR part 170 estimated billings as discussed in the following paragraphs.

The budgeted resources for the fuel facilities fee class increased primarily as a result of an increase in the fully-costed FTE rate compared to FY 2022 due to an increase in salaries and benefits. In addition, the budgeted resources increased to support the following: (1) licensing actions related to enrichment and manufacturing of high-assay low-enrichment uranium fuel, advanced reactor fuel, and ATF; (2) the staff's review of a new fuel facility application; (3) cyber security activities; (4) restart activities for the Honeywell

International, Inc. Uranium Conversion Facility and the Centrus American Centrifuge Plant; (5) an anticipated increase in material control and accounting inspections at Category II facilities; and (6) fuel facilities rulemaking activities.

The 10 CFR part 170 estimated billings increased as a result of the following: (1) the staff's review of the Nuclear Fuel Services U-metal amendment and an inspection that was delayed due to the COVID–19 pandemic; (2) the staff's review of the TRISO–X, LLC, fuel fabrication facility application; and (3) the staff's review of the Global Nuclear Fuel Americas, LLC, amendment for an increase in enrichment and inspection activities.

The NRC will continue allocating annual fees to individual fuel facility licensees based on the effort/fee determination matrix developed in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). To briefly recap, the matrix groups licensees within this fee class into various fee categories. The matrix lists processes that are conducted at licensed sites and assigns effort factors for the safety and safeguards activities associated with each process (these effort levels are reflected in Table IX). The annual fees are then distributed across the fee class based on the regulatory effort assigned by the matrix. The effort factors in the matrix represent regulatory effort that is not recovered through 10 CFR part 170 fees (*e.g.,* rulemaking, guidance). Regulatory effort for activities that are subject to 10 CFR part 170 fees, such as the number of inspections, is not applicable to the effort factor.

In the FY 2023 final rule, the safeguards factor in the effort factors matrix for the uranium hexaflouride (UF_6) conversion and deconversion fee category for UF_6/liquid process have been increased from 0 (no effort) to 5 (moderate effort), and the conversion powder process has reduced from 10 (high effort) to 1 (low effort). Currently, there is one uranium conversion facility that had been in a ready-idle status for several years with no processing operations during this time; however, this facility is now in the process of returning to full operations.

In the proposed rule, the NRC proposed an effort factor of 0 for safeguards and 5 for safety for the liquid UF_6 process for the one uranium conversion facility. At the time when the effort factors were developed for the proposed rule, Security Order EA–02–025 was temporarily relaxed while the facility was in a ready-idle status. Subsequently, in October 2022, the NRC withdrew the temporary relaxation of Security Order EA–02–025 at the site. As a result of reinstating Security Order EA–02–025 at the site, the NRC reevaluated the proposed effort factor for safeguards and determined that it should be changed from 0 to 5 to reflect a moderate level of effort for the liquid UF_6 process. The effort factor of 5 for safety in the proposed rule continues to be appropriate, resulting in a combined effort factor for the liquid UF_6 process of 10.

In the proposed rule, the NRC also proposed changes to the safety effort factor for the conversion powder process, a separate process under the matrix that is assigned its own effort factors. Specifically, the proposed rule proposed an effort factor of 10 for safety for the conversion powder process at the one uranium conversion facility that is in the process of returning to full operations. The proposed level of effort was based on the facility returning to full operations, which would involve increased amounts of uranium powder for processing at the site and an increased effort to support the restart to full operations. The NRC reevaluated the proposed effort factor based on additional information available from the pre-operational inspections conducted at the site and evaluations of regulated activities during the restart phase. Utilizing actual data instead of estimates, the reevaluation concluded that the overall NRC level of effort would be moderate during the initial restart phase, would be minimal for the remainder of the restart phase, and would be minimal once operations resumed. Therefore, the NRC level of effort for the year results in a revised effort factor of 1 for safety for the conversion powder process.

In summary, for FY 2023, the liquid UF_6 effort factors are revised to Safety-5 and Safeguards-5, and conversion powder effort factors are revised to Safety-1 and Safeguards-0. These changes, along with adding the effort factors for the other processes in the matrix that remain unchanged, results in a total effort factor of 19 for the UF_6 Conversion and Deconversion fee category. The revised total effort factor results in a decrease in the annual fees for the UF_6 Conversion and Deconversion fee category by 16.4 percent compared to the proposed rule. The decrease in annual fees for the UF_6 Conversion and Deconversion fee category results in a corresponding average increase of approximately 1.2 percent in all other fee categories in the fee class. Additional information can be found in the work papers.

TABLE IX—EFFORT FACTORS FOR FUEL FACILITIES, FY 2023

Facility type (fee category)	Number of facilities	Effort factors	
		Safety	Safeguards
High-Enriched Uranium Fuel (1.A.(1)(a))	2	88	91
Low-Enriched Uranium Fuel (1.A.(1)(b))	3	70	21
Limited Operations (1.A.(2)(a))	1	3	11
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	0	0	0
Hot Cell (and others) (1.A.(2)(c))	0	0	0
Uranium Enrichment (1.E.)	1	16	23
UF_6 Conversion and Deconversion (2.A.(1))	1	12	7

In FY 2023, the total remaining amount of the annual fees to be recovered, $19.7 million, is attributable to safety activities, safeguards activities, and the LLW surcharge. For FY 2023, the total budgeted resources to be recovered as annual fees for safety activities are approximately $10.7 million. To calculate the annual fee, the NRC allocates this amount to each fee category based on its percentage of the total regulatory effort for safety activities. Similarly, the NRC allocates the budgeted resources to be recovered as annual fees for safeguards activities, $8.6 million, to each fee category based on its percentage of the total regulatory effort for safeguards activities. Finally, the fuel facilities fee class portion of the LLW surcharge—$0.4 million—is allocated to each fee category based on its percentage of the total regulatory effort for both safety and safeguards activities. The annual fee per licensee is

then calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category. The annual fee for each facility is summarized in Table X.

TABLE X—ANNUAL FEES FOR FUEL FACILITIES

[Actual dollars]

Facility type (fee category)	FY 2022 final annual fee	FY 2023 final annual fee
High-Enriched Uranium Fuel (1.A.(1)(a))	$4,334,000	$5,156,000
Low-Enriched Uranium Fuel (1.A.(1)(b))	1,469,000	1,747,000
Facilities with limited operations (1.A.(2)(a))	968,000	807,000
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	N/A	N/A
Hot Cell (and others) (1.A.(2)(c))	N/A	N/A
Uranium Enrichment (1.E.)	1,888,000	2,247,000
UF_6 Conversion and Deconversion (2.A.(1))	436,000	1,095,000

d. Uranium Recovery Facilities

The NRC will collect $0.2 million in annual fees from the uranium recovery facilities fee class in FY 2023, as shown in Table XI. The FY 2022 uranium recovery facilities fees are shown for comparison purposes.

TABLE XI—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 final rule
Total budgeted resources	$0.9	$0.5
Less estimated 10 CFR part 170 receipts	−0.6	−0.3
Net 10 CFR part 171 resources	0.3	0.2
Allocated generic transportation	N/A	N/A
Billing adjustments	0.0	0.0
Total required annual fee recovery	$0.3	$0.2

In comparison to FY 2022, the FY 2023 annual fee for the non-DOE licensee in the uranium recovery facilities fee class is increasing as a result of the decrease in 10 CFR part 170 estimated billings due to the following: (1) the completion of the NRC staff's National Environmental Review Act and National Historic Preservation Act review of Crow Butte Resources, Inc.'s 2014 license renewal; and (2) the completion of the staff's review of Powertech (USA) Inc.'s license amendment for the indirect change of control.

The NRC regulates DOE's Title I and Title II activities under the Uranium Mill Tailings Radiation Control Act (UMTRCA).[2] The annual fee assessed to DOE includes the resources specifically budgeted for the NRC's UMTRCA Title I and Title II activities, as well as 10 percent of the remaining budgeted resources for this fee class. The NRC described the overall methodology for determining fees for UMTRCA in the FY 2002 fee rule (67 FR 42625; June 24, 2002), and the NRC continues to use this methodology. The DOE's UMTRCA annual fee is decreasing compared to FY 2022 primarily due to a decrease in budgeted resources needed to conduct generic work that staff will be performing to resolve issues associated with the transfer of NRC and Agreement State uranium mill tailings sites to DOE for long-term surveillance and maintenance. In addition, 10 CFR part 170 estimated billings are declining due to the anticipated workload decreases at various DOE UMTRCA sites. The NRC assesses the remaining 90 percent of its budgeted resources to the remaining licensee in this fee class, as described in the work papers, which is reflected in Table XII.

TABLE XII—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FACILITIES FEE CLASS

[Actual dollars]

Summary of costs	FY 2022 final annual fee	FY 2023 final annual fee
DOE Annual Fee Amount (UMTRCA Title I and Title II) General Licenses:		
UMTRCA Title I and Title II budgeted resources less 10 CFR part 170 receipts	$206,441	$142,181
10 percent of generic/other uranium recovery budgeted resources	4,665	5,798

[2] Congress established the two programs, Title I and Title II, under UMTRCA to protect the public and the environment from hazards associated with uranium milling. The UMTRCA Title I program is for remedial action at abandoned mill tailings sites where tailings resulted largely from production of uranium for weapons programs. The NRC also regulates DOE's UMTRCA Title II program, which is directed toward uranium mill sites licensed by the NRC or Agreement States in or after 1978.

TABLE XII—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FACILITIES FEE CLASS—Continued

[Actual dollars]

Summary of costs	FY 2022 final annual fee	FY 2023 final annual fee
10 percent of uranium recovery fee-relief adjustment	N/A	N/A
Total Annual Fee Amount for DOE (rounded)	211,000	148,000
Annual Fee Amount for Other Uranium Recovery Licenses:		
90 percent of generic/other uranium recovery budgeted resources less the amounts specifically budgeted for UMTRCA Title I and Title II activities	41,986	52,185
90 percent of uranium recovery fee-relief adjustment	N/A	N/A
Total Annual Fee Amount for Other Uranium Recovery Licensees	41,986	52,185

Further, for any non-DOE licensees, the NRC will continue using a matrix to determine the effort levels associated with conducting generic regulatory actions for the different licensees in the uranium recovery facilities fee class; this is similar to the NRC's approach for fuel facilities, described previously. The matrix methodology for uranium recovery licensees first identifies the licensee categories included within this fee class (excluding DOE). These categories are conventional uranium mills and heap leach facilities, uranium *in situ* recovery (ISR) and resin ISR facilities, and mill tailings disposal facilities. The matrix identifies the types of operating activities that support and benefit these licensees, along with each activity's relative weight. Please see the work papers for more detail. Currently, there is only one remaining non-DOE licensee, which is a basic ISR facility. Table XIII displays the benefit factors for the non-DOE licensee in that fee category.

TABLE XIII—BENEFIT FACTORS FOR URANIUM RECOVERY LICENSES

Fee category	Number of licensees	Benefit factor per licensee	Total value	Benefit factor percent total
Conventional and Heap Leach mills (2.A.(2)(a))	0			0
Basic *In Situ* Recovery facilities (2.A.(2)(b))	1	190	190	100
Expanded *In Situ* Recovery facilities (2.A.(2)(c))	0			0
Section 11e.(2) disposal incidental to existing tailings sites (2.A.(4))	0			0
Total	1	190	190	100

The FY 2023 annual fee for the remaining non-DOE licensee is calculated by allocating 100 percent of the budgeted resources, as summarized in Table XIV.

TABLE XIV—ANNUAL FEES FOR URANIUM RECOVERY LICENSEES

[Other than DOE]

[Actual dollars]

Facility type (fee category)	FY 2022 final annual fee	FY 2023 final annual fee
Conventional and Heap Leach mills (2.A.(2)(a))	N/A	N/A
Basic *In Situ* Recovery facilities (2.A.(2)(b))	$42,000	$52,200
Expanded *In Situ* Recovery facilities (2.A.(2)(c))	N/A	N/A
Section 11e.(2) disposal incidental to existing tailings sites (2.A.(4))	N/A	N/A

e. Non-Power Production or Utilization Facilities

The NRC will collect $0.289 million in annual fees from the non-power production or utilization facilities fee class in FY 2023, as shown in Table XV. The FY 2022 non-power production or utilization facilities fees are shown for comparison purposes.

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR NON-POWER PRODUCTION OR UTILIZATION FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 final rule
Total budgeted resources	$6.072	$5.115
Less estimated 10 CFR part 170 receipts	−5.804	−4.869

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR NON-POWER PRODUCTION OR UTILIZATION FACILITIES—Continued

[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 final rule
Net 10 CFR part 171 resources	0.268	0.246
Allocated generic transportation	0.035	0.040
Billing adjustments	−0.032	0.003
Total required annual fee recovery	0.270	0.289
Total non-power production or utilization facilities licenses	3	3
Total annual fee per license (rounded)	0.0901	0.0963

In comparison to FY 2022, the FY 2023 annual fee for the non-power production or utilization facilities fee class is increasing, as discussed in the following paragraphs.

In FY 2023, while the budgeted resources decreased primarily due to the completion of the staff's review of the SHINE Medical technologies, LLC's (SHINE) operating license application, this decrease in the budgeted resources is offset by an increase in the fully-costed FTE rate compared to FY 2022 due to an increase in salaries and benefits.

The 10 CFR part 170 estimated billings associated with operating non-power production or utilization facilities licensees subject to annual fees are declining slightly due to less hours needed for activities associated with the special team inspection and the staff's review of a complex license amendment associated with the restart of the NIST Neutron Reactor. The 10 CFR part 170 estimated billings with respect to the medical isotope production facilities and advanced research and test reactors are remaining steady when compared with FY 2022. While the staff completed its review of the operating license application for SHINE, the decrease in estimated billings related to review of the SHINE application are offset by the staff's review of the Kairos Power's, LLC, application for a permit to construct the Hermes test reactor; and pre-application meetings due to the anticipated submission of several license applications.

Furthermore, the annual fee is increasing as a result of an increase in the 10 CFR part 171 billing adjustment (moving from a credit to a surcharge) due to the timing of invoices issued in FY 2022.

The annual fee-recovery amount is divided equally among the three non-power production or utilization facilities licensees subject to annual fees and results in an FY 2023 annual fee of $96,300 for each licensee.

f. Rare Earth

In FY 2023, the NRC has allocated approximately $0.3 million in budgeted resources to this fee class; however, because all the budgeted resources will be recovered through service fees assessed under 10 CFR part 170, the NRC will not assess and collect annual fees in FY 2023 for this fee class.

g. Materials Users

The NRC will collect $39.7 million in annual fees from materials users licensed under 10 CFR parts 30, 40, and 70 in FY 2023, as shown in Table XVI. The FY 2022 materials users fees are shown for comparison purposes.

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS

[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 final rule
Total budgeted resources for licensees not regulated by Agreement States	$34.1	$38.7
Less estimated 10 CFR part 170 receipts	−0.9	−1.2
Net 10 CFR part 171 resources	33.2	37.5
Allocated generic transportation	1.7	2.0
LLW surcharge	0.1	0.1
Billing adjustments	−0.2	0.0
Total required annual fee recovery	34.8	39.7

The formula for calculating 10 CFR part 171 annual fees for the various categories of materials users is described in detail in the work papers. Generally, the calculation results in a single annual fee that includes 10 CFR part 170 costs, such as amendments, renewals, inspections, and other licensing actions specific to individual fee categories.

The total annual fee recovery of $39.7 million for FY 2023 shown in Table XVI consists of $30.3 million for general costs, $9.3 million for inspection costs, and $0.1 million for LLW costs. To equitably and fairly allocate the $39.7 million required to be collected among approximately 2,400 diverse materials users licensees, the NRC continues to calculate the annual fees for each fee category within this class based on the 10 CFR part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the materials license, this approach is the methodology for allocating the generic and other regulatory costs to the diverse fee categories. This fee calculation method also considers the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses.

In comparison to FY 2022, the FY 2023 annual fees are increasing for 55

fee categories within the materials users fee class primarily as a result of an increase in the budgeted resources for: (1) application of a new decision-making tool to calculate resources for direct inspection work and support activities; (2) associated materials users rulemaking activities; and (3) an increase in the fully-costed FTE rate compared to FY 2022 due to an increase in salaries and benefits. In addition, annual fees are increasing for the materials users fee class generally due to the following: (1) the biennial review of licensing and inspection activities, which affects the distribution of fees across categories based on the relative level of staff effort; (2) an increase in generic transportation costs for materials users; and (3) a slight decrease in the number of materials users licensees from FY 2022.

A constant multiplier is established to recover the total general costs (including allocated generic transportation costs) of $30.3 million. To derive the constant multiplier, the general cost amount is divided by the sum of all fee categories (application fee plus the inspection fee divided by inspection priority) then multiplied by the number of licensees. This calculation results in a constant multiplier of 1.10 for FY 2023. The average inspection cost is the average inspection hours for each fee category multiplied by the professional hourly rate of $300. The inspection priority is the interval between routine inspections, expressed in years. The inspection multiplier is established in order to recover the $9.3 million in inspection costs. To derive the inspection multiplier, the inspection costs amount is divided by the sum of all fee categories (inspection fee divided by inspection priority) then multiplied by the number of licensees. This calculation results in an inspection multiplier of 1.74 for FY 2023. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. Please see the work papers for more detail about this classification.

The annual fee being assessed to each licensee also takes into account a share of approximately $0.1 million in LLW surcharge costs allocated to the materials users fee class (see Table IV, ''Allocation of LLW Surcharge, FY 2023,'' in Section III, ''Discussion,'' of this document). The annual fee for each fee category is shown in the revision to § 171.16(d).

h. Transportation

The NRC will collect $1.7 million in annual fees to recover generic transportation budgeted resources in FY 2023, as shown in Table XVII. The FY 2022 fees are shown for comparison purposes.

TABLE XVII—ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION

[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 final rule
Total budgeted resources	$10.2	$11.1
Less estimated 10 CFR part 170 receipts	−3.4	−3.4
Net 10 CFR part 171 resources	6.8	7.7
Less generic transportation resources	−5.3	−6.0
Billing adjustments	0.0	0.0
Total required annual fee recovery	1.5	1.7

In comparison to FY 2022, the FY 2023 annual fee for the transportation fee class is increasing primarily due to an increase in the budgeted resources that is partially offset by generic transportation resources allocated to other fee classes.

In FY 2023, the budgeted resources increased primarily due to: (1) an increase in the fully-costed FTE rate compared to FY 2022 due to an increase in salaries and benefits; (2) maintenance for the storage and transportation information management system; and (3) environmental and licensing reviews of transportation packages for ATF, other advanced reactors fuels, and micro-reactors. This increase is offset by a decrease in budgeted resources associated with rulemaking activities. The increase in the annual fee is offset by an increase in generic transportation resources allocated to respective other fee classes due to a rise in the number of CoCs.

Furthermore, the net result of changes in 10 CFR part 170 estimated billings result in no change compared to FY 2022. Compared to FY 2022, an increase in 10 CFR part 170 estimated billings related to the review of new and amended transportation packages are offset by a decrease in 10 CFR part 170 estimated billings due to delays or the completion of transportation amendment packages.

Consistent with the policy established in the NRC's FY 2006 final fee rule (71 FR 30721; May 30, 2006), the NRC recovers generic transportation costs unrelated to DOE by including those costs in the annual fees for licensee fee classes. The NRC continues to assess a separate annual fee under § 171.16, fee category 18.A., for DOE transportation activities. The amount of the allocated generic resources is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered.

This resource distribution to the license fee classes and DOE is shown in Table XVIII. Note that for the non-power production or utilization facilities fee class, the NRC allocates the distribution to only those licensees that are subject to annual fees. Although five CoCs benefit the entire non-power production or utilization facilities fee class, only three out of 30 operating non-power production or utilization facilities licensees are subject to annual fees. Consequently, the number of CoCs used to determine the proportion of generic transportation resources allocated to annual fees for the non-power production or utilization facilities fee class has been adjusted to 0.5 so these licensees are charged a fair and equitable portion of the total fees. For additional detail see the work papers.

TABLE XVIII—DISTRIBUTION OF TRANSPORTATION RESOURCES, FY 2023

[Dollars in millions]

Licensee fee class/DOE	Number of CoCs benefiting fee class or DOE	Percentage of total CoCs	Allocated generic transportation resources
Materials Users	24.0	25.7	$2.0
Operating Power Reactors	6.0	6.4	0.5
Spent Fuel Storage/Reactor Decommissioning	19.0	20.3	1.6
Non-Power Production or Utilization Facilities	0.5	0.5	0.0
Fuel Facilities	23.0	24.6	1.9
Sub-Total of Generic Transportation Resources	72.5	77.5	6.0
DOE	21.0	22.5	1.7
Total	93.5	100.0	7.8

The NRC assesses an annual fee to DOE based on the 10 CFR part 71 CoCs it holds. The NRC, therefore, does not allocate these DOE-related resources to other licensees' annual fees because these resources specifically support DOE.

FY 2023—Policy Changes

The NRC made one policy change for FY 2023.

Expand § 171.15 to be technology-inclusive and create an additional minimum fee and variable rate.

The NRC is amending § 171.15, ''Annual fees: Non-power production or utilization licenses, reactor licenses, and independent spent fuel storage licenses,'' to (1) expand the applicability of the small modular reactor (SMR) variable fee structure to include non-light water reactor (non-LWR) SMRs, and (2) establish an additional minimum fee and variable rate applicable to SMRs with a licensed thermal power rating of less than or equal to 250 megawatts-thermal (MWt). The NRC is making these changes to be technology inclusive and establish a fair and equitable approach for assessing annual fees to these SMRs. In addition, there is the potential for a reduced regulatory effort (and cost) for the smallest proposed SMRs since these types of facilities are considerably smaller in size than the current fleet of operating power reactors, and the level of oversight could be comparable to facilities in the non-power production or utilization facilities fee class. This revision retains the bundled unit concept for SMRs and the approach for calculating fees for reactors, or bundled units, with licensed thermal power ratings greater than 250 MWt. For the purpose of calculating NRC fees, an SMR is defined in §§ 170.3 and 171.5, ''Definitions,'' as a power reactor with a licensed thermal power rating of 1,000 MWt or less. The rating is based on an electrical power generating capacity of 300 megawatts-electric or less per module. This definition currently applies only to light-water reactors (LWRs). The final rule provides for a non-LWR SMR's annual fee to be calculated the same as for a LWR SMR, as a function of its licensed thermal power rating. In addition to the amendments to § 171.15, the NRC is also making conforming changes to the relevant definitions in §§ 170.3 and 171.5.

In 2016, the NRC published the final rule, ''Variable Annual Fee Structure for Small Modular Reactors'' (SMR rule) (81 FR 32617; May 24, 2016). The SMR rule provisions in § 171.15 were the direct result of a multi-year agencywide effort with extensive stakeholder engagement. The goal of the effort was to address NRC staff and industry concerns that there may be inequities if SMR licensees were charged the same annual fee as the current fleet of operating power reactors, which have much larger thermal power levels and electrical generating capacity. The SMR rule was limited to LWR SMRs but left open the possibility of future inclusion of non-LWR SMRs. The NRC stated in the final rule that, ''[T]he light-water SMR designs that have been discussed with the NRC in pre-application discussions to date are similar to the current U.S. operating fleet of reactors in terms of physical configuration, operational characteristics, and applicability to the NRC's existing regulatory framework. The NRC may consider the inclusion of non-light water SMRs in a future rulemaking once the agency has increased understanding of these factors with respect to non-light water designs'' (81 FR 32617; May 24, 2016).

After issuing the SMR rule, the NRC continued to engage with industry, other Federal agencies, the international community, and other interested stakeholders to develop a knowledge base and understanding of the characteristics and proposed designs of non-LWR SMRs. The NRC conducted public meetings with stakeholders to share information and discuss topics related to the development and licensing of non-LWRs and participated in preapplication activities with several applicants. During these public meetings, the NRC staff discussed possible approaches to assessing annual fees for non-LWR SMRs. Stakeholders recommended that the NRC consider lower fees for non-LWR SMRs and requested the NRC proceed with rulemaking expeditiously. In developing an approach to assess annual fees to future non-LWR SMRs, the NRC considered stakeholder input from these public meetings and analyzed a position paper from the Nuclear Energy Institute (NEI), ''NEI Input on NRC Annual Fee Assessment for Non-Light Water Reactors.''

The NRC is in the process of conducting pre-application reviews for several LWR and non-LWR commercial SMR designs, but no applications for SMRs have been submitted for operating licenses under 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' or combined licenses under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' Under the current regulatory framework, it will be several years before a new SMR is ready, if approved, to begin commercial operation and be subject to annual fees pursuant to 10 CFR part 171. However, industry representatives and stakeholders have requested prompt NRC action to establish an annual fee policy for non-LWR SMRs, including micro-reactors, in order to inform business decisions and to provide regulatory predictability.

Commercial power reactors that are less than or equal to 20 MWt are considerably smaller in size than the current fleet of operating power reactors; the NRC anticipates that the level of oversight could be comparable

to facilities in the non-power production or utilization facilities fee class. In addition, non-LWR SMRs that are less than 20 MWt may not require resident inspectors, similar to the non-power production or utilization facilities fee class oversight program.

As a result of this multi-year effort, the NRC is amending § 171.15 to be technology inclusive by expanding applicability to non-LWR SMRs. Additionally, the NRC is changing the minimum fees and the variable annual fee scale for SMRs that have a licensed thermal power rating of less than or equal to 250 MWt in order to fairly and equitably assess annual fees for those SMRs.

The new minimum fee will be equal to the lowest annual fee that is assessed to the non-power production or utilization facility fee class and will be the only annual fee assessed for an SMR, or for bundled units, with a combined licensed thermal power rating per site that is less than or equal to 20 MWt. This change also creates a new variable annual fee for an SMR or for bundled units with a combined licensed thermal power rating per site greater than 20 MWt but less than or equal to 250 MWt that will be added to the minimum fee (the non-power production or utilization facilities fee class annual fee). This approach provides for a gradual increase in the annual fee as the licensed thermal power rating increases. The minimum fee currently included in § 171.15, which is equal to the average of the spent fuel storage/reactor decommissioning and non-power production or utilization facilities fee classes annual fees, is retained as a component of the annual fee with an added variable fee assessed for an SMR, or for bundled units, with a combined licensed thermal power rating per site greater than 250 MWt but less than or equal to 2,000 MWt.

Three different variable fees will be assessed: (1) a new variable fee assessed for power reactors with a licensed thermal power rating greater than 20 MWt but less than or equal to 250 MWt; (2) the existing variable fee assessed for power reactors with a licensed thermal power rating greater than 250 MWt but less than or equal to 2,000 MWt; and (3) for bundled units added above 4,500 MWt, the maximum fee (equal to the annual fee for the operating power reactor fee class) plus a variable fee will be assessed for the incremental licensed thermal power rating greater than 4,500 MWt up to 6,500 MWt (another 2,000 MWt range), which constitutes an additional bundled unit. This pattern for assessed fees will continue as licensed thermal power rating capacity is added. The new variable fee provides for a gradual increase in fees for power reactors above 20 MWt but less than equal to 250 MWt rather than an abrupt increase to the higher minimum fee once an increment above 20 MWt is reached.

Without these changes to § 171.15, a non-LWR SMR, regardless of size, would be required to pay the same annual fee as the operating power reactors fee class under the NRC's current annual fee structure. NEIMA requires that 10 CFR part 171 annual fees be assessed in a fair and equitable manner and, to the maximum extent practicable, be reasonably related to the cost of providing regulatory services. NEIMA also provides that annual fees may be based on the allocation of resources of the Commission among licensees or certificate holders or classes of licensees or certificate holders. The differences between SMRs and the existing operating power reactor fleet will result in significant differences in the anticipated regulatory cost, thus applying the current fee structure to non-LWR SMRs could be inconsistent with NEIMA requirements that the NRC's fees be fairly and equitably allocated among its licensees.

The NRC finds this policy change to be reasonable, fair, and equitable. Pursuant to § 171.15, annual fees for power reactors licensed under 10 CFR part 50, or a combined license under 10 CFR part 52, including an SMR licensee, will not commence until the licensee has notified the NRC in writing of the successful completion of power ascension testing. The NRC does not expect to license a non-LWR SMR facility for operation that would be assessed annual fees under 10 CFR part 171 for several years. However, the NRC made this policy change, well before operation, to promote regulatory consistency and transparency, as well as to provide potential non-LWR SMR applicants, the industry, and the public with notice and opportunity to comment on the methodology that will be used to calculate 10 CFR part 171 annual fees for future licensed facilities. Furthermore, the NRC's view is that this policy change addresses potential inconsistencies in the current 10 CFR part 171 annual fee structure for future non-LWR SMRs. This policy change will assist industry in planning and budgeting for future annual fees and will continue to provide a clear method for allocating NRC generic expenses to its operating power reactor licensees.

Because the annual regulatory cost associated with LWR and non-LWR SMRs is inherently uncertain before such a licensed facility is operational, the NRC intends to reevaluate the variable annual fee structure at the appropriate time to ensure consistency with NEIMA. This re-evaluation will occur once SMR facilities become operational and sufficient regulatory cost data becomes available. Operational experience data should provide insights that will identify the correlation between design features and the level of NRC oversight typically needed for these new types of power plants as well as inform whether further annual fee adjustments for SMRs may be needed. As cost data and operating experience for LWR and non-LWR SMRs are accumulated, the NRC will propose adjustments to fees as needed to make sure that the fees assessed to LWR and non-LWR SMRs (and to all operating power reactors) are commensurate with the regulatory support services provided by the NRC, consistent with NEIMA.

FY 2023—Administrative Changes

The NRC is making three administrative changes in FY 2023:

1. Amend Table 1 in § 170.31 and Table 2 in § 171.16 to add Program Code 21131 to fee category 1(A)(2)(c).

On February 1, 2022, staff in the Office of Nuclear Material Safety and Safeguards added Program Code 21131, ''Medical Isotopes Production Facility Licensed Under 10 part 70,'' to fee category 1(A)(2)(c). This program code was created in preparation for future license applications that the NRC anticipates will be submitted for medical isotopes production facilities under 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material.'' The NRC is amending Table 1 in § 170.31, ''Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses,'' and Table 2 in § 171.16, ''Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC,'' to add Program Code 21131 to fee category 1(A)(2)(c), as the program code is used as the basis for assessing 10 CFR part 170 service fees at full cost and a future annual fee under 10 CFR part 171.

2. Amend § 170.12(f), ''Method of payment,'' by clarifying the types of payments and payment method.

The NRC is amending § 170.12(f), ''Method of payment,'' to add new payment method options (Amazon Pay and PayPal) now available via *www.Pay.gov.* The NRC is also removing the requirement for payment of invoices

of $5,000 or more be made via the Automated Clearing House (ACH) through the NRC's Lockbox Bank. The NRC encourages applicants and licensees to use the electronic payment options for fee submittal.

3. Change Small Entity Fees.

In developing this final rule, the NRC has conducted a biennial review of small entity fees to determine whether the NRC should change those fees. The NRC used the fee methodology developed in FY 2009 to perform this biennial review (74 FR 27641; June 10, 2009). Based on this methodology and as a result of the biennial review, the NRC is increasing the upper tier small entity fee from $4,900 to $5,200, which constitutes an increase of approximately 6 percent. The lower tier small entity fee is not increasing and will remain at $1,000. The NRC believes these fees are reasonable and provide relief to small entities, while at the same time recovering from those licensees some of the NRC's costs for activities that benefit them.

III. Public Comment Analysis

Overview of Public Comments

The NRC published a proposed rule on March 3, 2023 (88 FR 13357) and requested public comment on its proposed revisions to 10 CFR parts 170 and 171. By the close of the comment period, the NRC received seven written comment submissions on the FY 2023 proposed rule. In general, commenters were supportive of the specific proposed regulatory changes, although most commenters expressed concerns about broader fee policy issues related to the overall size of the NRC's budget, fairness of fees, transparency, and budget formulation.

The commenters are listed in Table XIX.

TABLE XIX—FY 2023 PROPOSED FEE RULE COMMENTER SUBMISSIONS

Commenter	Affiliation	ADAMS accession No.
Timothy J. Tate	Framatome	ML23093A114
Brian Hunt	Honeywell International—Metropolis Works (MTW)	ML23093A123
Dr. Jennifer L. Uhle	Nuclear Energy Institute (NEI)	ML23093A188
Richard J. Freudenberger	BWX Technologies, Inc. (BWXT)	ML23093A189
David M. Gullott	Constellation Energy Generation, LLC (CEG)	ML23093A187
Paul A. Kerl	U.S. Department of Energy (DOE)	ML23100A189
Timothy A. Knowles	Nuclear Fuel Services, Inc. (NFS)	ML23109A190

Information about obtaining the complete text of the comment submissions is available in the ''Availability of Documents,'' section of this document.

IV. Public Comments and NRC Responses

The NRC has carefully considered the public comments received on the proposed rule. The comments have been organized into six topics. Comments from multiple commenters raising similar specific concerns were combined to capture the common essential issues raised by the commenters. Comments from a single commenter have been quoted to ensure accuracy; brackets within those comments are used to show changes that have been made to the quoted comments.

A. Fuel Facilities Fee Class Budget and Increase in the Annual Fees

Comment: Several commenters expressed concerns about the average 18.5% annual fee increase for all operating fuel cycle facilities, except for the approximate 203% increase proposed for the uranium conversion plant, which is expected to restart operations later this year. The commenters stated that the fuel facilities business line budget and annual fees decreased each of the prior four fiscal years (FY 2019–FY 2022) to more accurately reflect the reduced number of operating facilities and the corresponding reduction in workload. The commenters expressed concern that despite the number of operating facilities remaining steady, the proposed annual fee increase is not based on quantitative workload data or effort factors and does not reflect the relatively low risk profile of the existing and predicted fuel cycle facility fleet. The commenters expressed concern that the basis for the increase in the annual fee is not adequate or clear. The commenters also expressed concern regarding the increase in the budget for licensing and oversight activities and the disparity between lower 10 CFR part 170 (service fees) relative to 10 CFR part 171 (annual fees). (Framatome, BWXT, NEI, and NFS)

Response: The NRC is aware and remains mindful of the impact of its budget on the fees for the fuel facilities fee class. When formulating the budget, the NRC takes into consideration various factors, including workload forecasting, historical data and trends in the business line, information from licensees and potential applicants, and uncertainty of projections. The NRC assesses the current environment and performs workload forecasting, which includes looking for significant drivers that could impact future workload. These include, but are not limited to, technical and regulatory developments that have the potential to generate additional work or reduce work (*i.e.,* pre-application activities and applications for new fuel facilities, potential major amendments and license termination requests, rulemaking activities, guidance development, and oversight of the fuel facilities program).

In addition, the NRC evaluates historical data and trends to measure how execution in previous years lines up with the budget assumptions at the time. The NRC uses that data to inform the future budget and identify areas where the assumptions previously used may have changed. Historical data allows the NRC to identify trending in quantity and/or complexity of the planned submittals, and to incorporate efficiencies gained and lessons learned from previous data.

The NRC also relies on communication from stakeholders to identify accurate dates for planned submittals (*i.e.,* major amendment requests, renewals, and new fuel facility applications), including letters of intent provided by licensees and applicants, and collecting information from project managers. For large licensing projects, the NRC tries to balance the appropriate resource needs against the relative certainty that an application will be submitted on schedule.

While the NRC understands the commenters' concerns regarding the impact of budget on the existing fuel facilities licensees, NEIMA requires the NRC to recover, to the maximum extent practicable, approximately 100 percent

of its annual budget authority, less the budget authority for excluded activities, and to do so through a combination of both user fees and annual fees. This requirement means that fact-of-life changes in the 10 CFR part 170 estimated collections for budgeted workloads (due to circumstances like delayed or cancelled licensing submittals) may increase the amount to be recovered through 10 CFR part 171 annual fees.

As expressed by the commenters, from FY 2019 through FY 2022 the annual fee for fuel facilities fee class had decreased each year and, after a significant decrease in the budgeted resources for the fee class from FY 2019 to FY 2020, budgeted resources had remained relatively flat from FY 2020 to FY 2022. The decrease in the fuel facilities budgeted resources over this period appropriately aligned resources with the projected workload for the fuel facilities fee class at the time. In FY 2023, the fuel facilities fee class budget did increase from FY 2022 by $4.2 million, which includes an increase of 5.3 FTE and approximately $0.5 million in contract support, for licensing, oversight, and rulemaking activities. The FY 2023 fuel facilities fee class budgeted resources of $26.6 million, which includes 52.5 FTE and approximately $2.2 million in contract support, is $3.4 million or approximately 11.3 percent less than the FY 2019 fuel facilities budgeted resources of $30.0 million, which included 66.7 FTE and approximately $2.0 million in contract support.

The FY 2023 CBJ, published in April 2022, explains that the increase in budgeted resources for the fuel facilities business line supports activities such as licensing actions related to the enrichment and manufacturing of high-assay low-enriched uranium fuel, advanced reactor fuel, and ATF, cybersecurity rulemaking for fuel cycle facilities, and an increase in the fully-costed FTE rate due to an increase in salaries and benefits to support Federal pay raises for NRC employees. Additionally, changing workload drivers, including shift in licensing action schedules, and the implementation of information security standards have impacted the FY 2023 budget for the fuel facilities business line.

Although the NRC is aware of the impact of its budgeted resources on the fees for fuel facilities licensees subject to 10 CFR part 171 annual fees, the fee class budget is not linearly proportional to the number of licensees in the fuel facilities fee class. Resources are required to develop and maintain the infrastructure independent of the number of operational fuel facilities. The fuel facilities business line must maintain certain minimum requirements in order to meet the NRC's regulatory and statutory oversight role. This includes maintaining expertise in a number of technical areas, including integrated safety analysis, radiation protection, criticality safety, chemical safety, fire safety, emergency management, environmental protection, decommissioning, management measures, material control and accounting, physical protection, and information security. Budgeted resources in technical areas are recovered through 10 CFR part 170 user fees as well as 10 CFR part 171 annual fees. Additionally, the infrastructure costs include indirect services and the business line portion of corporate support. Indirect services include rulemaking, maintaining guidance for licensees, maintaining procedures for NRC staff, training, and travel. Corporate support includes, but is not limited to, the cost for information management and technology, security, facilities management, rent, utilities, human resources, financial management, and acquisitions.

Consistent with NEIMA, when developing the annual fee rule, the NRC accounted for changes that occurred in the two-year interval between the development of the FY 2023 budget request, which began in FY 2021, and the enactment of the FY 2023 appropriation in December 2022. As part of developing the annual fee rule, the NRC estimates the amount of 10 CFR part 170 service fees by each fee class by analyzing billing data and the actual cost of work under NRC contracts that was charged to licensees and applicants for the previous four quarters. The estimate, therefore, reflects any recent changes in the NRC's regulatory activities. The FY 2023 proposed rule utilized four quarters of the prior year invoice data, while the NRC is using a combination of two quarters of the prior year and two quarters of the current year billing data (which is also updated to reflect workload changes) for the FY 2023 final rule. In the FY 2023 proposed fee rule, the 10 CFR part 170 estimated service fees for the fuel facilities fee class increased from $8.0 million in FY 2022 to $9.0 million as shown in the FY 2023 proposed fee rule, which is an increase of $1.0 million or 12.5 percent compared to FY 2022. As described in the FY 2023 proposed fee rule, the 10 CFR part 170 estimated billings increased as a result of the following: (1) the staff's review of the Westinghouse Electric Company, LLC's license renewal application for the Columbia Fuel Fabrication Facility, which was completed in September 2022; (2) the staff's review of the Nuclear Fuel Services U-metal amendment and an inspection that was delayed due to the COVID–19 pandemic; (3) Louisiana Energy Services' transition of the Authority to Operate from DOE to the NRC; and (4) upgrades to NIST–800–53. The increase in 10 CFR part 170 estimated billings was offset by a delay in the submission of X–Energy's environmental review for the TRISO–X facility.

The NRC continues to actively evaluate resource requirements to address changes that occur between budget formulation and execution. The NRC will continue to assess resource requirements, evaluate programmatic efficiencies, and make changes as appropriate.

No changes were made to this final rule as a result of these comments.

Comment: Several commenters expressed concerns that they have finalized their calendar year budgets and funding an 18.5 percent increase in the FY 2023 annual fees is not currently budgeted and can only be fulfilled by making difficult resource decisions while maintaining operational safety and security. (Framatome, BWXT, and NEI)

Response: NEIMA requires the NRC to recover, to the maximum extent practicable, approximately 100 percent of its annual budget authority, less the budget authority for excluded activities, through fees by the end of the fiscal year. The NRC must set its fees in accordance with its appropriated budget authority. Furthermore, the annual appropriation cycle places additional constraints upon the NRC. Even though the NRC does not know the amount of fees it will need to collect until after it receives an annual appropriation from Congress, the NRC starts the process of developing the fee rule in the preceding summer to allow for timely final billing prior to the end of the fiscal year, consistent with the requirements of NEIMA. This practice ensures that NRC fees assessed bear a reasonable relationship to the cost of NRC services.

Furthermore, the NRC must comply with additional statutory requirements, including the Administrative Procedures Act (APA). Section 553 of the APA requires the NRC to give the public an opportunity to comment on a published proposed rule. Moreover, because OMB has found the fee rule to be a major rule under the Congressional Review Act, the effective date of the final rule cannot be less than 60 days

from the date of publication and must allow for timely final billing prior to the end of the fiscal year. The NRC, therefore, cannot republish the FY 2023 proposed fee rule to provide advance notification of all changes within the final rule and meet its statutory requirements.

The NRC recognizes that the issuance of the fee rule may not coincide with budget cycles of industry; however, the NRC must promulgate a notice-and-comment rule based on the most accurate data available regarding the cost of NRC services in the context of the NRC's budget for a given fiscal year.

No changes were made to this final rule as a result of these comments.

B. Fuel Facilities Matrix

Comment: ''Since 2018, the Metropolis facility [MTW] has been secured in an idle state due to market conditions. The NRC was notified of the decision to restart the plant on February 15, 2021. The start date of the production of UF6 was estimated to occur by the end of March of 2023. The current schedule indicates the earliest date to produce UF6 will be in April 2023. MTW will only produce UF6 for 2 quarters in FY 2023. A review of the effort factors based on the start-up of the plant was completed. The effort factor for the Conversion Powder was increased from 0 to 10 with the Liquid UF6 effort factor going from 0 to 5. MTW agrees that the effort factor for the liquid state UF6 is correct based on previous years of plant operation. MTW does not agree with the Conversion Powder effort factor going from 0 to 10. Additionally, the Conversion Powder effort factor for the Fuel Fabricators is only listed as 5. This has a much higher safety significance than the MTW Source Material (Natural U3O8). During the previous 5 years of operation, prior to the ready idle period, the effort factor for Conversion Powder at MTW was assigned a value of 1. To reflect the same level of effort that was used during previous years of plant operation, MTW asks that the effort factor for the Conversion Powder be revised from 10 to 1, and the FY 2023 part 171 annual fee be recalculated using the lower effort factor.'' (Honeywell)

Response: Prior to issuing the final rule, the NRC conducted additional verification and validation of the data inputs and calculations on the fuel facilities effort factors matrix. As a result of this review, the NRC determined that the effort factors for Honeywell should be revised because of the reinstatement of Security Order EA–02–025 and a reevaluation of the level of effort associated with conversion powder during restart and operations.

In the proposed rule, the NRC proposed an effort factor of 0 for safeguards and 5 for safety for liquid UF_6 for Honeywell. When the effort factors were developed for the proposed rule, Security Order EA–02–025 was temporarily relaxed while Honeywell was in ready-idle status. Subsequently, in October 2022, the NRC reinstated Security Order EA–02–025 at the site. As a result of reinstating Security Order EA–02–025 at the site, the NRC reevaluated the proposed effort factor for safeguards and determined that it should be changed from 0 to 5 to reflect a moderate level of effort. The effort factor for safety for liquid UF_6 for Honeywell remains 5.

In the proposed rule, the NRC also proposed changes to the safety effort factor for the conversion powder process, a separate process under the matrix that is assigned its own effort factors. Specifically, the proposed rule proposed an effort factor of 10 for safety for conversion powder at Honeywell. The proposed level of effort was based on Honeywell returning to full operations, which would involve increased amounts of uranium powder for processing at the site and increased effort to support the restart. The NRC reevaluated the proposed effort factor based on the additional information available from pre-operational inspections conducted at the site and evaluations of regulated activities during the restart phase. Utilizing actual data instead of estimates, the re-evaluation concluded that the overall NRC level of effort during the initial restart phase would be moderate, would be minimal for the remainder of the restart phase, and would be minimal once operations were resumed. Therefore, the NRC level of effort revised the effort factor to 1 for safety for conversion powder.

In summary, for FY 2023, the liquid UF_6 effort factors are revised to safety–5 and safeguards–5, and conversion powder effort factors are revised to safety–1 and safeguards–0. These changes, along with adding the effort factors for the other processes in the matrix that remain unchanged, results in a total effort factor of 19 for the UF_6 Conversion and Deconversion fee category. The revised total effort factor results in a decrease in the annual fees for the UF_6 Conversion and Deconversion fee category by 16.4 percent compared to the proposed rule. The decrease in annual fees for the UF_6 Conversion and Deconversion fee category results in a corresponding average increase of approximately 1.2 percent in all other fee categories in the fee class. The NRC provides a significant amount of information in the work papers that details the inputs and calculations used to develop the fees for each fee category. Specific information fee calculations for fuel facilities can be found in Table VIII—Annual Fee Summary Calculation for Fuel Facilities.

C. Operating Power Reactors Fee Class Budget and Declining 10 CFR Part 170 Estimated Billings

Comment: Several commenters expressed concerns that the NRC's operating power reactors fee class budget is too large and that there is a growing disparity between 10 CFR part 170 and 10 CFR part 171. The commenters expressed the view that over the past five years, the 10 CFR part 170 service fee collections have decreased by 39 percent, while the budget for operating reactors has decreased by less than 1 percent. As a result, a greater percentage of the budget is required to be recovered through annual fees and, as such, this points to a need to revalue the NRC's budget and fee collection model. (NEI and CEG)

Response: The NRC is aware and remains mindful of the impact of its budget on the fees for operating power reactors licensees. The operating power reactors fee class supports the activities of the operating reactors and new reactors business lines, including both direct-billable licensing actions and those general activities that indirectly support the agency's mission in these areas. The NRC's FY 2023 CBJ provided the agency's explanation and justification for the resources being requested to allow the agency to complete its mission, and the reason for the changes in the budget request for the NRC compared to the prior year.

When formulating the budget, the NRC takes into consideration various factors, including workload forecasting, historical data and trends in the business line, information from licensees and potential applicants, and uncertainty of projections. The NRC assesses the current environment and performs workload forecasting, which includes looking for significant drivers that could impact the future workload. These include, but are not limited to, technical and regulatory developments that have the potential to generate additional work or reduce work (*i.e.,* rulemaking, a guidance change that could drive new submittals, or known plant closures that will reduce the overall size of the program). In addition, the NRC reviews historical data and trends to measure how execution in previous years lines up with the budget

assumptions at the time. The NRC uses that data to inform the future budget and identify areas where the assumptions previously used may have changed. The NRC also relies on communications from stakeholders to identify plant submittals, including letters of intent, collecting information from project managers, considering responses to the periodic regulatory issue summaries, and the level of pre-application activities. In budgeting for large licensing projects, the NRC tries to balance the anticipated resource needs against the relative certainty that an application will be submitted on schedule.

In FY 2023, the operating power reactors fee class is $665.3 million, which includes approximately 1,245 FTE and $86.6 million in contract support. This represents an increase from FY 2022 of $19.9 million, which includes a decrease of approximately 41 FTE primarily in licensing and oversight activities. Compared to FY 2017, the FY 2023 operating power reactors fee class budget decreased by $5.0 million, or approximately 0.7 percent less than the FY 2017 operating power reactors budgeted resources of $670.3 million, which included approximately 1,532 FTE and $66.0 million in contract support. The $19.9 million increase in the operating power reactors fee class budget is primarily due to increases in the fully-costed FTE rate from an increase in salaries and benefits. The increase in the annual fee is partially offset by a decline in FTEs associated with changes in workload, including but not limited to the following: (1) the closure of Palisades; (2) delays to planned new reactor design and licensing applications; and (3) a reduction in resources for the development of operating reactors licensing action infrastructure for process improvements and special projects.

Since FY 2017, service fees directly billed to operating power reactors under 10 CFR part 170 have decreased from $256.3 million in FY 2017 to $158.9 million as shown in the FY 2023 final fee rule, which represents a decline of $97.4 million, or approximately 38 percent. During the same period, the operating power reactors fleet has declined from 99 to 93.

Further, while the NRC understands the commenters' concerns regarding the budget for the existing operating power reactor licensees, NEIMA requires the NRC to recover, to the maximum extent practicable, approximately 100 percent of its annual budget authority, less the budget authority for excluded activities. This requirement means that fact-of-life changes in the 10 CFR part 170 estimated collections for budgeted workloads (due to circumstances like delayed or cancelled licensing applications) may increase the amount to be recovered through 10 CFR part 171 annual fees. NEIMA also caps the per-licensee annual fee for operating reactors, to the maximum extent practicable, at the FY 2015 annual fee amount as adjusted for inflation.

Although the NRC is mindful of the impact of its budgeted resources on the fees for operating power reactors licensees subject to 10 CFR part 171 annual fees, the fee class budget is not linearly proportional to the number of licensees in the operating power reactors fee class. Resources are required to develop and maintain the infrastructure independent of the number of operational power reactors. The operating and new reactors business lines must maintain certain minimum requirements in order to meet the NRC's regulatory and statutory oversight role. This includes maintaining expertise by developing and implementing licensing, oversight, incident response programs, and rulemaking for reactors. Budgeted resources in technical areas are recovered through 10 CFR part 170 user fees as well as 10 CFR part 171 annual fees. Additionally, the infrastructure costs include indirect services and the business line portion of corporate support. Indirect services include rulemaking, maintaining guidance for licensees, maintaining procedures for NRC staff, training, and travel. Corporate support includes, but is not limited to, the cost for information management and technology, security, facilities management, rent, utilities, human resources, financial management, and acquisitions.

Consistent with NEIMA, when developing the annual fee rule, the NRC took into account changes that occurred in the two-year interval between the development of the FY 2023 budget request, which began in FY 2021, and the enactment of the FY 2023 appropriation in December 2022. As part of the development of the annual fee rule, the NRC estimates the amount of 10 CFR part 170 service fees by each fee class by analyzing billing data and the actual cost of work under NRC contracts that was charged to licensees and applicants for the previous four quarters. The estimate, therefore, reflects any recent changes in the NRC's regulatory activities. The FY 2023 proposed rule utilized four quarters of the prior year invoice data, while the NRC is using a combination of two quarters of the prior year and two quarters of the current year billing data (which is also updated to reflect workload changes) for the FY 2023 final rule. In the FY 2023 proposed fee rule, the 10 CFR part 170 estimated service fees for the operating power fee class decreased from $165.8 million in FY 2022 to $160.2 million as shown in the FY 2023 proposed fee rule, which is a decrease of $5.6 million or 3.4 percent compared to FY 2022. As described in the FY 2023 proposed fee rule, the 10 CFR part 170 estimated billings decreased as a result of the following: (1) a decrease in hours associated with the closure of Palisades and (2) delays to planned new reactor design and licensing applications, topical reports, and white papers.

With the cap on annual fees for the operating power reactors fee class, the NRC continues to evaluate resource requirements and adjustments to address changes that occur between budget formulation and execution. The NRC will continue to assess resource requirements, evaluate programmatic efficiencies, and make changes as appropriate.

No changes were made to this final rule as a result of these comments.

D. Non-Power Production or Utilization Facilities Fee Class

Comment: ''The FY2023 proposed fee rule outlines a 9.8% increase in annual fees for non-power production or utilization facilities (NPUFs). Historically, and justifiably, the annual fee for NPUFs has remained relatively stable, with fluctuations of around 1%. However, that stable trend was drastically reversed in FY22 when NPUF's received a 12.6% increase in annual fees (which was the largest increase among all fee classes for that fiscal year). NRC justified this increase primarily by the fact that the number of NPUF licensees subject to fees went from 4 to 3. We assumed the hike of FY2022 would allow for a stabilization in FY2023. Yet, for FY2023, the NRC is proposing another 9.8% annual fee increase, for which the basis is not clear. The NRC's statement in the FRN describes the NPUF increase due to the following: 'Furthermore, the proposed annual fee is increasing as a result of an increase in the 10 CFR part 171 billing adjustment (moving from a credit to a surcharge) due to the timing of invoices issued in FY 2022.' 'Timing of invoices' as the sole justification for a 9.8% increase seems inadequate. In addition, we urge the NRC to consider the unique role of these facilities, and how fee increases have a direct impact upon resources available for research and development. This role is outlined

under the Atomic Energy Act, section 104(c), and 10 CFR 50.41(b), which directs the Commission to regulate and license class 104(c) licensees in a manner that 'will permit the conduct of widespread and diverse research and development.' '' (NEI)

Response: While the timing of invoices was the main contributor to the increase in the FY 2023 fee for the NPUF fee class, it was not the sole justification provided for the increase. As discussed in the FY 2023 proposed fee rule, the NPUF budgetary resources decreased primarily due to the expected completion of the staff's review of the SHINE operating license application. The decrease in the budgeted resources was offset by an increase in the fully-costed FTE rate compared to FY 2022 due to an increase in salaries and benefits. Each fee class was impacted by the increase in the fully-costed FTE rate due to the increase in salaries and benefits. In addition, the 10 CFR part 170 estimated billings associated with operating NPUF licensees subject to annual fees are declining slightly due to less hours needed for activities associated with the special team inspection and the staff's review of a complex license amendment associated with the restart of the NIST Neutron Reactor. The 10 CFR part 170 estimated billings with respect to the medical isotope production facilities and advanced research and test reactors are remaining steady when compared with FY 2022 due to the following: (1) the staff's construction and operational readiness inspection activities for SHINE; (2) the staff's review of the Kairos Power's, LLC application for a permit to construct a test reactor; and (3) pre-application meetings due to the anticipated submission of several license applications. Finally, as the commenter noted, an additional reason for the proposed annual fee is increasing is the 10 CFR part 171 billing adjustment (moving from a credit to a surcharge) due to the timing of invoices issued in FY 2022.

In a March 21, 2023, FY 2023 proposed fee rule public meeting, the NRC discussed the NPUF fee class over a five-year period and reasons for the change in the proposed annual fee. Further, the NRC discussed the billing adjustment, which was the main contributing factor for the increase in the NPUF proposed annual fee. Billing adjustments are a combination of invoices issued in a prior fiscal year and paid in the current fiscal year offset by estimated invoices that are issued in the current year and paid in a future year. This amount can fluctuate from year to year based on many different variables including timing of when the final annual fee invoices are issued due to the effective date of the fee rule and deferral of debt including payment plans. The ADAMS accession number for the slides is provided in the ''Availability of Documents'' section of this document.

Finally, the commenter asserts that the NRC should consider how fee increases have a direct impact upon resources available for research and development as described under the Atomic Energy Act, section 104(c), and 10 CFR 50.41(b). The NRC is mindful of the impact of its budgeted resources on the fees for facilities involved in research and development, and only requests from Congress those resources necessary to complete its mission. In FY 2023, the budgetary resources for the NPUF fee class were necessary to address emerging work needs and maintaining adequate oversight of the existing fleet of facilities. NEIMA requires the NRC to recover, to the maximum extent practicable, approximately 100 percent of the total budget authority appropriated for the fiscal year, less the budget authority for excluded activities.

No change was made to this final rule in response to this comment.

E. Use of Fee-Based Carryover To Reduce Fees

Comment: Several commenters suggested that the NRC should use its available discretionary authority to apply fee-based carryover funds for the purpose of reducing licensee fees. The commenters suggested that the NRC apply carryover funds in the FY 2023 fee rule for the purpose of reducing fees and that carryover should be applied from one year to the next to alleviate costs. (NEI and CEG)

Response: Under NEIMA, the NRC must recover, to the maximum extent practicable, approximately 100 percent of the total budget authority appropriated for the fiscal year, less the budget authority for excluded activities. The NRC's discretionary use of carryover does not reduce the amount of current-year budget authority appropriated to the NRC.

No changes were made to this final rule as a result of these comments.

F. Transparency

Comment: ''Most licensees must estimate and budget their NRC fees well in advance of the proposed fee rule and typically use recent NRC fee history in making their estimates. The lack of directed carryover to offset current fiscal year funding is a significant departure from this recent fee history and is the cause of budget challenges for licensees. We strongly encourage the NRC to re-examine the remaining available carryover and use whatever discretion exists to reallocate this carryover to offset current year funding needs, consistent with past NRC budgets. Further, we also strongly encourage the NRC to use any means available to notify licensees of any substantial changes made during the crafting of the final rule, *e.g.,* the use of carryover and the number of operating power reactors assumed. This would allow licensees additional time needed to realign their own budgets.'' (NEI)

Response: The NRC strives to ensure that the proposed fee rule is as accurate as possible and explains its assumptions about the budgetary resources and the number of operating power reactors to provide the best information available regarding the fiscal year's proposed fees. The NRC discussed these assumptions during the March 21, 2023, public meeting on the FY 2023 proposed fee rule.

Under NEIMA, the NRC must recover, to the maximum extent practicable, approximately 100 percent of the total budget authority appropriated for the fiscal year, less the budget authority for excluded activities. The NRC's discretionary use of carryover does not reduce the amount of current-year budget authority appropriated to the NRC.

Furthermore, the NRC must comply with additional statutory requirements, including the APA. Section 553 of the APA requires the NRC to give the public an opportunity to comment on a published proposed rule. Moreover, because OMB has found the fee rule to be a major rule under the Congressional Review Act, the effective date of the final rule cannot be less than 60 days from the date of publication and must allow for timely final billing prior to the end of the fiscal year. The NRC, therefore, cannot republish the FY 2023 proposed fee rule to provide advance notification of all changes within the final rule and meet its statutory requirements.

No changes were made to this final rule in response to these comments.

V. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[3] the NRC has prepared a regulatory flexibility analysis related to this final rule. The regulatory flexibility analysis is available as indicated in the

[4] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, Title II, 110 Stat. 847 (1996).

''Availability of Documents'' section of this document.

VI. Regulatory Analysis

Under NEIMA, the NRC is required to recover, to the maximum extent practicable, approximately 100 percent of its annual budget for FY 2023 less the budget authority for excluded activities. The NRC established fee methodology guidelines for 10 CFR part 170 in 1978 and established additional fee methodology guidelines for 10 CFR part 171 in 1986. In subsequent rulemakings, the NRC has adjusted its fees without changing the underlying principles of its fee policy to ensure that the NRC continues to comply with the statutory requirements for cost recovery.

In this final rule, the NRC continues this longstanding approach. Therefore, the NRC did not identify any alternatives to the current fee structure guidelines and did not prepare a regulatory analysis for this final rule.

VII. Backfitting and Issue Finality

The NRC has determined that the backfit and issue finality provisions, §§ 50.109, ''Backfitting''; 52.39, ''Finality of early site permit determinations''; 52.63, ''Finality of standard design certifications''; 52.83, ''Finality of referenced NRC approvals; partial initial decision on site suitability''; 52.98, ''Finality of combined licenses; information requests''; 52.145, ''Finality of standard design approvals; information requests''; 52.171, ''Finality of manufacturing licenses; information requests''; and 70.76, ''Backfitting,'' do not apply to this final rule and that a backfit analysis is not required because these amendments do not require the modification of, or addition to, (1) systems, structures, components, or the design of a facility; (2) the design approval or manufacturing license for a facility; or (3) the procedures or organization required to design, construct, or operate a facility.

VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC wrote this document to be consistent with the Plain Writing Act, as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

IX. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described in § 51.22(c)(1). Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this final rule.

X. Paperwork Reduction Act

This final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Existing collections of information were approved by OMB, approval number 3150–0190.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

XI. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act of 1996 (5 U.S.C. 801–808). The Office of Management and Budget has found it to be a major rule as defined in the Congressional Review Act.

XII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants, as necessary, to recover, to the maximum extent practicable, approximately 100 percent of its annual budget for FY 2023 less the budget authority for excluded activities, as required by NEIMA. This action does not constitute the establishment of a standard that contains generally applicable requirements.

XIII. Availability of Guidance

The Small Business Regulatory Enforcement Fairness Act requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. The NRC, in compliance with the law, prepared the ''Small Entity Compliance Guide'' for the FY 2023 fee rule. The compliance guide was developed when the NRC completed the small entity biennial review. This compliance guide is available as indicated in the ''Availability of Documents'' section of this document.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Documents	ADAMS acccession No./FR citation/web link
FY 2023 Final Rule Work Papers	ML23136A575.
OMB Circular A–25, ''User Charges''	*https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf.*
SECY–05–0164, ''Annual Fee Calculation Method,'' dated September 15, 2005	ML052580332.
''Revision of Fee Schedules; Fee Recovery for Fiscal Year 2015,'' dated June 30, 2015	80 FR 37432.
NUREG–1100, Volume 38, ''Congressional Budget Justification: Fiscal Year 2023'' (April 2022)	ML22089A188.
''Variable Annual Fee Structure for Small Modular Reactors,'' dated May 24, 2016	81 FR 32617.
Revision of Fee Schedules; Fee Recovery for FY 2002,'' dated June 24, 2002	67 FR 42611.
''Revision of Fee Schedules; Fee Recovery for FY 2006,'' dated May 30, 2006	71 FR 30721.
''Revision of Fee Schedules; Fee Recovery for FY 2009,'' dated June 10, 2009	74 FR 27641.
''NEI Input on NRC Annual Fee Assessment for Non-Light Water Reactors,'' dated November 23, 2020.	ML20328A173.
FY 2023 Proposed Fee Rule Public Meeting Slides	ML23076A132.
FY 2023 Regulatory Flexibility Analysis	ML23123A138.
FY 2023 U.S. Nuclear Regulatory Commission Small Entity Compliance Guide	ML22347A247.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Approvals, Byproduct material, Holders of certificates, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Registrations, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is amending 10 CFR parts 170 and 171 as follows:

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 1. The authority citation for part 170 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 161(w) (42 U.S.C. 2014, 2201(w)); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2215; 31 U.S.C. 901, 902, 9701; 44 U.S.C. 3504 note.

■ 2. In § 170.3, revise the definition for ''Small modular reactor (SMR)'' to read as follows.

§ 170.3 Definitions.

* * * * *

Small modular reactor (SMR) for the purposes of calculating fees, means the class of power reactors having a licensed thermal power rating less than or equal to 1,000 MWt per module. This rating is based on the thermal power equivalent of an SMR with an electrical power generating capacity of 300 MWe or less per module.

* * * * *

■ 3. In § 170.12, revise paragraph (f) to read as follows.

§ 170.12 Payment of fees.

* * * * *

(f) *Method of payment.* All fee payments under 10 CFR part 170 are to be made payable to the U.S. Nuclear Regulatory Commission. The payments are to be made in U.S. funds by electronic funds transfer, such as ACH (Automated Clearing House) using Electronic Data Interchange (E.D.I.), check, draft, money order, credit card, Amazon Pay, or PayPal (submit electronic payment at *www.Pay.gov* or manual payment using the NRC Form 629, ''Authorization for Payment by Credit Card''). Specific written instructions for making electronic payments and credit card payments may be obtained by contacting the Office of the Chief Financial Officer at 301–415–7554. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

* * * * *

§ 170.20 [Amended]

■ 4. In § 170.20, remove the dollar amount ''$290'' and add in its place the dollar amount ''$300''.

■ 5. In § 170.31, revise table 1 to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

* * * * *

TABLE 1 TO § 170.31—SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2] [3]
1. Special nuclear material: [11]	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [6] [Program Code(s): 21213]	Full Cost.
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [6] [Program Code(s): 21210]	Full Cost.
(2) All other special nuclear materials licenses not included in Category 1.A. (1) which are licensed for fuel cycle activities.[6]	
(a) Facilities with limited operations [6] [Program Code(s): 21240, 21310, 21320]	Full Cost.
(b) Gas centrifuge enrichment demonstration facilities [6] [Program Code(s): 21205]	Full Cost.
(c) Others, including hot cell facilities [6] [Program Code(s): 21130, 21131, 21133]	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [6] [Program Code(s): 23200].	Full Cost.
C. Licenses for possession and use of special nuclear material of less than a critical mass as defined in § 70.4 of this chapter in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.[4] Application [Program Code(s): 22140].	$1,400.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass, as defined in § 70.4 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A.[4] Application [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310].	$2,800.
E. Licenses or certificates for construction and operation of a uranium enrichment facility [6] [Program Code(s): 21200]	Full Cost.
F. Licenses for possession and use of special nuclear material greater than critical mass as defined in § 70.4 of this chapter, for development and testing of commercial products, and other non-fuel-cycle activities.[4] [6] [Program Code(s): 22155].	Full Cost.
2. Source material: [11]	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal [6] [Program Code(s): 11400].	Full Cost.
(2) Licenses for possession and use of source material in recovery operations such as milling, *in-situ* recovery, heap-leaching, ore buying stations, ion-exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.[6]	
(a) Conventional and Heap Leach facilities [6] [Program Code(s): 11100]	Full Cost.

TABLE 1 TO § 170.31—SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2] [3]
(b) Basic *In Situ* Recovery facilities [6] [Program Code(s): 11500]	Full Cost.
(c) Expanded *In Situ* Recovery facilities [6] [Program Code(s): 11510]	Full Cost.
(d) *In Situ* Recovery Resin facilities [6] [Program Code(s): 11550]	Full Cost.
(e) Resin Toll Milling facilities [6] [Program Code(s): 11555]	Full Cost.
(f) Other facilities [6] [Program Code(s): 11700]	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [6] [Program Code(s): 11600, 12000].	Full Cost.
(4) Licenses that authorize the receipt of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [6] [Program Code(s): 12010].	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding. [7] [8] Application [Program Code(s): 11210].	$1,300.
C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter. Application [Program Code(s): 11240].	$6,400.
D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter. Application [Program Code(s): 11230, 11231].	$3,000.
E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution. Application [Program Code(s): 11710].	$2,800.
F. All other source material licenses. Application [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810, 11820]	$2,800.
3. Byproduct material: [11]	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 1–5. Application [Program Code(s): 03211, 03212, 03213].	$14,000.
(1). Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 6–20. Application [Program Code(s): 04010, 04012, 04014].	$18,600.
(2). Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: more than 20. Application [Program Code(s): 04011, 04013, 04015].	$23,300.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 1–5. Application [Program Code(s): 03214, 03215, 22135, 22162].	$3,900.
(1). Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 6–20. Application [Program Code(s): 04110, 04112, 04114, 04116].	$5,200.
(2). Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: more than 20. Application [Program Code(s): 04111, 04113, 04115, 04117].	$6,400.
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: 1–5. Application [Program Code(s): 02500, 02511, 02513].	$5,600.
(1). Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: 6–20. Application [Program Code(s): 04210, 04212, 04214].	$7,500.
(2). Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: more than 20. Application [Program Code(s): 04211, 04213, 04215].	$9,300.
D. [Reserved]	N/A.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units). Application [Program Code(s): 03510, 03520].	$3,400.
F. Licenses for possession and use of less than or equal to 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes. Application [Program Code(s): 03511].	$7,000.
G. Licenses for possession and use of greater than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes. Application [Program Code(s): 03521].	$66,900.
H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter. Application [Program Code(s): 03254, 03255, 03257].	$7,200.

TABLE 1 TO § 170.31—SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2] [3]
I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter. Application [Program Code(s): 03250, 03251, 03253, 03256].	$11,000.
J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter. Application [Program Code(s): 03240, 03241, 03243].	$2,200.
K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter. Application [Program Code(s): 03242, 03244].	$1,200.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 1–5. Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613].	$5,900.
(1) Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 6–20. Application [Program Code(s): 04610, 04612, 04614, 04616, 04618, 04620, 04622].	$7,900.
(2) Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: more than 20. Application [Program Code(s): 04611, 04613, 04615, 04617, 04619, 04621, 04623].	$9,800.
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution. Application [Program Code(s): 03620].	$8,900.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C.[13] Application [Program Code(s): 03219, 03225, 03226]	$9,600.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. Number of locations of use: 1–5. Application [Program Code(s): 03310, 03320].	$10,900.
(1). Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. Number of locations of use: 6–20. Application [Program Code(s): 04310, 04312].	$14,500.
(2). Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. Number of locations of use: more than 20. Application [Program Code(s): 04311, 04313].	$18,200.
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.[9] Number of locations of use: 1–5. Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03130, 03140, 03220, 03221, 03222, 03800, 03810, 22130].	$7,400.
(1). All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.[9] Number of locations of use: 6–20. Application [Program Code(s): 04410, 04412, 04414, 04416, 04418, 04420, 04422, 04424, 04426, 04428, 04430, 04432, 04434, 04436, 04438].	$9,900.
(2). All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.[9] Number of locations of use: more than 20. Application [Program Code(s): 04411, 04413, 04415, 04417, 04419, 04421, 04423, 04425, 04427, 04429, 04431, 04433, 04435, 04437, 04439].	$12,300.
Q. Registration of a device(s) generally licensed under part 31 of this chapter. Registration	$500.
R. Possession of items or products containing radium-226 identified in § 31.12 of this chapter which exceed the number of items or limits specified in that section.[5]	
1. Possession of quantities exceeding the number of items or limits in § 31.12(a)(4) or (5) of this chapter but less than or equal to 10 times the number of items or limits specified. Application [Program Code(s): 02700].	$2,800.
2. Possession of quantities exceeding 10 times the number of items or limits specified in § 31.12(a)(4) or (5) of this chapter. Application [Program Code(s): 02710].	$2,700.
S. Licenses for production of accelerator-produced radionuclides. Application [Program Code(s): 03210]	$15,300.
4. Waste disposal and processing: [11]	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material. Application [Program Code(s): 03231, 03233, 03236, 06100, 06101].	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. Application [Program Code(s): 03234].	$7,500.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. Application [Program Code(s): 03232].	$5,400.
5. Well logging: [11]	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies. Application [Program Code(s): 03110, 03111, 03112].	$4,900.

TABLE 1 TO § 170.31—SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
B. Licenses for possession and use of byproduct material for field flooding tracer studies. Licensing [Program Code(s): 03113].	Full Cost.
6. Nuclear laundries: [11]	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material. Application [Program Code(s): 03218].	$23,900.
7. Medical licenses: [11]	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. Number of locations of use: 1–5. Application [Program Code(s): 02300, 02310].	$12,000.
(1). Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. Number of locations of use: 6–20. Application [Program Code(s): 04510, 04512].	$15,900.
(2). Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. Number of locations of use: more than 20. Application [Program Code(s): 04511, 04513].	$19,900.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. Number of locations of use: 1–5. Application [Program Code(s): 02110].	$9,400.
(1). Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. Number of locations of use: 6–20. Application [Program Code(s): 04710].	$12,400.
(2). Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. Number of locations of use: more than 20. Application [Program Code(s): 04711].	$15,500.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.[10] Number of locations of use: 1–5. Application [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160].	$10,200.
(1). Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.[10] Number of locations of use: 6–20. Application [Program Code(s): 04810, 04812, 04814, 04816, 04818, 04820, 04822, 04824, 04826, 04828].	$13,600.
(2). Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.[10] Number of locations of use: more than 20. Application [Program Code(s): 04811, 04813, 04815, 04817, 04819, 04821, 04823, 04825, 04827, 04829].	$17,000.
8. Civil defense: [11]	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities. Application [Program Code(s): 03710].	$2,800.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution. Application—each device.	$21,900.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices. Application—each device.	$9,700.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution. Application—each source.	$5,700.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel. Application—each source.	$1,100.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	Full Cost.
2. Other Casks	Full Cost.
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators.	
Application	$4,200.
Inspections	Full Cost.
2. Users.	
Application	$4,200.
Inspections	Full Cost.

TABLE 1 TO § 170.31—SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2] [3]
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices).	Full Cost.
11. Review of standardized spent fuel facilities	Full Cost.
12. Special projects: Including approvals, pre-application/licensing activities, and inspections. Application [Program Code: 25110].	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance	Full Cost.
B. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Decommissioning/Reclamation: [11]	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including master materials licenses (MMLs). The transition to this fee category occurs when a licensee has permanently ceased principal activities. [Program Code(s): 03900, 11900, 21135, 21215, 21325, 22200].	Full Cost.
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, regardless of whether or not the sites have been previously licensed.	Full Cost.
15. Import and Export licenses: [12]	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E.).	
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under § 110.40(b) of this chapter. Application—new license, or amendment; or license exemption request.	N/A.
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes applications for the export and import of radioactive waste and requires the NRC to consult with domestic host state authorities (i.e., Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.). Application—new license, or amendment; or license exemption request.	N/A.
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances. Application—new license, or amendment; or license exemption request.	N/A.
D. Application for export or import of nuclear material not requiring Commission or Executive Branch review, or obtaining foreign government assurances. Application—new license, or amendment; or license exemption request.	N/A.
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities. Minor amendment.	N/A.
Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in appendix P to part 110 of this chapter (fee categories 15.F. through 15.R.).	
Category 1 (Appendix P, 10 CFR part 110) Exports:	
F. Application for export of appendix P Category 1 materials requiring Commission review (e.g., exceptional circumstance review under § 110.42(e)(4) of this chapter) and to obtain one government-to-government consent for this process. For additional consent see fee category 15.I. Application—new license, or amendment; or license exemption request.	N/A.
G. Application for export of appendix P Category 1 materials requiring Executive Branch review and to obtain one government-to-government consent for this process. For additional consents see fee category 15.I. Application—new license, or amendment; or license exemption request.	N/A.
H. Application for export of appendix P Category 1 materials and to obtain one government-to-government consent for this process. For additional consents see fee category 15.I. Application—new license, or amendment; or license exemption request.	N/A.
I. Requests for each additional government-to-government consent in support of an export license application or active export license. Application—new license, or amendment; or license exemption request.	N/A.
Category 2 (Appendix P, 10 CFR part 110) Exports:	
J. Application for export of appendix P Category 2 materials requiring Commission review (e.g., exceptional circumstance review under § 110.42(e)(4) of this chapter). Application—new license, or amendment; or license exemption request.	N/A.
K. Applications for export of appendix P Category 2 materials requiring Executive Branch review. Application—new license, or amendment; or license exemption request.	N/A.
L. Application for the export of Category 2 materials. Application—new license, or amendment; or license exemption request.	N/A.
M. [Reserved]	N/A.
N. [Reserved]	N/A.
O. [Reserved]	N/A.
P. [Reserved]	N/A.
Q. [Reserved]	N/A.
Minor Amendments (Category 1 and 2, Appendix P, 10 CFR Part 110, Export):	
R. Minor amendment of any active export license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign authorities. Minor amendment.	N/A.

TABLE 1 TO § 170.31—SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2] [3]
16. Reciprocity: Agreement State licensees who conduct activities under the reciprocity provisions of § 150.20 of this chapter. Application.	$3,000.
17. Master materials licenses of broad scope issued to Government agencies. Application [Program Code(s): 03614]	Full Cost.
18. Department of Energy:	
A. Certificates of Compliance. Evaluation of casks, packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages).	Full Cost.
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	Full Cost.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews; applications for new licenses, approvals, or license terminations; possession-only licenses; issuances of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(1) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses, except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(i) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(ii) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee category 1.C. only.

(2) *Licensing fees.* Fees for reviews of applications for new licenses, renewals, and amendments to existing licenses, pre-application consultations and other documents submitted to the NRC for review, and project manager time for fee categories subject to full cost fees are due upon notification by the Commission in accordance with § 170.12(b).

(3) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to an export or import license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment, unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(4) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(5) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under title 10 of the *Code of Federal Regulations* (*e.g.,* 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in fee categories 9.A. through 9.D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect when the service is provided, and the appropriate contractual support services expended.

[4] Licensees paying fees under categories 1.A., 1.B., and 1.E. are not subject to fees under categories 1.C., 1.D. and 1.F. for sealed sources authorized in the same license, except for an application that deals only with the sealed sources authorized by the license.

[5] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

[6] Licensees subject to fees under fee categories 1.A., 1.B., 1.E., or 2.A. must pay the largest applicable fee and are not subject to additional fees listed in this table.

[7] Licensees paying fees under 3.C., 3.C.1, or 3.C.2 are not subject to fees under 2.B. for possession and shielding authorized on the same license.

[8] Licensees paying fees under 7.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

[9] Licensees paying fees under 3.N. are not subject to paying fees under 3.P., 3.P.1, or 3.P.2 for calibration or leak testing services authorized on the same license.

[10] Licensees paying fees under 7.B., 7.B.1, or 7.B.2 are not subject to paying fees under 7.C., 7.C.1, or 7.C.2. for broad scope licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices authorized on the same license.

[11] A materials license (or part of a materials license) that transitions to fee category 14.A is assessed full-cost fees under 10 CFR part 170, but is not assessed an annual fee under 10 CFR part 171. If only part of a materials license is transitioned to fee category 14.A, the licensee may be charged annual fees (and any applicable 10 CFR part 170 fees) for other activities authorized under the license that are not in decommissioning status.

[12] Because the resources for import and export licensing activities are identified as a fee-relief activity to be excluded from the fee-recoverable budget, import and export licensing actions will not incur fees.

[13] Licensees paying fees under 4.A., 4.B. or 4.C. are not subject to paying fees under 3.N. licenses that authorize services for other licensees authorized on the same license.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 6. The authority citation for part 171 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 161(w), 223, 234 (42 U.S.C. 2014, 2201(w), 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2215; 44 U.S.C. 3504 note.

■ 7. In § 171.5, revise the definitions for ''Bundled unit'', ''Minimum fee'', ''Small modular reactor (SMR)'', ''Variable fee'', and ''Variable rate'' to read as follows:

§ 171.5 Definitions.

* * * * *

Bundled unit means multiple SMRs on a single site that are considered a single unit for the purpose of assessing an annual fee. A bundled unit is assessed an annual fee based on the cumulative licensed thermal power rating of all licensed SMRs on the same site. The maximum capacity of a bundled unit is a cumulative licensed thermal power rating of 4,500 MWt. A single SMR can be part of two bundled units if it completes the capacity of one

unit and begins the capacity of an additional unit. For a given site, the use of the bundled unit concept is independent of the number of SMR plants, the number of SMR licenses issued, or the sequencing of the SMR licenses that have been issued. Bundled units with capacities greater than 2,000 MWt and less than or equal to 4,500 MWt are assessed a maximum fee that is equivalent to the annual fee paid by the current reactor fleet. Above 4,500 MWt establishes an additional bundled unit.

* * * * *

Minimum fee means the lowest annual fee assessed for an SMR or a bundled unit in a thermal power rating fee assessment tier.

* * * * *

Small modular reactor (SMR) for the purposes of calculating fees means the class of power reactors having a licensed thermal power rating less than or equal to 1,000 MWt per module. This rating is based on the thermal power equivalent of an SMR with an electrical power generating capacity of 300 MWe or less per module.

* * * * *

Variable fee means an annual fee component that is added to the minimum fee. The variable fee is designed to gradually increase as licensed thermal power capacity is added within the bundled unit fee assessment tier. The variable fee is calculated as the product of the incremental increase in the thermal power rating multiplied by the variable rate.

Variable rate means the factor used to calculate the variable fee component of the annual fee. To determine the total annual fee, the incremental increase in the licensed thermal power rating within the fee assessment tier is multiplied by the variable rate resulting in a variable fee that is added to the minimum fee. There is a different factor for each SMR or bundled unit fee assessment tier. Each factor represents the difference between the lower licensed thermal power rating within each tier and the actual thermal power rating for the unit or site.

■ 8. In § 171.15, revise paragraphs (b)(1), (b)(2) introductory text, (c)(1), (c)(2) introductory text, (d)(2) and (e) to read as follows:

§ 171.15 Annual fees: Non-power production or utilization licenses, reactor licenses, and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2023 annual fee for each operating power reactor that must be collected by September 30, 2023, is $5,492,000.

(2) The FY 2023 annual fees are comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee and associated additional charges. The activities comprising the spent fuel storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2023 base annual fee for operating power reactors are as follows:

* * * * *

(c)(1) The FY 2023 annual fee for each power reactor holding a 10 CFR part 50 license or combined license issued under 10 CFR part 52 that is in a decommissioning or possession-only status and has spent fuel onsite, and for each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license or a 10 CFR part 52 combined license, is $261,000.

(2) The FY 2023 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section). The activities comprising the FY 2023 spent fuel storage/reactor decommissioning rebaselined annual fee are:

* * * * *

(d) * * *

(2) The annual fees for a small modular reactor(s) located on a single site to be collected by September 30 of each year, are as follows:

TABLE 1 TO PARAGRAPH (d)(2)

Bundled unit thermal power rating	Minimum fee	Variable fee	Maximum fee
First Bundled Unit(s)—cumulative MWt:			
0 MWt ≤ 20 MWt	TBD[a]	N/A	N/A.
>20 MWt ≤ 250 MWt	TBD[a]	TBD[d]	N/A.
>250 MWt ≤ 2,000 MWt	TBD[b]	TBD[e]	N/A.
>2,000 MWt ≤ 4,500 MWt	N/A	N/A	TBD.[c]
Additional Bundled Unit(s)—cumulative MWt (above the first bundled unit of 4,500 MWt):			
0 MWt ≤ 2,000 MWt	N/A	TBD[f]	N/A.
>2,000 MWt ≤ 4,500 MWt	N/A	N/A	TBD.[c]

[a] Annual fee paid by the non-power production or utilization facilities fee class.
[b] Average of the annual fees for the spent fuel storage/reactor decommissioning and the non-power production or utilization facilities fee classes.
[c] Annual fee paid by the operating power reactors fee class.
[d] [((b) − (a))/230] × the difference between 20 MWt for the first bundled unit(s) and the actual cumulative licensed thermal power rating up to 250 MWt.
[e] [((c) − (b))/1,750] × the difference between 250 MWt for the first bundled unit(s) and the actual cumulative licensed thermal power rating up to 2,000 MWt.
[f] [((c) − (b))/2,000] × the difference between 4,500 MWt for the first bundled unit(s) and the total actual cumulative licensed thermal power rating up to 2,000 MWt.

* * * * *

(e) The FY 2023 annual fee for licensees authorized to operate one or more non-power production or utilization facilities under a single 10 CFR part 50 license, unless the reactor is exempted from fees under § 171.11(b), is $96,300.

■ 9. In § 171.16, revise paragraphs (b) introductory text, (c), and (d) to read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

* * * * *

(b) The FY 2023 annual fee is comprised of a base annual fee and

associated additional charges. The base FY 2023 annual fee is the sum of budgeted costs for the following activities:

* * * * *

(c) A licensee who is required to pay an annual fee under this section, in addition to 10 CFR part 72 licenses, may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in table 1 to this paragraph (c). Failure to file a small entity certification in a timely manner could result in the receipt of a delinquent invoice requesting the outstanding balance due and/or denial of any refund that might otherwise be due. The small entity fees are as follows:

TABLE 1 TO PARAGRAPH (c)

NRC small entity classification	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing (Average gross receipts over the last 5 completed fiscal years):	
$555,000 to $8 million	$5,200
Less than $555,000	1,000
Small Not-For-Profit Organizations (Annual Gross Receipts):	
$555,000 to $8 million	5,200
Less than $555,000	1,000
Manufacturing Entities that Have An Average of 500 Employees or Fewer:	
35 to 500 employees	5,200
Fewer than 35 employees	1,000
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 49,999	5,200
Fewer than 20,000	1,000
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer:	
35 to 500 employees	5,200
Fewer than 35 employees	1,000

(d) The FY 2023 annual fees for materials licensees and holders of certificates, registrations, or approvals subject to fees under this section are shown in table 2 to this paragraph (d):

TABLE 2 TO PARAGRAPH (d)—SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [15] [Program Code(s): 21213]	$5,156,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [15] [Program Code(s): 21210]	1,747,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [15] [Program Code(s): 21310, 21320]	807,000
(b) Gas centrifuge enrichment demonstration facility [15] [Program Code(s): 21205]	N/A
(c) Others, including hot cell facility [15] [Program Code(s): 21130, 21131, 21133]	N/A
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [11] [15] [Program Code(s): 23200]	N/A
C. Licenses for possession and use of special nuclear material of less than a critical mass, as defined in § 70.4 of this chapter, in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. [Program Code(s): 22140]	2,900
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass, as defined in § 70.4 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A. [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310]	8,200
E. Licenses or certificates for the operation of a uranium enrichment facility [15] [Program Code(s): 21200]	2,247,000
F. Licenses for possession and use of special nuclear materials greater than critical mass, as defined in § 70.4 of this chapter, for development and testing of commercial products, and other non-fuel cycle activities.[4] [Program Code: 22155]	5,100
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal.[15] [Program Code: 11400]	1,095,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion-exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities.[15] [Program Code(s): 11100]	N/A

TABLE 2 TO PARAGRAPH (d)—SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
(b) Basic *In Situ* Recovery facilities.[15] [Program Code(s): 11500]	52,200
(c) Expanded *In Situ* Recovery facilities.[15] [Program Code(s): 11510]	N/A
(d) *In Situ* Recovery Resin facilities.[15] [Program Code(s): 11550]	[5] N/A
(e) Resin Toll Milling facilities.[15] [Program Code(s): 11555]	[5] N/A
(f) Other facilities.[6] [Program Code(s): 11700]	[5] N/A
(3) Licenses that authorize the receipt of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4).[15] [Program Code(s): 11600, 12000]	[5] N/A
(4) Licenses that authorize the receipt of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [15] [Program Code(s): 12010]	N/A
B. Licenses which authorize the possession, use, and/or installation of source material for shielding.[16, 17] Application [Program Code(s): 11210]	3,100
C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter. [Program Code: 11240]	11,800
D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter. [Program Code(s): 11230 and 11231]	6,000
E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution. [Program Code: 11710]	7,500
F. All other source material licenses. [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810, 11820]	10,200
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 1–5. [Program Code(s): 03211, 03212, 03213]	32,400
(1). Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 6–20. [Program Code(s): 04010, 04012, 04014]	43,000
(2). Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: more than 20. [Program Code(s): 04011, 04013, 04015]	53,800
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 1–5. [Program Code(s): 03214, 03215, 22135, 22162]	11,200
(1). Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 6–20. [Program Code(s): 04110, 04112, 04114, 04116]	14,800
(2). Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: more than 20. [Program Code(s): 04111, 04113, 04115, 04117]	18,300
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4) of this chapter. Number of locations of use: 1–5. [Program Code(s): 02500, 02511, 02513]	11,000
(1). Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: 6–20. [Program Code(s): 04210, 04212, 04214]	14,600
(2). Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: more than 20. [Program Code(s): 04211, 04213, 04215]	20,000
D. [Reserved]	[5] N/A
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units). [Program Code(s): 03510, 03520]	10,500
F. Licenses for possession and use of less than or equal to 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. [Program Code(s): 03511]	10,400
G. Licenses for possession and use of greater than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. [Program Code(s): 03521]	87,100

TABLE 2 TO PARAGRAPH (d)—SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter. [Program Code(s): 03254, 03255, 03257]	10,800
I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter. [Program Code(s): 03250, 03251, 03253, 03256]	15,800
J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter. [Program Code(s): 03240, 03241, 03243]	4,200
K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter. [Program Code(s): 03242, 03244]	3,100
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 1–5. [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	15,100
(1) Licenses of broad scope for possession and use of product material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 6–20. [Program Code(s): 04610, 04612, 04614, 04616, 04618, 04620, 04622]	20,100
(2) Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: more than 20. [Program Code(s): 04611, 04613, 04615, 04617, 04619, 04621, 04623]	24,900
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution. [Program Code(s): 03620]	15,500
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4.A., 4.B., and 4.C.[21] [Program Code(s): 03219, 03225, 03226]	17,000
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license Number of locations of use: 1–5. [Program Code(s): 03310, 03320]	37,900
(1). Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license. Number of locations of use: 6–20. [Program Code(s): 04310, 04312]	50,700
(2). Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license. Number of locations of use: more than 20. [Program Code(s): 04311, 04313]	63,300
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.[18] Number of locations of use: 1–5. [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03140, 03130, 03220, 03221, 03222, 03800, 03810, 22130]	12,300
(1). All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.[18] Number of locations of use: 6–20. [Program Code(s): 04410, 04412, 04414, 04416, 04418, 04420, 04422, 04424, 04426, 04428, 04430, 04432, 04434, 04436, 04438]	16,400
(2). All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.[18] Number of locations of use: more than 20. [Program Code(s): 04411, 04413, 04415, 04417, 04419, 04421, 04423, 04425, 04427, 04429, 04431, 04433, 04435, 04437, 04439]	20,400
Q. Registration of devices generally licensed under part 31 of this chapter	[13] N/A
R. Possession of items or products containing radium-226 identified in § 31.12 of this chapter which exceed the number of items or limits specified in that section: [14]	
(1). Possession of quantities exceeding the number of items or limits in § 31.12(a)(4), or (5) of this chapter but less than or equal to 10 times the number of items or limits specified [Program Code(s): 02700]	7,200
(2). Possession of quantities exceeding 10 times the number of items or limits specified in § 31.12(a)(4) or (5) of this chapter [Program Code(s): 02710]	7,600
S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210]	29,800
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material. [Program Code(s): 03231, 03233, 03236, 06100, 06101]	23,000

TABLE 2 TO PARAGRAPH (d)—SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. [Program Code(s): 03234]	17,500
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. [Program Code(s): 03232]	10,300
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies. [Program Code(s): 03110, 03111, 03112]	13,900
B. Licenses for possession and use of byproduct material for field flooding tracer studies. [Program Code(s): 03113]	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material. [Program Code(s): 03218]	32,700
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] Number of locations of use: 1–5. [Program Code(s): 02300, 02310]	32,300
(1). Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] Number of locations of use: 6–20. [Program Code(s): 04510, 04512]	42,900
(2). Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] Number of locations of use: more than 20. [Program Code(s): 04511, 04513]	53,700
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] Number of locations of use: 1–5. [Program Code(s): 02110]	46,500
(1). Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] Number of locations of use: 6–20. [Program Code(s): 04710]	61,700
(2). Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] Number of locations of use: more than 20. [Program Code(s): 04711]	77,100
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [19] Number of locations of use: 1–5. [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	18,000
(1). Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [19] Number of locations of use: 6–20. [Program Code(s): 04810, 04812, 04814, 04816, 04818, 04820, 04822, 04824, 04826, 04828]	24,000
(2). Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [19] Number of locations of use: more than 20. [Program Code(s): 04811, 04813, 04815, 04817, 04819, 04821, 04823, 04825, 04827, 04829]	30,700
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities. [Program Code(s): 03710]	7,200
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	24,100
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	10,700

TABLE 2 TO PARAGRAPH (d)—SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	6,300
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	1,200
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
2. Other Casks	[6] N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators	[6] N/A
2. Users	[6] N/A
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	[6] N/A
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects [Program Code(s): 25110]	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under § 72.210 of this chapter	[12] N/A
14. Decommissioning/Reclamation:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including master materials licenses (MMLs). The transition to this fee category occurs when a licensee has permanently ceased principal activities. [Program Code(s): 03900, 11900, 21135, 21215, 21325, 22200]	[7] [20] N/A
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, whether or not the sites have been previously licensed	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies.[15] [Program Code(s): 03614]	390,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,750,000
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities [Program Code(s): 03237, 03238]	148,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current FY. The annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1 of the current FY, and permanently ceased licensed activities entirely before this date. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession-only license during the FY and for new licenses issued during the FY will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (*e.g.,* human use and irradiator activities), annual fees will be assessed for each category applicable to the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] Other facilities include licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance and related Quality Assurance program approvals, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses under fee categories 7.A, 7.A.1, 7.A.2, 7.B., 7.B.1, 7.B.2, 7.C, 7.C.1, or 7.C.2.

[10] This includes Certificates of Compliance issued to the DOE that are not funded from the Nuclear Waste Fund.

[11] See § 171.15(c).

[12] See § 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

[14] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

[15] Licensees subject to fees under categories 1.A., 1.B., 1.E., 2.A., and licensees paying fees under fee category 17 must pay the largest applicable fee and are not subject to additional fees listed in this table.

[16] Licensees paying fees under 3.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

[17] Licensees paying fees under 7.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

[18] Licensees paying fees under 3.N. are not subject to paying fees under 3.P., 3.P.1, or 3.P.2 for calibration or leak testing services authorized on the same license.

[19] Licensees paying fees under 7.B., 7.B.1, or 7.B.2 are not subject to paying fees under 7.C., 7.C.1, or 7.C.2 for broad scope license licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices authorized on the same license.

[20] No annual fee is charged for a materials license (or part of a materials license) that has transitioned to this fee category because the decommissioning costs will be recovered through 10 CFR part 170 fees, but annual fees may be charged for other activities authorized under the license that are not in decommissioning status.

[21] Licensees paying fees under 4.A., 4.B. or 4.C. are not subject to paying fees under 3.N. licenses that authorize services for other licensees authorized on the same license.

Dated: June 2, 2023.

For the Nuclear Regulatory Commission.

Howard K. Osborne,

Chief Financial Officer.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No.: FAA–2019–0218; Amdt. No. 25–148]

RIN 2120–AL15

High Elevation Airport Operations

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

ACTION: Final rule.

SUMMARY: This final rule amends certain airworthiness regulations applicable to cabin pressurization systems and oxygen dispensing equipment on transport category airplanes, to facilitate certification of those airplanes, systems, and equipment for operation at high elevation airports. This rule eliminates the need for certain equivalent level of safety findings and exemptions.

DATES: Effective July 17, 2023.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

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

I. Overview of Final Rule

This final rule amends two sections of title 14, Code of Federal Regulations (14 CFR), part 25.

First, the rule amends § 25.841, ''Pressurized cabins,'' for airplanes equipped with cabin pressurization systems intended for operations at airports with elevations at or above 8,000 feet. The FAA considers airports with elevations greater than 8,000 feet as ''high elevation airports.'' Section 25.841(a) still requires that cabin pressure altitudes do not exceed 8,000 feet under normal operating conditions, while the revisions allow cabin pressure altitudes to exceed 8,000 feet during takeoff and landing at high elevation airports. In addition, changes to § 25.841(b)(6) allow applicants to increase the threshold for activation of cabin pressure altitude warnings to altitudes above 10,000 feet, to prevent nuisance warnings to the flightcrew during takeoff and landing at high elevation airports.

Second, this rule amends § 25.1447, ''Equipment standards for oxygen dispensing units,'' for airplanes equipped with passenger oxygen systems intended for operations into or out of airports with elevations above 13,000 feet. The revisions to § 25.1447(c)(5) allow applicants to raise the automatic presentation altitude for oxygen masks located throughout the passenger cabin to altitudes above 15,000 feet while operating out of or into airports with elevations exceeding 13,000 feet.

This final rule affects manufacturers, modifiers, and operators of transport category airplanes. The amendments to §§ 25.841 and 25.1447 eliminate the burden on applicants and the FAA that results from the processing of project-specific equivalent level of safety (ELOS) findings and grants of exemption that are currently necessary for the FAA to approve the designs of cabin pressurization systems and oxygen dispensing units on airplanes intended to be used for operations into or out of high elevation airports.

II. Background

A. Summary of the Problem

Current FAA regulations require that the cabin pressure altitude on transport category airplanes remain at or below 8,000 feet in normal operating conditions, and that supplemental oxygen be automatically presented to passengers before the cabin pressure altitude reaches 15,000 feet. While these standards provide an acceptable level of safety for normal operating conditions, they can hinder or conflict with operations at high elevation airports.

To enable such operations, applicants develop specialized design modifications that often cannot comply with cabin pressurization and supplemental oxygen requirements in FAA regulations. In order to approve such modifications and enable operation into high elevation airports, the FAA typically must make and document an ELOS finding. The FAA must typically also grant an exemption from the automatic oxygen mask presentation requirements for operations into or out of airports with elevations at or above 13,000 feet.

Transport airplane operators currently utilize seven airports in the United States that have an elevation between 8,000 and 10,000 feet. While no airports in the U.S. supporting transport airplane operations are at an elevation higher than 10,000 feet, the FAA is aware of at least five airports in other parts of the world that support transport airplane operations and are at elevations that exceed 13,000 feet. Therefore, it is for operations at these airports that applicants seek either an ELOS or an exemption in order to obtain certification of cabin pressurization and oxygen systems.

B. Discussion of Current Regulatory Requirements

Current regulatory requirements for cabin pressurization systems of transport category airplanes are contained in § 25.841(a) and (b). Section 25.841(a) requires cabin pressurization systems to maintain the interior cabin pressure so that the maximum cabin

pressure altitude does not exceed 8,000 feet. While an airplane is operating on the ground before takeoff or after landing, however, the interior cabin pressure must be equal to the outside ambient air pressure, or airport pressure altitude. Otherwise, should the need for an emergency evacuation arise, the pressure differential between interior cabin and airport pressure altitude may be too high to allow cabin attendants to open the doors. For airports above 8,000 feet, the regulatory requirement of § 25.841(a) to equip the airplane to keep its cabin pressure altitude from exceeding 8,000 feet, and the practical requirement for cabin pressure altitude to equal the airport pressure altitude for takeoff and landing, are in direct conflict. This creates a need for specialized design modifications and certification approaches to accommodate these operations.

When a transport category airplane takes off from an airport with an elevation below 8,000 feet, its cabin pressure altitude does not normally exceed 8,000 feet. The cabin pressure nominally starts at the ambient pressure altitude of the airport, and gradually increases as the airplane climbs until the cabin pressure altitude stabilizes at an altitude not exceeding 8,000 feet.

However, when a transport category airplane takes off from an airport with an elevation at or above 8,000 feet, the cabin pressure altitude necessarily exceeds 8,000 feet. The cabin pressure starts at the airport's ambient pressure altitude at 8,000 feet or greater, and then, if it is equipped with a system that complies with § 25.841(a), decreases until it is not more than 8,000 feet. During the time between takeoff and the point when cabin pressure altitude reaches 8,000 feet, the airplane's pressurization system is not in compliance with the regulation. Similarly, when a transport category airplane is landing at a high elevation airport, the interior cabin pressure altitude will initially be at or below 8,000 feet, as required by § 25.841(a), and then rise as the airplane descends, until the interior cabin pressure altitude is the same as the ambient pressure altitude at the airport. Since the maximum cabin pressure altitude of 8,000 feet is exceeded to accommodate the operation into a high elevation airport, the cabin pressurization system would again briefly not comply with the 8,000 foot limit in § 25.841(a).

Furthermore, § 25.841(b)(6) requires a warning indication at the pilot or flight engineer station to indicate when the safe or preset pressure differential and cabin pressure altitude limits are exceeded. As described in § 25.841(b)(6), appropriate warning markings on the cabin pressure differential indicator meet the warning requirement for pressure differential limits, and an aural or visual signal (in addition to cabin altitude indicating means) meets the warning requirement for cabin pressure altitude limits, if they warn the flightcrew when the cabin pressure altitude exceeds 10,000 feet. To support high elevation airport operations and avoid nuisance alerts, airplane designers incorporate modifications to raise the cabin pressure altitude at which the cabin pressure high altitude warning indication occurs.

Currently, when an airplane designer applies to the FAA for certification of an airplane with a cabin pressurization system intended for operations at high elevation airports, the cabin pressurization and cabin pressure altitude warning systems cannot meet the design standards in § 25.841(a) and (b)(6). To obtain FAA approval of such designs, the airplane designer will typically include compensating elements that provide an equivalent level of safety to that intended by the regulations.[1] For the design standards provided by § 25.841(a) and (b)(6), the FAA has found that compensating factors such as the flightcrew's use of oxygen and minimizing the time that the cabin pressure altitude may be above 8,000 feet can provide an ELOS during high elevation airport operations. The FAA documents its finding in a memorandum that communicates the agency's rationale to the public.[2] Processing an ELOS finding (*i.e.,* evaluating the request, analyzing the design, making the determination, and creating the memorandum) creates an administrative burden on both the applicant and the FAA during the certification process.

Section 25.1447(c)(1) requires airplanes certified for operations above 30,000 feet to include oxygen dispensing equipment that is automatically presented to each of the airplane's occupants in the event of depressurization, before the cabin pressure altitude reaches 15,000 feet. To avoid unnecessary presentations of the supplemental oxygen equipment and the maintenance costs of servicing the system afterward, applicants typically incorporate design features to temporarily raise the automatic presentation altitude for oxygen masks during high elevation airport operations. Currently, applicants whose designs incorporate these features must submit a petition for an exemption from § 25.1447(c)(1).[3] This creates an administrative burden for both applicants who develop the petition and the FAA in the evaluation and analysis of each petition.

C. Summary of the Notice of Proposed Rulemaking (NPRM)

The FAA published an NPRM (84 FR 13565) on April 5, 2019, that proposed to amend §§ 25.841, ''Pressurized cabins,'' and 25.1447, ''Equipment standards for oxygen dispensing units.'' The FAA proposed these revisions to provide design standards for cabin pressurization systems and oxygen dispensing equipment on transport category airplanes intended for operation at airports with elevations at or above 8,000 feet, also referred to in this preamble as ''high elevation airports.''

In the NPRM, the FAA proposed adding new § 25.841(c), as an exception to § 25.841(a), for systems designed to support operations at high elevation airports. Proposed § 25.841(c) would have allowed the airplane's cabin pressure altitude to be equal to or less than the airport elevation while the airplane is at or below 25,000 feet, provided the cabin pressurization system is designed to minimize the time that passenger cabin occupants would be exposed to cabin pressure altitudes exceeding 8,000 feet in flight.

The FAA also proposed adding new § 25.841(d) as an exception to § 25.841(b)(6). This would have allowed an applicant to change the threshold for the cabin pressure altitude warning indication from 10,000 feet to either 15,000 feet or 2,000 feet above the airport elevation, whichever is greater, when operating into or out of a high elevation airport and the airplane is at or below 25,000 feet. The FAA proposed 2,000 feet above the airport elevation in order to allow for system flexibility while maintaining a level of safety consistent with previously issued ELOS determinations.

In the NPRM, the FAA also proposed to add new § 25.1447(c)(5) as an exception to § 25.1447(c)(1) to allow approval of passenger cabin oxygen dispensing units that automatically

[1] The authority for the agency to make an ELOS finding is provided in 14 CFR 21.21(b). Paragraph (b) of § 21.21 specifies that the FAA must find the proposed design meets the applicable airworthiness requirements of subchapter C of chapter I of title 14 of the Code of Federal Regulations or that any airworthiness provisions not complied with are compensated for by factors that provide an equivalent level of safety.

[2] ELOS memorandums are available electronically to the public in the FAA's Dynamic Regulatory System (DRS) at *https://drs.faa.gov/browse.*

[3] The Administrator's exemption authority is provided by 49 U.S.C. 44701(f) and implemented in accordance with 14 CFR part 11.

deploy at 15,000 feet, or 2,000 feet above the airport elevation, whichever is greater, during operations into or out of high elevation airports. Similarly, the FAA proposed a variation of 2,000 feet above the airport elevation to allow for system flexibility while maintaining a level of safety consistent with previously-issued exemptions and to harmonize with European Union Aviation Safety Agency (EASA) guidance.

The revisions proposed in the NPRM intended to eliminate administrative tasks and analyses associated with the preparation and processing of ELOS determinations and exemptions to accommodate transport category airplane operations at high elevation airports, without compromising safety. The FAA invited comments to the proposal, and the comment period closed on June 4, 2019.

D. General Overview of Comments

The FAA received ten sets of comments. Three commenters were airplane manufacturers: Boeing, Bombardier, and Embraer. The Aerospace Industries Association and the General Aviation Manufacturers Association (AIA/GAMA) commented collectively. One civil aviation authority, the Transport Canada Civil Aviation Authority (TCCA), provided comment. Three individuals commented, and three Health Sciences majors submitted a collective comment.

The majority of the comments from industry were requests to revise regulatory text for clarification and consistency. An individual also described the need to make clear distinctions and utilize consistent terminology. Another individual supported the economic cost savings, but requested further information on new airplane designs. The three Health Sciences majors opposed the proposed regulation because they stated that the health risks of flying into high elevation airports outweigh the economic benefits. Another commenter recommended not approving high elevation operations and proposed the removal of airports located at elevations greater than 7,500 feet for safety and environmental reasons. A detailed discussion of the comments and resulting regulatory changes is provided in section III.

E. Advisory Material

AIA/GAMA and Boeing suggested that the FAA develop and publish an Advisory Circular (AC) on high elevation airport operations to provide specific guidance on how to design cabin pressurization systems to minimize the amount of time that passenger cabin occupants are exposed to higher cabin pressure altitudes, to reduce the risk of hypoxia. The FAA is providing additional discussion of this topic in this final rule and does not consider it necessary to publish separate guidance.

III. Discussion of Public Comments and Final Rule

The FAA has made changes to this final rule in response to comments made by the public. Some of the changes are to terminology to improve clarity, while other changes are in response to technical comments related to design of cabin pressurization systems. Summaries of the comments and the FAA's responses are grouped by category in the following subsections.

A. Clarification of Terminology

Six commenters recommended that the FAA use the term ''cabin pressure altitude'' in the regulatory language and preamble, in lieu of the term ''cabin pressure'' as used in the NPRM including proposed changes to § 25.841. ''Cabin pressure'' is a measurement of pressure, typically pounds per square inch, while ''cabin pressure altitude'' is an equivalent measurement expressed in height above sea level, typically feet. The FAA agrees that the suggested change would promote clarity and consistency, and in this final rule uses ''cabin pressure altitude'' instead of ''cabin pressure'' when referring to the condition in the airplane cabin.

B. Cabin Pressure Altitude at the Maximum Operating Altitude

Section 25.841(a) limits the cabin pressure altitude to not more than 8,000 feet at the maximum operating altitude of the airplane under normal operating conditions. In the NPRM, the FAA proposed revising § 25.841(a) to remove the phrase ''at the maximum operating altitude of the airplane.'' As discussed in the NPRM, the FAA did not intend § 25.841(a) to imply that the cabin pressure altitude could exceed 8,000 feet under normal operating conditions provided the airplane was below the maximum operating altitude.

In response to the NPRM, TCCA asked if the FAA would update any advisory materials to clarify the intent of the term ''under normal operating conditions.'' The FAA does not intend to update or add any advisory materials for this rulemaking and notes that the term ''normal operating conditions'' currently in § 25.841(a) is not being changed by this rule. As the term relates to § 25.841(a), the FAA considers normal operating conditions to mean that the cabin pressurization system is operating normally, rather than under some alternative mode due to system failure. The FAA considers operating at the maximum operating altitude of the airplane a normal operating condition. In the context of this rulemaking, the FAA also considers operations into or out of a high elevation airport a normal operating condition.

C. Cabin Pressurization Limits

In the NPRM, the FAA proposed changes to § 25.841(a) related to operations at airports with elevations exceeding 8,000 feet. When issuing the NPRM, the FAA did not consider airports that may be planned or under construction which would exceed an elevation of 15,000 feet. AIA/GAMA and Boeing requested that the FAA add an exception to § 25.841(a) to account for probable pressurization failures that could occur while operating at airports with elevations exceeding 15,000 feet. When operating at such airports, a probable pressurization system failure could occur while the cabin pressure altitude is above 15,000 feet, and the airplane pressurization system would not comply with current § 25.841(a). The commenters suggested that the FAA should also consider the effects of probable failures of a cabin pressurization system during operations into or out of airports with elevations that exceed 15,000 feet.

The FAA agrees with the commenters. Under normal operating conditions into or out of airports with elevations near 15,000 feet, the cabin pressure altitude is likely to be near or above 15,000 feet for short durations. The FAA still considers any probable failure of the cabin pressurization system during this timeframe to be a system failure, even if the airplane's cabin pressure altitude is already above 15,000 feet due to operation at the airport. The closer the airplane is to the airport, the closer the cabin pressure altitude will be to the airport pressure altitude. If the cabin pressure altitude were already above 13,000 feet while the airplane is near the high elevation airport, a probable cabin pressurization failure would not result in significant changes in cabin pressure altitude that would increase passenger risk of hypoxia. The FAA is therefore adding in this final rule an exception to § 25.841(a)(1) to allow certification of systems despite probable cabin pressurization system failures [4] resulting in cabin pressure altitudes which exceed 15,000 feet. In the event

[4] A probable failure condition is a failure condition having an average probability per flight hour greater than the order of 1x10E–5.

of such failures, new § 25.841(c)(1) specifies that the cabin pressure altitude cannot exceed either 15,000 feet or 2,000 feet above the airport elevation, whichever is higher. These exceptions accommodate operations into or out of airports with elevations near 15,000 feet.

D. Cabin Pressure Altitudes Exceeding 8,000 Feet

In the NPRM, the FAA proposed new § 25.841(c)(1) to allow cabin pressure altitude during operations at high elevation airports to be equal to or less than the airport elevation provided the airplane is at or below 25,000 feet.

AIA/GAMA, Boeing, Bombardier, and TCCA suggested removing the proposed restriction of this allowance to altitudes at or below 25,000 feet, due to concerns over passenger discomfort that may result from the rapid changes in cabin pressure altitude that might occur with systems designed to meet this restriction. They noted that the restriction would limit design options and could inadvertently result in designs that employ rapid increases in cabin pressure altitude in excess of those typically necessary to accommodate operations into high elevation airports.

The commenters cited a scenario that assumed an average airplane descent rate of 2,500 ft/min, which results in a descent time of approximately four minutes from 25,000 feet to an airport with an elevation of 15,000 feet. Assuming an initial cabin pressure altitude of 8,000 feet when the airplane descends through 25,000 feet, the pressurization systems would begin commanding the cabin pressure altitude to increase to reach the airport elevation of 15,000 feet in this timeframe. This results in a cabin pressure altitude ascent rate in excess of 1,000 ft/min. A similar cabin pressure altitude descent rate would be required during the climb phase after takeoff from a 15,000-foot elevation airport.

While this rate of cabin pressure altitude change would meet the FAA's objective to minimize the time the cabin pressure altitude is above 8,000 feet, the FAA acknowledges that rapid changes in pressure could cause passenger discomfort, and injury to the eardrum, if the pressure difference between the middle and outer ear continues to rapidly increase. As discussed by the commenters, typical operations utilize a change in cabin pressure altitude on average around 500 ft/min. Although using a slower airplane descent or ascent rate may be a viable option for some high elevation airport operations, it is not always possible at some high elevation airports due to surrounding terrain, and may cause issues for air traffic control and flight planning.

For these reasons, the FAA agrees with the commenters, and in this final rule has revised proposed § 25.841(c)(1) to eliminate the restriction that the cabin pressure altitude may only be above 8,000 feet while the airplane is at or below 25,000 feet, when undertaking operations at high elevation airports. This decision is consistent with ELOS determinations made by the FAA in which the proposed design required the flightcrew to configure the cabin pressurization system for high elevation airport operations while the airplane was at the top of descent, rather than at or below 25,000 feet.

Conversely, three Health Sciences majors collectively expressed concern with increased health risks to passengers at cabin pressure altitudes above 8,000 feet. Another individual recommended not approving high elevation airport operations, and removal of airports over 7,500 feet for safety and to ''reduce development in these fragile zones.'' The group of three individuals suggested that the potential health risks outweigh the economic benefits to the airline industry from the proposed regulations. They noted that the flying public might not be aware of potential health issues associated with low cabin air pressure, and under this new rule may be less able to make fully informed choices about the potential risks posed to them by flying. They filed information concerning the health risks of high cabin pressure altitudes and the effects of hypoxia on primarily elderly and infants.

The FAA acknowledges the possibility of increased health risks to some passengers exposed to cabin pressure altitudes above 8,000 feet for extended periods of time. However, this rulemaking is only applicable to airplane designs and systems seeking approval for operations at high elevation airports, not all airplane designs. For some passengers, there may be increased health risks with flight in general because their blood oxygen saturation may reach levels considered hypoxic during exposure to typical cabin pressure altitudes experienced during flight. The FAA has sponsored research on this subject [5] to enhance the awareness of the public and medical communities of these risks. The FAA expects that passengers travelling to high elevation airports do so intentionally and accept the potential health risks of visiting or living at high altitude. Areas surrounding these high elevation airports are sufficiently inhabited that the need for airplane service has arisen. High elevation airports allow transportation to areas that may otherwise be difficult to reach. Air travel to these areas allows for easier transportation of not only people, but also supplies such as medical equipment and other cargo.

Since travel to these areas is necessary, the FAA is adopting, as proposed, the condition in § 25.841(c)(2) that the system minimize the time that the cabin pressure altitude is above 8,000 feet. The FAA expects that the cabin pressurization system design will automatically control the cabin pressure altitude once descent into the high elevation airport is initiated, to ensure that the cabin pressure altitude is equal to the pressure altitude at the airport when the airplane lands. As such, the FAA expects the cabin pressure altitude to be above 8,000 feet for no more than 15 to 20 minutes during most high elevation airport operations. For example, assuming a constant airplane descent rate of 2,500 ft/min, a descent from 40,000 feet to an airport elevation of 15,000 feet would take approximately 10 minutes. Assuming a constant change in cabin pressure altitude of 500 ft/min, a change in cabin pressure altitude from 8,000 feet to 15,000 feet would take approximately 14 minutes. The FAA recognizes that many variables are associated with flights into or out of specific high elevation airports, so descent rates and cabin pressure altitude changes will vary. However, in accordance with § 25.841(c)(2), the design must minimize the time that the cabin pressure altitude may be above 8,000 feet during high elevation airport operations. The FAA's intent is that manufacturers optimize the airplane flight manual procedures and cabin pressurization system to minimize the time that the cabin pressure altitude is above 8,000 feet to safely support high elevation airport operations.

E. Cabin Pressure High Altitude Warning System

Section 25.841(b)(6) requires a warning indication at the pilot or flight engineer station to indicate when the safe or preset pressure differential and cabin pressure altitude limits are exceeded. The FAA did not propose any changes to this section, but TCCA recommended clarifying it by replacing

[5] National Air Transportation Center of Excellence for Research in the Intermodal Transport Environment (RITE)/Airliner Cabin Environment Research (ACER) Program, Report No. RITE–ACER–CoE–2011–1, Health Effects of Aircraft Cabin Pressure for Older and Vulnerable Passengers, dated November 2011, Final Report. *https://www.faa.gov/data_research/research/med_humanfacs/cer/media/HealthEffectsVulnerablePassengers.pdf.*

''warning indication at the pilot or flight engineer station'' with ''warning indication at the flightcrew station.'' The purpose of that requirement is to provide warning to the flightcrew at the appropriate time, not to prescribe a location within the flight deck to receive such a warning. Therefore in this final rule the FAA has revised § 25.841(b)(6) to require a warning indication for the flightcrew when the safe or preset pressure differential or cabin pressure altitude limit is exceeded.

The NPRM proposed adding new § 25.841(d) as an exception to § 25.841(b)(6) to allow for changes to the threshold for activation of the cabin pressure high altitude warning alert from 10,000 feet, so that it is provided at either 15,000 feet or 2,000 feet above the airport elevation, whichever is greater, when the airplane is operating at a high elevation airport and at or below 25,000 feet. Because of multiple comments, the FAA has revised the structure of § 25.841(d) from what was proposed in the NPRM. The FAA revised the introductory paragraph of § 25.841(d), as detailed below, to accommodate the varied nature of the designs of cabin pressure altitude warning systems. The NPRM proposed in § 25.841(d)(1), that if the threshold for activation of the cabin pressure high altitude warning is shifted above 10,000 feet, an alert is provided to the flightcrew. This final rule moved the requirement to § 25.841(d)(2) and, as explained in more detail below, revised it to refer to an indication rather than an alert. In this context, the cabin pressure high altitude warning alert is referring to the system that provides warning to the flight crew that the safe or pre-set cabin pressure altitude has been exceeded. Section 25.841(d)(2) in this final rule requires that indication is provided to the flight crew when the cabin pressure high altitude warning alert is shifted above 10,000 feet.

The FAA received multiple requests that the FAA not adopt the proposed condition that the activation altitude for the cabin pressure high altitude warning alert could only be raised above 10,000 feet once the airplane was at or below 25,000 feet. In response, the FAA has revised § 25.841(d)(1) to include the following alternative conditions for when the activation altitude for the cabin pressure high altitude warning alert can be raised.

As previously discussed, the NPRM proposed adding new § 25.841(d) as an exception to § 25.841(b)(6). This would have allowed for adjustment to the cabin pressure high altitude warning alert to be provided at 15,000 feet, or 2,000 feet above the airport elevation, whichever is greater, when the airplane is operating into or out of a high elevation airport and at or below 25,000 feet. AIA/GAMA, Boeing, and TCCA requested that the FAA clarify § 25.841(d) to explain that the cabin pressure high altitude warning alert should be provided at cabin pressure altitudes ''up to'' 15,000 feet or 2,000 feet above the airport elevation. The exception proposed in the NPRM would have allowed for certification of a system that raised the activation threshold for the cabin pressure high altitude warning alert from the 10,000 feet in the current rule, to 15,000 feet. However, that proposal would not have accommodated designs where the cabin pressure high altitude warning alert could vary as a function of airport elevation and activate at some point between 10,000 and 15,000 feet. As described by the commenters, some cabin pressure high altitude warning systems are a function of the pressure altitude data entered into the flight computer and not an analog pressure switch. For these types of systems, the cabin pressure high altitude warning system may have a unique setting that varies as a function of pressure altitude rather than a simple step up from 10,000 feet to 15,000 feet. The FAA does not intend for applicants to change the cabin pressure high altitude warning system unless it is necessary to prevent nuisance warnings during operations into or out of high elevation airports. As a result, in this final rule § 25.841(d) allows the cabin pressure high altitude warning alert to be triggered at elevations ''up to'' 15,000 feet or 2,000 feet above the airplane's maximum takeoff and landing altitude, whichever is greater, when operating into or out of a high elevation airport.

AIA/GAMA and Boeing also requested that the FAA revise § 25.841(d) to allow the cabin pressure high altitude warning alert to activate at up to 15,000 feet or within 2,000 feet of the airplane's maximum takeoff and landing altitude during high elevation airport operations, rather than 2,000 feet above the airport elevation. For example, high elevation airports in Tibet have a maximum pressure altitude of approximately 15,400 feet; therefore, an airplane operating into this area would need to have a cabin pressure high altitude warning alert activated before the cabin pressure altitude reaches 17,400 feet to avoid a nuisance warning. If the same airplane were used for operations into an airport with an elevation of 14,000 feet, the cabin pressure high altitude warning alert would need to be provided before the cabin pressure altitude reached 16,000 feet. As such, the rule proposed in the NPRM would require either a system specifically designed for each airport, or a system that could change the cabin pressure high altitude warning alert as a function of the pressure altitude at the airport. The commenters also noted that there is still a large portion of the airplane fleet which utilizes an analog pressure switch to activate the cabin pressure altitude warning alert, and therefore implementing a variable system is either not possible or would be extremely costly to implement for derivative airplane models.

The FAA agrees with the commenters and revised § 25.841(d) to state that when operating into or out of airports with elevations exceeding 8,000 feet, the cabin pressure altitude warning alert may be provided up to 15,000 feet, or 2,000 feet above the airplane's maximum takeoff and landing altitude, whichever is greater. For reference, the maximum takeoff and landing altitude is defined in the applicable flight manual as an operational limitation of the airplane. This change to the final rule will accommodate various designs of the cabin pressure altitude warning system and prevent unnecessary warning alerts while still including provisions intended to maintain an acceptable level of safety during operations into and out of high altitude airports. The provision in § 25.841(d)(1) is intended to minimize the time that the cabin pressure altitude is above 8,000 feet as well as minimize the time that the cabin altitude warning alert for the flight crew is shifted above 10,000 feet. Section 25.841(d)(2) requires indication to the flight crew that the altitude for the cabin pressure altitude warning system alert has been changed for high altitude operations. Section 25.841(d)(3) requires one of two different methods intended to protect the flight crew from the effects of hypoxia during high altitude airport operations. The first option requires an additional alert to notify the flight crew when to don oxygen in accordance with their applicable operating regulations. Such a system, if installed, provides the same intended function as the cabin altitude warning alert. The second option is to have approved procedures in the airplane flight manual that would require at least one pilot to don oxygen when the cabin pressure altitude warning alert is shifted for high altitude operations. Such provisions are consistent with previously issued ELOS determinations depending on the specific aircraft design that was being considered.

As previously discussed, the FAA is not adopting the condition, originally proposed for § 25.841(c)(1), that the cabin pressure altitude of the airplane may only be above 8,000 feet during operations into or out of high elevation airports while the airplane is at or below 25,000 feet. In the NPRM, the FAA also proposed § 25.841(d), which would have allowed the cabin pressure high altitude warning alert to be activated at cabin pressure altitudes above 10,000 feet during high elevation airport operations provided the airplane was at or below 25,000 feet. AIA/GAMA, Boeing, and TCCA suggested raising or eliminating the 25,000 foot operating condition on the increased activation altitude for the cabin pressure high altitude warning alert when the cabin pressurization system is configured either automatically or by the flightcrew for high elevation airport operations, to avoid potential nuisance alerts during descent. The FAA agrees with the commenters. When the cabin pressurization system is configured for high elevation airport operations, either manually by the flightcrew or automatically as dictated by the design, during descent the cabin pressure altitude may reach 10,000 feet before the airplane passes 25,000 feet. Such a condition may unnecessarily activate the cabin pressure high altitude warning alert certified to existing regulations. In this final rule, the FAA has therefore revised § 25.841(d) to remove the condition that the activation altitude for the cabin pressure high altitude warning alert could only exceed 10,000 feet while the airplane was at or below 25,000 feet.

In addition, in this final rule, the FAA adds § 25.841(d)(1) to require that during landing, the activation altitude for the cabin pressure high altitude warning alert may not be changed to exceed 10,000 feet before the start of descent into the high elevation airport. Following takeoff from a high elevation airport, the cabin pressure altitude warning must be reset to 10,000 feet, either automatically or manually by the flightcrew, before beginning cruise operation. Both requirements ensure that the cabin pressure high altitude warning alert remains at 10,000 feet during cruise while allowing operational flexibility during climb out of and descent into high elevation airports. This is consistent with ELOS determinations that the FAA has made, approving systems for which the cabin pressure high altitude warning alert is changed to exceed 10,000 feet for high elevation airport operations once the aircraft enters descent, rather than below 25,000 feet.

AIA/GAMA and Boeing also requested that the FAA revise the condition requiring a flightcrew alert that the activation altitude for the cabin pressure high altitude warning has shifted to above 10,000 feet in proposed § 25.841(d)(1) to refer to an ''indication'' system instead of an ''alert'' system. As described in the preamble for § 25.1322, amendment 25–131 (75 FR 67209, November 2, 2010) (§ 25.1322), the word ''alert'' describes a flight deck indication meant to attract the attention of the flightcrew and identify a non-normal operational or airplane system condition. For high elevation airport operations, the alert originally proposed in § 25.841(d)(1) was for a normal operating condition, not for a non-normal condition. Thus, requiring that an alert be provided for a normal operating condition is not appropriate.

The FAA agrees with the commenters, and this final rule revises § 25.841(d) to refer to an indication system rather than an alert system. Revised § 25.841(d)(2) requires an indication to be provided to the flightcrew that the activation altitude for the cabin pressure high altitude warning alert has shifted above 10,000 feet cabin pressure altitude. The FAA considers the required indication to be in support of normal operations and flightcrew action may not necessarily be required. However, depending on which certification method in § 25.841(d)(3) the applicant follows, flight procedures may still require the pilot to don oxygen when the indication denotes that the cabin pressure high altitude warning has shifted above 10,000 feet cabin pressure altitude.

In the NPRM, the FAA proposed that § 25.841(d)(2) require that if the system shifts the cabin pressure high altitude warning above 10,000 feet automatically, it must also alert the flightcrew to take action should the automatic shift function fail. AIA/GAMA, Boeing, and Bombardier suggested removal of this additional alert. The commenters suggested that such an alert is unnecessary and the need to provide crew alerts is already addressed through compliance with §§ 25.1309(c) and 25.1322.

The FAA agrees with the commenters. For any system that an applicant proposes to reconfigure for high elevation airport operations, § 25.1309 would be applicable and require the applicant to conduct a hazard analysis that includes system failure. The FAA is not adopting the proposal that § 25.841(d)(2) require an additional alert to the flightcrew. An additional alert may or may not be necessary depending on the hazard analysis that must still be conducted in accordance with § 25.1309.

F. Automatic Presentation of Oxygen Masks

The NPRM proposed adding § 25.1447(c)(5) as an exception to § 25.1447(c)(1) to allow approval of passenger cabin oxygen dispensing units that are automatically presented at 15,000 feet or within 2,000 feet of the airport elevation, whichever is higher, provided the airplane is being operated at altitudes at or below 25,000 feet. This change was meant to relieve applicants and the FAA from the burden of preparing and processing exemptions from the passenger oxygen mask automatic presentation altitude requirement in § 25.1447(c)(1). During operations into some high elevation airports, increasing the cabin pressure altitude at which passenger cabin oxygen dispensing units are automatically presented is required in order to avoid unnecessary presentations.

AIA/GAMA and Boeing requested that new § 25.1447(c)(5) allow automatic oxygen mask presentations at up to 15,000 feet or within 2,000 feet of the airplane's maximum takeoff and landing altitude, rather than within 2,000 feet of the airport elevation. They noted that many in-production airplanes, which an applicant may seek to certify for operation at high elevation airports, utilize an analog pressure switch to automatically deploy the oxygen masks. Implementing a variable system is either not possible or would be extremely costly to implement on airplanes with this type of design, according to the commenters. AIA/GAMA, Boeing, and Bombardier commented that the proposed rule would have required either an automatic oxygen mask presentation system unique for each airport, or a system that would automatically change the oxygen mask presentation altitude as a function of the airport elevation. In addition, landing at a high elevation airport, which is below the airplane's maximum certified takeoff and landing altitude, will have a negligible difference between when masks might be automatically presented due to a sudden loss of cabin pressure, and when the airplane lands. The FAA agrees with the commenters, and § 25.1447(c)(5) allows automatic oxygen mask presentations at up to 15,000 feet or within 2,000 feet of the airplane's maximum takeoff and landing altitude, to accommodate the variation in design and potential unnecessary presentation of the oxygen masks.

In addition, AIA/GAMA and Boeing suggested that the FAA not adopt the requirement proposed in the NPRM that the passenger oxygen mask presentation altitude could only be reset during high elevation operations when the airplane is below 25,000 feet. As discussed by the commenters, not allowing the flightcrew to reset the oxygen mask presentation altitude until the airplane is below 25,000 feet creates additional crew workload, which could be avoided if the airplane is allowed to be configured at the top of descent. Reduction in crew workload during the critical descent phase allows the crew to focus on other tasks. The FAA agrees with the commenters and § 25.1447(c)(5) omits the condition proposed in the NPRM that the oxygen mask presentation altitude only be revised when the airplane is at or below 25,000 feet.

In the discussion of § 25.1447(c)(5) in the NPRM, the FAA proposed raising the automatic presentation altitude for passenger oxygen masks during operations into all airports above 8,000 feet. However, the intent of this rulemaking, in part, is to eliminate the need for processing exemptions to § 25.1447(c)(1) to avoid nuisance oxygen mask presentations while operating at airports with elevations that would otherwise cause oxygen mask presentations. When operating into airports with elevations at or below 13,000 feet, the automatic presentation altitude for the oxygen masks could still be below 15,000 feet, the required presentation altitude in § 25.1447(c)(1), and avoid inadvertent oxygen mask presentations. As a result, the FAA has not granted exemptions to the automatic oxygen mask presentation requirements in § 25.1447(c)(1) for airplanes proposed to be approved for operations at airports with elevations at or below 13,000 feet. As a result of all related comments, § 25.1447(c)(5), as adopted in this final rule, states that when operating into or out of airports with elevations above 13,000 feet, the dispensing units providing the required oxygen flow must be automatically presented to the occupants within 2,000 feet of the airplane's maximum takeoff and landing altitude.

In addition, an individual commenter described various operational considerations that should be made by operators when operating into high elevation airports, such as the potential need to provide oxygen to passengers that may need it while the airplane is on the ground or when cabin pressure altitudes are above 8,000 feet. The FAA agrees that there are many operational issues to consider when operating into and out of high elevation airports. However, this rulemaking is limited to approval of new airplane type designs with cabin pressurization systems and oxygen systems intended for operations into and out of high elevation airports. Operational considerations are outside the scope of this rulemaking activity.

The FAA also received comments to revise specific preamble text of the NPRM. The specific preamble text from the NPRM is not restated in this final rule, so specific editorial suggestions to the preamble text of the NPRM are not applicable. No changes were made to this final rule in this regard.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 (''Modernizing Regulatory Review''), direct that each Federal agency shall adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its 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. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $177 million using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, FAA has determined that this final rule (1) has benefits that justify its costs; (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, as amended; (3) will not have a significant economic impact on a substantial number of small entities; (4) will not create unnecessary obstacles to the foreign commerce of the United States; and (5) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified previously. These analyses are summarized below.

Currently, the FAA processes ELOS memorandums to document ELOS findings when an airplane manufacturer or modifier requests certification of airplane cabin pressurization systems used for operations into or out of airports with elevations at or above 8,000 feet. The FAA also processes exemptions to the automatic oxygen mask presentation requirements for operations into or out of airports with elevations at or above 13,000 feet. The final rule will eliminate the need to continue performing the administrative tasks and analyses associated with the processing of an ELOS or exemption to accommodate operations at high elevation airports for transport category airplanes without compromising safety.

This final rule will result in small quantifiable cost savings. The FAA issues on average four ELOS findings and two exemptions per year related to high elevation airports, devoting between 20 to 100 engineering hours for each ELOS or exemption processed. The FAA estimates industry organizations seeking certification expend the same range of engineering hours for each ELOS and exemption processed. Using the loaded wage rate of $83.86 for aerospace engineer,[6] the FAA estimates the total annual cost savings of this final rule could range from $20,126 to $100,632 for both industry and FAA.

As a result, this rulemaking will reduce the cost of airplane certification without reducing the current level of safety. The expected outcome will be a minimal economic impact resulting in a small regulatory burden relief. The FAA requested comments with supporting justification about the FAA determination of minimal economic impact. No such comments were received. Therefore, the FAA has determined that this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, as amended, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a

[6] $59.12 is the average wage salary cost for aerospace engineer, which accounts 70.5% of employer costs; and $24.74 or 29.5% is the fringe benefits. *https://www.bls.gov/news.release/pdf/ecec.pdf* (accessed on 12/20/22).

principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA covers a wide range of small entities, including small businesses, and not-for-profit organizations.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The final rule relieves the industry from requesting that the FAA make a determination that an ELOS exists for certification of airplane cabin pressurization systems used for operations into or out of airports with elevations at or above 8,000 feet above sea level. This final rule also relieves industry from petitioning for exemptions to the automatic oxygen mask presentation requirements for operations into and out of airports with elevations above 13,000 feet above sea level. This expected outcome will be a minimal economic impact with small burden relief and savings for any small entity affected by this rulemaking action.

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

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) 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 Act, 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 effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation. Therefore, the final rule is in compliance with the Trade Agreements Act.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $177 million using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

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

F. International Cooperation

(1) In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA's 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 found no differences with these final regulations.

(2) European Union Aviation Safety Agency (EASA) certification requirements related to oxygen dispensing units in CS 25.1447(c)(1) are similar to those in § 25.1447(c)(1). In amendment 18 of Certification Specifications and Acceptable Means of Compliance for Large Aeroplanes, CS–25,[7] the EASA describes an acceptable means of compliance (AMC) in AMC 25.1447(c)(1). Specifically, AMC 25.1447(c)(1) states: ''The design of the automatic presentation system should take into account that when the landing field altitude is less than 610 m (2,000 feet) below the normal preset automatic presentation altitude, the automatic presentation altitude may be reset to landing field altitude plus 610 m (2,000 feet).'' Thus, the FAA's change to § 25.1447 is consistent with guidance provided by EASA.

(3) EASA has not published advisory material to accommodate operations into or out of high elevation airports in consideration of the cabin pressure altitude and warning requirements in CS 25.841.

G. Environmental Analysis

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

V. Executive Order Determinations

A. Executive Order 13132, Federalism

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

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

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,[8] and

[7] Amendment 18 of European Aviation Safety Agency, ''Certification Specifications and Acceptable Means of Compliance for Large Aeroplanes,'' CS–25, dated June 22, 2016, can be found at this web address: *https://www.easa.europa.eu/document-library/certification-specifications/cs-25-amendment-18.*

[8] 65 FR 67249 (Nov. 6, 2000).

FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,[9] the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on tribes resulting from this proposed rule.

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

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

D. Executive Order 13609, International Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action will not effect on international regulatory cooperation.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the internet—

1. Search the Federal eRulemaking Portal (*www.regulations.gov*);

2. Visit the FAA's Regulations and Policies web page at *www.faa.gov/regulations_policies/;* or

3. Access the Government Printing Office's web page at *www.GovInfo.gov.*

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *https://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 14 CFR Part 25

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

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 25 as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

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

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

■ 2. Amend § 25.841 by revising paragraphs (a) introductory text, (a)(1), and (b)(6) and adding paragraphs (c) and (d) to read as follows:

§ 25.841 Pressurized cabins.

(a) Except as provided in paragraph (c) of this section, pressurized cabins and compartments to be occupied must be equipped to provide a cabin pressure altitude of not more than 8,000 feet under normal operating conditions.

(1) If certification for operation above 25,000 feet is requested, the airplane must be designed so that occupants will not be exposed to cabin pressure altitudes in excess of 15,000 feet after any probable failure condition in the pressurization system except as provided in paragraph (c) of this section.

* * * * *

(b) * * *

(6) Warning indication to the flightcrew when the safe or preset pressure differential or cabin pressure altitude limit is exceeded. Appropriate warning markings on the cabin pressure differential indicator meet the warning requirement for pressure differential limits. An alert meets the warning requirement for cabin pressure altitude limits if it warns the flightcrew when the cabin pressure altitude exceeds 10,000 feet, except as provided in paragraph (d) of this section.

* * * * *

(c) When operating into or out of airports with elevations at or above 8,000 feet, the cabin pressure altitude in pressurized cabins and occupied compartments may be up to, or greater than, the airport elevation by 2,000 feet, provided—

(1) In the event of probable failure conditions of the cabin pressurization system, the cabin pressure altitude must not exceed 15,000 feet, or 2,000 feet above the airport elevation, whichever is higher; and

(2) The cabin pressurization system is designed to minimize the time in flight that occupants may be exposed to cabin pressure altitudes exceeding 8,000 feet.

(d) When operating into or out of airports with elevations at or above 8,000 feet, the cabin pressure high altitude warning alert may be provided at up to 15,000 feet, or 2,000 feet above the airplane's maximum takeoff and landing altitude, whichever is greater, provided:

(1) During landing, the change in cabin pressure high altitude warning alert may not occur before the start of descent into the high elevation airport and, following takeoff, the cabin pressure high altitude warning alert must be reset to 10,000 feet before beginning cruise operation;

(2) Indication is provided to the flightcrew that the cabin pressure high altitude warning alert has shifted above 10,000 feet cabin pressure altitude; and

(3) Either an alerting system is installed that notifies the flightcrew members on flight deck duty when to don oxygen in accordance with the applicable operating regulations, or a limitation is provided in the airplane flight manual that requires the pilot flying the airplane to don oxygen when the cabin pressure altitude warning has shifted above 10,000 feet, and requires other flightcrew members on flight deck

[9] FAA Order No. 1210.20 (Jan. 28, 2004), available at *https://www.faa.gov/documentLibrary/media/1210.pdf.*

duty to monitor the cabin pressure and utilize oxygen in accordance with the applicable operating regulations.

■ 3. Amend § 25.1447 by revising paragraph (c)(1) and adding paragraph (c)(5) to read as follows:

§ 25.1447 Equipment standards for oxygen dispensing units.

* * * * *

(c) * * *

(1) There must be an oxygen dispensing unit connected to oxygen supply terminals immediately available to each occupant wherever seated, and at least two oxygen dispensing units connected to oxygen terminals in each lavatory. The total number of dispensing units and outlets in the cabin must exceed the number of seats by at least 10 percent. The extra units must be as uniformly distributed throughout the cabin as practicable. Except as provided in paragraph (c)(5) of this section, if certification for operation above 30,000 feet is requested, the dispensing units providing the required oxygen flow must be automatically presented to the occupants before the cabin pressure altitude exceeds 15,000 feet. The crewmembers must be provided with a manual means of making the dispensing units immediately available in the event of failure of the automatic system.

* * * * *

(5) When operating into or out of airports with elevations above 13,000 feet, the dispensing units providing the required oxygen flow must be automatically presented to the occupants at cabin pressure altitudes no higher than 2,000 feet above the airplane's maximum takeoff and landing altitude.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC.

Billy Nolen,

Acting Administrator.

[FR Doc. 2023–12454 Filed 6–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0614; Airspace Docket No. 23–ASW–7]

RIN 2120–AA66

Amendment of Class E Airspace; Artesia, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Artesia, NM. This action is the result of an airspace review caused by the decommissioning of the Artesia non-directional beacon (NDB). The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA–2023–0614 in the **Federal Register** (88 FR 21138; April 10, 2023) proposing to amend the Class E airspace at Artesia, NM. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

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

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

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile (decreased from a 7-mile) radius of Artesia Municipal Airport, Artesia, NM; removes all extensions as they are no longer required; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion

under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW NM E5 Artesia, NM [Amended]

Artesia Municipal Airport, NM
(Lat 32°51′07″ N, long 104°28′03″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Artesia Municipal Airport.

* * * * *

Issued in Fort Worth, Texas, on June 12, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–12781 Filed 6–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0914; Airspace Docket No. 23–AGL–10]

RIN 2120–AA66

Amendment of Class E Airspace; Madison Dane County Regional Airport-Truax Field, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Madison Dane County Regional Airport-Truax Field, WI, and establishes Class E airspace at Madison, WI. This action is the result of an airspace review requested by the FAA Airspace Rules and Regulations office. The name and geographic coordinates of various airports are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA–2023–0914 in the **Federal Register** (88 FR 22931; April 14, 2023) proposing to amend the Class E airspace at Madison Dane County Regional Airport-Truax Field, WI, and establish Class E airspace at Madison, WI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraphs 6002, 6003, 6004, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This amendment to 14 CFR part 71:

Modifies the Class E surface area at Dane County Regional Airport/Truax Field, Madison, WI, by removing all of the extensions contained within the airspace legal descriptions as they will be incorporated into new Class E airspace designated as an extension to a Class E surface area to comply with FAA Order JO 7400.2N, Procedures for

Handling Airspace Matters; replaces the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement''; modifies the header from ''Madison Dane County Regional Airport-Truax Field, WI'' to ''Madison, WI'' to comply with changes to FAA Order JO 7400.2N; and updates the name of Dane County Regional Airport/Truax Field (previously Dane County Regional Airport-Truax Field) and the geographic coordinates of Dane County Regional Airport/Truax Field and Waunakee Airport, Waunakee, WI, to coincide with the FAA's aeronautical database;

Modifies the Class E airspace designated as an extension to a Class C surface area at Dane County Regional Airport/Truax Field by removing the extension north of the airport as it is no longer required; modifies the extension southeast of the airport to within 2.4 miles each side of the Madison VORTAC 130° radial (previously 134° bearing from the Dane County Regional Airport-Truax Field) extending from the 5-mile radius of Dane County Regional Airport/Truax Field to 7 miles southeast of the Madison VORTAC (previously Dane County Regional Airport-Truax Field); modifies the extension northwest of the airport to within 2.4 miles each side of the Madison VORTAC 319° radial (previously 358° bearing from the Dane County Regional Airport-Truax Field) extending from the 5-mile radius of Dane County Regional Airport/Truax Field to 7 miles northwest of the Madison VORTAC (previously Dane County Regional Airport-Truax Field); replaces the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement''; modifies the header from ''Madison Dane County Regional Airport-Truax Field, WI'' to ''Madison, WI'' to comply with changes to FAA Order JO 7400.2N; and updates the name of Dane County Regional Airport/Truax Field (previously Dane County Regional Airport-Truax Field) and the geographic coordinates of Dane County Regional Airport/Truax Field and Waunakee Airport, Waunakee, WI, to coincide with the FAA's aeronautical database;

Establishes Class E airspace designated as an extension to a Class E surface area at Dane County Regional Airport/Truax Field within 2.4 miles each side of the Madison VORTAC 130° radial extending from the 5-mile radius of Madison Dane County Regional Airport/Truax Field to 7 miles southeast of the Madison VORTAC; and within 2.4 miles each side of the Madison VORTAC 319° radial extending from the 5-mile radius of Madison Dane County Regional Airport/Truax Field to 7 miles northwest of the Madison VORTAC excluding that airspace within a 1.5-mile radius of Waunakee Airport;

And modifies the Class E airspace extending upward from 700 feet above the surface to within a 7.5-mile (decreased from an 8.8-mile) radius of Dane County Regional Airport/Truax Field; removes the extension south of the airport as it is no longer required; adds an extension within 2 miles each side of the 029° bearing from the airport extending from the 7.5-mile radius to 13.7 miles north of the airport; adds an extension within 1 mile each side of the 316° bearing from the airport extending from the 7.5-mile radius to 11 miles northwest of the airport; and updates the names and geographic coordinates of Dane County Regional Airport/Truax Field (previously Dane County Regional Airport-Truax Field) and Middleton Municipal Airport/Morey Field (previously Morey Airport), Middleton, WI, to coincide with the FAA's aeronautical database; and removes the cities associated with the airports in the header to comply with changes to FAA Order JO 7400.2N.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AGL WI E2 Madison, WI [Amended]

Dane County Regional Airport/Truax Field, WI
(Lat 43°08′24″ N, long 89°20′15″ W)
Waunakee Airport
(Lat 43°10′43″ N, long 89°27′05″ W)

Within a 5-mile radius of the Dane County Regional Airport/Truax Field excluding that airspace within a 1.5-mile radius of the Waunakee Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6003 Class E Airspace Areas Designated as an Extension to a Class C Surface Area.

* * * * *

AGL WI E3 Madison, WI [Amended]

Dane County Regional Airport/Truax Field, WI
(Lat 43°08′24″ N, long 89°20′15″ W)
Madison VORTAC
(Lat 43°08′41″ N, long 89°20′23″ W)
Waunakee Airport
(Lat 43°10′43″ N, long 89°27′05″ W)

That airspace extending upward from the surface within 2.4 miles each side of the Madison VORTAC 130° radial extending from the 5-mile radius of Dane County Regional Airport/Truax Field to 7 miles southeast of the Madison VORTAC; and within 2.4 miles each side of the Madison VORTAC 319° radial extending from the 5-mile radius of Dane County Regional Airport/Truax Field to 7 miles northwest of the Madison VORTAC excluding that airspace

within a 1.5-mile radius of the Waunakee Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

AGL WI E4 Madison, WI [Establish]

Dane County Regional Airport/Truax Field, WI
(Lat 43°08′24″ N, long 89°20′15″ W)
Madison VORTAC
(Lat 43°08′41″ N, long 89°20′23″ W)
Waunakee Airport
(Lat 43°10′43″ N, long 89°27′05″ W)

That airspace extending upward from the surface within 2.4 miles each side of the Madison VORTAC 130° radial extending from the 5-mile radius of Dane County Regional Airport/Truax Field to 7 miles southeast of the Madison VORTAC; and within 2.4 miles each side of the Madison VORTAC 319° radial extending from the 5-mile radius of Dane County Regional Airport/Truax Field to 7 miles northwest of the Madison VORTAC excluding that airspace within a 1.5-mile radius of the Waunakee Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

AGL WI E5 Madison, WI [Amended]

Dane County Regional Airport/Truax Field, WI
(Lat 43°08′24″ N, long 89°20′15″ W)
Middleton Municipal Airport/Morey Field, WI
(Lat 43°06′52″ N, long 89°31′54″ W)

That airspace extending upward from 700 feet above the surface within an 7.5-mile radius of Dane County Regional Airport/Truax Field; and within 2 miles each side of the 029° bearing from the airport extending from the 7.5-mile radius of the airport to 13.7 miles north of the airport; and within 1 mile each side of the 316° bearing from the airport extending from the 7.5-mile radius of the airport to 11 miles northwest of the airport; and within a 6.3-mile radius of Middleton Municipal Airport/Morey Field.

* * * * *

Issued in Fort Worth, Texas, on June 12, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–12782 Filed 6–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0854; Airspace Docket No. 23–AEA–08]

RIN 2120–AA66

Revocation of Class E Airspace; A.P. Hill, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace extending upward from 700 feet above the surface for A.P. Hill AAF (Fort A.P. Hill), VA, as instrument approach procedures for this airport no longer exist.

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

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours a day, 365 days a year. FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it removes Class E airspace in A.P. Hill, VA, as all instrument approaches have been canceled for A.P. Hill AAF.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023–0854 in the **Federal Register** (88 FR 21127; April 10, 2023), proposing to remove Class E airspace extending upward from 700 feet above the surface for A.P. Hill AAF, A.P. Hill, VA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

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

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

The Rule

This action amends 14 CFR part 71 by removing Class E airspace extending upward from 700 feet above the surface for A.P. Hill AAF, A.P. Hill, VA, as instrument approaches no longer exist for this airport.

Regulatory Notices and Analyses

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

procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances warrant the preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA VA E5 Fort A.P. Hill, VA [Removed]

* * * * *

Issued in College Park, Georgia, on June 9, 2023.

Lisa Burrows,

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

[FR Doc. 2023–12809 Filed 6–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0333; Airspace Docket No. 23–ASW–5]

RIN 2120–AA66

Amendment of Class E Airspace; Carthage, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Carthage, TX. This action is the result of an airspace review caused by the decommissioning of the Carthage non-directional beacon (NDB). The name and geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA–2023–0333 in the **Federal Register** (88 FR 21144; April 10, 2023) proposing to amend the Class E airspace at Carthage, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

Subsequent to publication, the FAA discovered that the geographic coordinates had been incorrectly published. This correction is administrative and does not impact the airspace as proposed.

Incorporation by Reference

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

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

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile (decreased from a 7-mile) radius of Panola County Airport-Sharpe Field, Carthage, TX; removes the city associated with the airport in the airspace legal description to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; and updates the name (previously Panola County-Sharpe Field) and geographic coordinates of the

airport to coincide with the FAA's aeronautical database.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Carthage, TX [Amended]

Panola County Airport-Sharpe Field, TX
(Lat. 32°10′34″ N, long. 94°17′56″ W)
That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Panola County Airport-Sharpe Field.

* * * * *

Issued in Fort Worth, Texas, on June 12, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–12784 Filed 6–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0720; Airspace Docket No. 23–ASO–12]

RIN 2120–AA66

Amendment of Class E Airspace; Elberton, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface for Elbert County-Patz Field Airport, Elberton, GA, as a new instrument approach procedure has been designed for this airport. This action also updates this airport's geographic coordinates.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023–0720 in the **Federal Register** (88 FR 21134; April 10, 2023), proposing to amend Class E airspace for Elbert County-Patz Field Airport, Elberton, GA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

Subsequent to publication, the FAA found that the city name was inadvertently included in the second line of the airspace description. This action removes the city name, leaving only Elbert County-Patz Field Airport, GA.

Incorporation by Reference

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

published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by amending Class E airspace extending upward from 700 feet above the surface for Elbert County-Patz Field Airport, Elberton, GA, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this airport. The existing radius is increased to 8 miles (previously 6.3-miles). This action also updates the airport's geographic coordinates to coincide with FAA's database. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a.

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO GA E5 Elberton, GA [Amended]

Elbert County-Patz Field Airport, GA
(Lat 34°05′43″ N, long. 82°49′03″ W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Elbert County-Patz Field Airport.

* * * * *

Issued in College Park, Georgia, on June 9, 2023.

Andreese C. Davis,

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

[FR Doc. 2023–12816 Filed 6–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1444; Airspace Docket No. 22–AWP–74]

RIN 2120–AA66

Establishment of Class E Airspace; Williams, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Williams, AZ. This action supports the establishment of new public instrument procedures.

DATES: Effective 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA–2022–1444 in the **Federal Register** (87 FR 74048; December 2, 2022) proposing to establish Class E airspace at Williams, AZ. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received.

Mr. Wally Roberts commented that he believes the proposed Class E airspace

to be excessive when compared to other Class E airspace in the area, which are usually a five to seven mile radius similar to Valle Airport north of Clark Memorial Field. The following response is provided.

FAA Order JO 7400.2N, Procedures for Handling Airspace Matters, requires that rising terrain be taken into consideration when evaluating airspace requirements. Clark Memorial Field is surrounded by rising terrain (*e.g.,* the peaks at 7,644 feet to the south; 7,725 feet to the north; 9,256 to the south; and 9,389 to the northeast) that must be taken into consideration and additional transitional airspace provided to allow aircraft climb above the terrain while remaining in the transitional airspace. Accordingly, the FAA proposed a radius for Clark Memorial Field that is larger than other airports that do not have significant rising terrain, including Valle Airport.

Incorporation by Reference

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

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

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 20-mile radius of H.A. Clark Memorial Field, Williams, AZ.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AWP AZ E5 Williams, AZ [Establish]

H.A. Clark Memorial Field, AZ
(Lat 35°18′20″ N, long 112°11′40″ W)

That airspace extending upward from 700 feet above the surface within a 20-mile radius of H.A. Clark Memorial Field.

* * * * *

Issued in Fort Worth, Texas, on June 12, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–12795 Filed 6–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0947; Airspace Docket No. 23–ASW–12]

RIN 2120–AA66

Establishment of Class E Airspace; Berclair, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Berclair, TX. This action is the result of a request from the U.S. Navy to establish Class E airspace at Goliad NOLF, Berclair, TX, to support instrument procedures at this airport.

DATES: Effective 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that

section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace extending upward from 700 feet above the surface at Goliad NOLF, Berclair, TX, to support instrument flight rule operations at this airport.

History

The FAA published an NPRM for Docket No. FAA–2023–0947 in the **Federal Register** (88 FR 22933; April 14, 2023) proposing to establish Class E airspace at Berclair, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received supporting the proposal. No response is provided.

Incorporation by Reference

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

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

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 7-mile radius of Goliad NOLF, Berclair, TX.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Berclair, TX [Establish]

Goliad NOLF, TX

(Lat 28°36′42″ N, long 97°36′45″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Goliad NOLF.

* * * * *

Issued in Fort Worth, Texas, on June 12, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–12783 Filed 6–14–23; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the asset allocation regulation for plans with valuation dates in the third quarter of 2023. These interest assumptions are used for valuing benefits under terminating single-employer plans and for other purposes.

DATES: Effective July 1, 2023.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, 202–229–3829. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions—including interest assumptions—for valuing benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulation are also published on PBGC's website (*https://www.pbgc.gov*).

PBGC uses the interest assumptions in appendix B to part 4044 (''Interest Rates Used to Value Benefits'') to determine the present value of annuities in an involuntary or distress termination of a single-employer plan under the asset allocation regulation. The assumptions are also used to determine the value of multiemployer plan benefits and certain assets when a plan terminates by mass withdrawal in accordance with PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281).

The third quarter 2023 interest assumptions will be 5.24 percent for the first 20 years following the valuation date and 4.58 percent thereafter. In comparison with the interest assumptions in effect for the second quarter of 2023, these interest assumptions represent no change in the select period (the period during which

the select rate (the initial rate) applies), a decrease of 0.14 percent in the select rate, and a decrease of 0.51 percent in the ultimate rate (the final rate).

Need for Immediate Guidance

PBGC has determined that notice of, and public comment on, this rule are impracticable, unnecessary, and contrary to the public interest. PBGC routinely updates the interest assumptions in appendix B of the asset allocation regulation each quarter so that they are available to value benefits. Accordingly, PBGC finds that the public interest is best served by issuing this rule expeditiously, without an opportunity for notice and comment, and that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication to allow the use of the proper assumptions to estimate the value of plan benefits for plans with valuation dates early in the third quarter of 2023.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE–EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. In appendix B to part 4044, an entry for ''July–September 2023'' is added at the end of the table to read as follows:

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*	*	*	*	*	
July–September 2023	0.0524	1–20	0.0458	>20	N/A	N/A

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2023–12751 Filed 6–14–23; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0465]

RIN 1625–AA00

Safety Zone; Upper Mississippi River, Prairie du Chien, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters on the Upper Mississippi River between 636–635, east of Island number one hundred seventy-two. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by high-speed power vessels. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Upper Mississippi River.

DATES: This rule is effective from 7:30 a.m. on June 23, 2023, through 6:30 p.m. on June 25, 2023. The rule is subject to enforcement from 7:30 a.m. through 6:30 p.m. each day it is effective.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0465 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 MSTC Nathaniel Dibley, Sector Upper Mississippi River Waterways Management Division, U.S. Coast Guard; telephone 314–269–2550, email *Nathaniel.d.dibley@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impractical due to the date the event is taking place. It is impracticable to publish an NPRM because we must establish this safety zone by June 23, 2023, and lacks sufficient time to provide a reasonable comment period and to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest due to the date the event is taking place. Delaying the effective date of this rule would be impracticable and contrary to public interest because we must establish the safety zone by June 23, 2023, in order to protect personnel, vessels, and the marine environment from the potential safety hazards associated with the high speed power vessel racecourse event occurring on that date.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The

Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with Great Lakes Watercross Race, on June 23, 2023, will be a safety concern for anyone within the marked area of the racecourse. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the race is being conducted.

IV. Discussion of the Rule

This rule establishes a safety zone from 7:30 a.m. through 6:30 p.m. each day on June 23 to June 25, 2023. The safety zone will cover all navigable waters within the Great Lakes Watercross Race, on the Upper Mississippi River, between Mile Markers 635 to 636 east of Island number one hundred seventy-two. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the race is conducted. No vessel or person will be permitted to transit 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, 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 limited duration and narrowly tailored geographic areas of the safety zone. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterways users will be notified to ensure the safety zone will result in minimal impact. In addition, normal marine traffic will be minimally impacted as race official will be to pass traffic between races. The navigation channel west of Island number one hundred seventy-two will not be impacted by the safety zone and will remain open. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP's designated representative.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting from 7:30 a.m. to 6:30 p.m. that will prohibit entry between Mile Markers 635–636 east of Island number one hundred seventy-two. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions

on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0439 to read as follows:

§ 165.T08–0465 Safety Zone; Upper Mississippi River, Mile Markers 635–636 east of Island number one hundred seventy-two, Prairie du Chien, WI.

(a) *Location.* The following area is a safety zone: all navigable waters within the Upper Mississippi River, Mile Markers 635–636 east of Island number one hundred seventy-two, Prairie du Chien, WI.

(b) *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. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control o the USCG Sector Upper Mississippi River.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16, or through USCG Sector Upper Mississippi River at 314–269–2332. 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.

(c) *Enforcement period:* This safety zone will be subject to enforcement from 7:30 a.m. through 6:30 p.m. each day from June 23 to June 25, 2023.

Dated: June 9, 2023.

A.R. Bender,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2023–12750 Filed 6–14–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0475]

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

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Cape Vincent French Festival Fireworks to provide for the safety of life on navigable waterways, including the St. Lawrence River, during this event. Our regulation for marine events within the Ninth Coast Guard District identifies the regulated area for this event as the St. Lawrence River, Cape Vincent, NY. During the enforcement period, the operator of any vessel in the regulated area must comply with directions from the Coast Guard Safety Zone Coordinator or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation in 33 CFR 165.939 will be enforced for the Cape Vincent French Festival Fireworks listed in item b.15 in the table to § 165.939 from 9:15 p.m. through 10:30 p.m., on July 8, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email the Marine Event Coordinator, U.S. Coast Guard MSD Massena; telephone 315–769–5483, email *SMB-MSDMassena-WaterwaysManagement@uscg.mil.*

SUPPLEMENTARY INFORMATION: This Notice of Enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). The Coast Guard will enforce a safety zone in 33 CFR 165.939 for the Cape Vincent French Festival Fireworks regulated area from 9:15 p.m. through 10:30 p.m. on July 8, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Ninth Coast Guard District, § 165.939, specifies the location of the regulated area for the French Festival Fireworks which encompasses portions of the St. Lawrence River. During the enforcement period as reflected in § 165.939, if you are the operator of a vessel in the regulated area you must comply with directions from the Coast Guard Safety Zone Coordinator or any Official Patrol displaying a Coast Guard ensign.

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

Dated: June 7, 2023.

Mark I. Kuperman,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2023–12817 Filed 6–14–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2022–0008]

RIN 0651–AD60

Standardization of the Patent Term Adjustment Statement Regarding Information Disclosure Statements

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is revising the rules of practice pertaining to patent term adjustment to require that the patent term adjustment statement regarding information disclosure statements be submitted on an Office form using the appropriate document code. The use of the Office form and document code will streamline certain aspects of prosecution by more accurately capturing and accounting for the patent term adjustment statement without unnecessary back-and-forth between the Office and applicant. It will also conserve resources by eliminating the need for a manual review of the patent term adjustment statement. Applicants who submit a patent term adjustment statement regarding information disclosure statements without using the Office form or the appropriate document code will need to request reconsideration of the patent term adjustment for the information disclosure statement to not be considered a failure to engage in reasonable efforts to conclude the prosecution (processing or examination) of the application. The Office conducts

a redetermination of patent term adjustment in response to this request, and the redetermination will include the Office's manual review of the patent term adjustment statement.

DATES: This final rule is effective July 17, 2023, and is applicable to any statement under 37 CFR 1.704(d) filed on or after July 17, 2023.

FOR FURTHER INFORMATION CONTACT: Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, at 571–272–7757. You can also send inquiries to *patentpractice@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 532(a) of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809 (1994)) amended 35 U.S.C. 154 to provide that the term of a patent ends on the date that is 20 years from the filing date of the application, or the earliest filing date for which a benefit is claimed under 35 U.S.C. 120, 121, or 365(c). The URAA also contained provisions, codified at 35 U.S.C. 154(b), for patent term extension due to certain examination delays. Under the patent term extension provisions of 35 U.S.C. 154(b) as amended by the URAA, an applicant is entitled to patent term extension for delays due to interference (which has since been replaced by derivation proceedings), secrecy orders, or successful appellate review. *See* 35 U.S.C. 154(b) (1995). The Office implemented the patent term extension provisions of the URAA in a final rule published in April of 1995. *See* Changes To Implement 20-Year Patent Term and Provisional Applications, 60 FR 20195 (Apr. 25, 1995).

The American Inventors Protection Act of 1999 (AIPA) (Pub. L. 106–113, 113 Stat. 1501, 1501A–552 through 1501A–591 (1999)) further amended 35 U.S.C. 154(b) to include additional bases for patent term extension (which is characterized as ''patent term adjustment'' in the AIPA). Original utility and plant patents issuing from applications filed on or after May 29, 2000, may be eligible for patent term adjustment if issuance of the patent is delayed due to one or more of the enumerated administrative delays listed in 35 U.S.C. 154(b)(1). Specifically, under the patent term adjustment provisions of 35 U.S.C. 154(b) as amended by the AIPA, an applicant is entitled to patent term adjustment for the following reasons: (1) if the Office fails to take certain actions during the examination and issue process within specified time frames (35 U.S.C. 154(b)(1)(A)); (2) if the Office fails to issue a patent within three years of the actual filing date of the application (35 U.S.C. 154(b)(1)(B)); and (3) for delays due to interference (and now for delays due to derivation proceedings), secrecy orders, or successful appellate review (35 U.S.C. 154(b)(1)(C)). *See* 35 U.S.C. 154(b)(1). However, the AIPA sets forth a number of conditions and limitations on any patent term adjustment accrued under 35 U.S.C. 154(b)(1). Specifically, 35 U.S.C. 154(b)(2)(C) provides, in part, that ''[t]he period of adjustment of the term of a patent under [35 U.S.C. 154(b)(1)] shall be reduced by a period equal to the period of time during which the applicant failed to engage in reasonable efforts to conclude prosecution of the application,'' and that ''[t]he Director shall prescribe regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application'' (35 U.S.C. 154(b)(2)(C)(i) and (iii)). The Office implemented the patent term adjustment provisions of 35 U.S.C. 154(b) as amended by the AIPA, including setting forth circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application, in a final rule published in September of 2000. *See* Changes To Implement Patent Term Adjustment Under Twenty-Year Patent Term, 65 FR 56365 (Sept. 18, 2000) (AIPA patent term adjustment final rule). The regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application and the resulting reduction of any patent term adjustment are set forth in 37 CFR 1.704(c)(1) through (14).

This final rule revises the patent term adjustment regulations at 37 CFR 1.704 establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude the prosecution (processing or examination) of an application and any resulting reduction of patent term adjustment. These regulations include a ''safe harbor'' in 37 CFR 1.704(d), which provides that a paper containing only an information disclosure statement in compliance with 37 CFR 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude the prosecution (processing or examination) of the application under 37 CFR 1.704(c)(6), (8), (9), or (10) if accompanied by the required statement. The ''safe harbor'' in 37 CFR 1.704(d) also provides that a request for continued examination, in compliance with 37 CFR 1.114, with no submission other than an information disclosure statement, in compliance with 37 CFR 1.97 and 1.98, will not be considered a failure to engage in reasonable efforts to conclude the prosecution (processing or examination) of the application under 37 CFR 1.704(c)(12) if accompanied by the required statement. The 37 CFR 1.704(d) ''safe harbor'' requires a statement that each item of information contained in the information disclosure statement: (1) was first cited in any communication from a patent office in a counterpart foreign or international application or from the Office, and this communication was not received by any individual designated in 37 CFR 1.56(c) more than 30 days prior to the filing of the information disclosure statement; or (2) is a communication that was issued by a patent office in a counterpart foreign or international application or by the Office, and this communication was not received by any individual designated in 37 CFR 1.56(c) more than 30 days prior to the filing of the information disclosure statement. 37 CFR 1.704(d)(1).

This final rule specifically revises 37 CFR 1.704(d) to include a new paragraph (d)(3) requiring applicants to submit the statement, under 37 CFR 1.704(d)(1), as required for the ''safe harbor'' of 37 CFR 1.704(d), on Office form PTO/SB/133 using the appropriate document code (PTA.IDS). The Office makes the patent term adjustment determination indicated in the patent with a computer program that uses the information recorded in the Office's patent application data repository, except when an applicant requests reconsideration pursuant to 37 CFR 1.705. *See* AIPA patent term adjustment final rule, 65 FR at 56381. When an applicant uses the Office form and document code, the patent term adjustment computer program will be able to determine when the statement under 37 CFR 1.704(d)(1), as required for the ''safe harbor'' of 37 CFR 1.704(d), has been filed in the application.

Applicants who submit their own statement under 37 CFR 1.704(d)(1), as required for the ''safe harbor'' of 37 CFR 1.704(d), without using the Office form or the appropriate document code will need to request reconsideration of the patent term adjustment under 37 CFR 1.705(b) for the information disclosure statement to not be considered a failure to engage in reasonable efforts to conclude the prosecution (processing or examination) of the application. The Office conducts a manual redetermination of patent term adjustment in response to a request for reconsideration of the patent term adjustment. *See* Revisions To

Implement the Patent Term Adjustment Provisions of the Leahy-Smith America Invents Act Technical Corrections Act, 79 FR 27755, 27757 (May 15, 2014). The redetermination of patent term adjustment will be based on the Office's manual review of the statement under 37 CFR 1.704(d)(1). A manual review of the statement under 37 CFR 1.704(d)(1), as required for the ''safe harbor'' of 37 CFR 1.704(d), is necessary when an applicant does not use Office form PTO/SB/133.

The Office has reviewed a sampling of statements under 37 CFR 1.704(d)(1) that were independently submitted without the use of Office form PTO/SB/133 and has determined that a number of those statements were deficient for failing to meet the required language of 37 CFR 1.704(d)(1). Therefore, the Office has determined that there is a need for the reconsideration procedure where the Office form PTO/SB/133 is not used.

Form PTO/SB/133 includes the patent term adjustment statement required by 37 CFR 1.704(d)(1). Specifically, the form includes the statement that ''[e]ach item of information contained in the information disclosure statement was first cited in any communication from a patent office in a counterpart foreign or international application or from the Office, and this communication was not received by any individual designated in 37 CFR 1.56(c) more than thirty days prior to the filing of the information disclosure statement.'' The form also includes the alternative statement that ''[e]ach item of information contained in the information disclosure statement is a communication that was issued by a patent office in a counterpart foreign or international application or by the Office, and this communication was not received by any individual designated in 37 CFR 1.56(c) more than thirty days prior to the filing of the information disclosure statement.'' Either one or both of these statements may be selected on form PTO/SB/133.

The Office has also created a particular document code (PTA.IDS) for the filing of Office form PTO/SB/133 (statement under 37 CFR 1.704(d)(1)) to facilitate the accurate electronic capture of a statement under 37 CFR 1.704(d)(1) by the Office's patent application data repository when filed using Office form PTO/SB/133. Thus, the Office's patent term adjustment computer program now determines when the Office form PTO/SB/133 has been filed concurrently with (*i.e.,* on the same date as) the information disclosure statement based on the application data in the Office's Patent Application Locating and Monitoring (PALM) system and will take the statement under 37 CFR 1.704(d)(1) into account when calculating patent term adjustment. The document code (PTA.IDS) is included on Office form PTO/SB/133. While the Office encourages the filing of correspondence via the USPTO patent electronic filing system, the inclusion of this document code (PTA.IDS) on the form PTO/SB/133 satisfies the ''using the appropriate document code (PTA.IDS)'' requirement of 37 CFR 1.704(d)(3) for statements under 37 CFR 1.704(d)(1) not submitted via the USPTO patent electronic filing system.

Use of form PTO/SB/133 and its document code (PTA.IDS) aims to: (1) ensure the accurate capture by the Office's PALM system of the presence of a statement under 37 CFR 1.704(d)(1), as required for the ''safe harbor'' of 37 CFR 1.704(d); and (2) eliminate the need to manually review an applicant's statement under 37 CFR 1.704(d)(1) to determine whether it is proper under 37 CFR 1.704(d)(1). Furthermore, as a result of using form PTO/SB/133 and its document code (PTA.IDS), the Office's automated process for calculating patent term adjustment will be more likely to account for the statement under 37 CFR 1.704(d)(1), thereby reducing the situations in which a request for reconsideration of patent term adjustment under 37 CFR 1.705(b) is necessary. Form PTO/SB/133 is available at *www.uspto.gov/sites/default/files/documents/sb0133.pdf.* The Office of Management and Budget (OMB) has determined that, under 5 CFR 1320.3(h), form PTO/SB/133 does not collect ''information'' within the meaning of the Paperwork Reduction Act of 1995.

Applicants may no longer use the document code PTA.IDS, which is specific to Office form PTO/SB/133, for filing a statement under 37 CFR 1.704(d)(1) unless they are using Office form PTO/SB/133. Applicants filing a statement under 37 CFR 1.704(d)(1) without Office form PTO/SB/133 may only use the document code PTA.IDS for the submission of an information disclosure statement. The presentation to the Office (whether by signing, filing, submitting, or later advocating) of form PTO/SB/133, whether by a practitioner or non-practitioner, is a certification under 37 CFR 11.18(b) that the existing text and any certification statements on the form have not been altered. The use of the document code PTA.IDS specifically for form PTO/SB/133 is a representation that the applicant is filing form PTO/SB/133 with no alterations to the text of the form.

Applicants who submit a statement under 37 CFR 1.704(d)(1) in any manner other than on Office form PTO/SB/133 will be treated as not having submitted the statement, under 37 CFR 1.704(d)(1), as required for the ''safe harbor'' of 37 CFR 1.704(d). In addition, applicants who submit a statement under 37 CFR 1.704(d)(1) on Office form PTO/SB/133 with any modification to the statement under 37 CFR 1.704(d)(1) on the form (that is, modifications to either or both of the statements indicated on the form) will be treated as not having submitted the statement, under 37 CFR 1.704(d)(1), as required for the ''safe harbor'' of 37 CFR 1.704(d). Under such circumstances, applicants will need to request reconsideration of the patent term adjustment, under 37 CFR 1.705(b) for the paper or request for continued examination, to be treated as having been filed concurrently with the statement, under 37 CFR 1.704(d)(1), as required for the ''safe harbor'' of 37 CFR 1.704(d).

The submission of a statement under 37 CFR 1.704(d)(1) does not require a fee. However, in certain cases, a fee is required for the Office to consider a statement under 37 CFR 1.704(d)(1) in a patent term adjustment determination. Specifically, the Office has provided a procedure for applicants to seek a waiver under 37 CFR 1.183 to allow for a late-filed statement under 37 CFR 1.704(d)(1). A petition under 37 CFR 1.183 provides for suspension of rules and requires the fee under 37 CFR 1.17(f). If an applicant submits an information disclosure statement within the 30-day period set forth in 37 CFR 1.704(d)(1) but does not include a statement under 37 CFR 1.704(d)(1) with the information disclosure statement, the applicant should consider filing a request for reconsideration of the patent term adjustment indicated on the patent (37 CFR 1.705(b)), along with a statement under 37 CFR 1.704(d)(1) (if not previously filed) and petition under 37 CFR 1.183 requesting that the Office consider a statement under 37 CFR 1.704(d)(1) when making the patent term adjustment determination. However, the Office will reevaluate the practice of considering such petitions under 37 CFR 1.183 now that the patent term adjustment computer program has been updated to account for submission via Office form PTO/SB/133. The Office will provide notice prior to making any changes to this procedure.

Applicants should keep in mind that a petition under 37 CFR 1.183 may only be used to request acceptance of the late-filed statement under 37 CFR 1.704(d)(1). Under no circumstances will an information disclosure statement filed more than 30 days from the applicable communication under 37

CFR 1.704(d)(1)(i) or (ii) be treated as filed within the ''safe harbor'' of 37 CFR 1.704(d). In addition, the 30-day period in 37 CFR 1.704(d)(1) is not extendable (see 37 CFR 1.704(d)(2)).

Discussion of Specific Rules

The following is a discussion of the amendment to 37 CFR part 1 in this final rule.

Section 1.704: Section 1.704(d) as amended in this final rule includes a new § 1.704(d)(3) requiring that the statement under § 1.704(d)(1) be submitted on a form provided by the Office (PTO/SB/133) using the appropriate document code (PTA.IDS). New § 1.704(d)(3) also provides that if the statement under § 1.704(d)(1) is not submitted on a form provided by the Office (PTO/SB/133) using the appropriate document code (PTA.IDS), the paper or request for continued examination will be treated as not accompanied by a statement under § 1.704(d)(1), unless an application for patent term adjustment in compliance with § 1.705(b) is filed, establishing that the paper or request for continued examination was accompanied by a statement in compliance with § 1.704(d)(1). New § 1.704(d)(3) provides that: (1) no changes to statements on this Office form may be made; and (2) the presentation of this form to the Office, whether by signing, filing, submitting, or later advocating, and whether by a practitioner or non-practitioner, constitutes a certification under 37 CFR 11.18(b) that the existing text and any certification statements on this form have not been altered.

Changes From the Proposed Rule

This final rule contains two changes from the proposed rule. First, the final rule replaces the proposed provision that a statement under § 1.704(d)(1) must be submitted on the Office form (PTO/SB/133) or the paper or request for continued examination will be treated as not accompanied by a statement under § 1.704(d)(1), with a new provision that a statement under § 1.704(d)(1) must be submitted on the Office form (PTO/SB/133) or the paper or request for continued examination will be treated as not accompanied by a statement under § 1.704(d)(1) unless an application for patent term adjustment (§ 1.705(b)) is filed, establishing that the paper or request for continued examination was accompanied by a statement in compliance with § 1.704(d)(1). Thus, this final rule allows applicants who provided a statement under § 1.704(d)(1) not using the Office form PTO/SB/133 with an avenue to have the statement given effect when determining the patent term adjustment. Second, this final rule clarifies that the form provided by the Office (PTO/SB/133) must be submitted using the appropriate document code (PTA.IDS).

Comments and Responses to Comments

Comment 1: One commenter suggested that the Office continue the current practice of permitting an applicant to make the required safe harbor statement(s) in any paper filed on the same date as the information disclosure statement, but require the applicant to request reconsideration of the patent term adjustment under § 1.705(b) to invoke the safe harbor if form PTO/SB/133 was not used. Another commenter expressed sympathy for the purpose of the rule change but opposed it because the Office has plenty of alternative methods to educate the public in reducing errors in the certificate statement.

Response: Section 1.704(d)(3), as adopted in this final rule, requires that the statement under § 1.704(d)(1) be submitted on a form provided by the Office (PTO/SB/133) using the appropriate document code (PTA.IDS). Section 1.704(d)(3) also provides that if the applicant does not use the Office form and its document code (PTA.IDS), the paper or request for continued examination will be treated as not accompanied by a statement under § 1.704(d)(1) unless an application for patent term adjustment in compliance with § 1.705(b) is filed, establishing that the paper or request for continued examination was accompanied by a statement in compliance with § 1.704(d)(1). Moreover, the Office will provide additional information and educate the public by providing examples in which the Office deemed the statement not sufficient to comply with the requirements of § 1.704(d)(1).

Comment 2: One commenter advised the Office that the electronic form would not allow for checking both boxes, and thus they had to file two forms to address statements under each provision.

Response: In response to this comment, the Office form PTO/SB/133 has been revised so an applicant can make the statement under § 1.704(d)(1)(i) or (ii), or both §§ 1.704(d)(1)(i) and (ii).

Comment 3: Two commenters suggested that the Office consider modifying the language of the form PTO/SB/133 to address concerns about what is being asserted when both boxes on the form are checked.

Response: Sections 1.704(d)(i) and 1.704(d)(ii) are distinct conditions. When an applicant checks both boxes on form PTO/SB/133, the applicant is asserting that each cited reference meets the conditions of § 1.704(d)(1)(i) or 1.704(d)(1)(ii).

In 2011, the Office added § 1.704(d)(1)(ii) to extend the ''safe harbor'' provision of § 1.704(d) to embrace information first cited in a communication from the Office, as well as the communication. *See* Revision of Patent Term Adjustment Provisions Relating to Information Disclosure Statements, 76 FR 74700 (Dec. 1, 2011).

Comment 4: One commenter asked whether the rule change would be retroactively applied. The commenter further asked what an applicant should do if they had previously filed a statement under § 1.704(d).

Response: The changes to the rules of practice pertaining to patent term adjustment are set to go into effect on the effective date of this final rule, and are applicable to any statement under § 1.704(d) filed on or after the effective date of this final rule. The Office will apply the interim procedure for patentees to request a recalculation of their patent term adjustment determination for alleged failure to recognize that an information disclosure statement was accompanied by a safe harbor statement, by submitting a request for recalculation of patent term adjustment using Office form PTO/SB/134, for applicants who filed a statement under § 1.704(d) prior to the effective date of the change to § 1.704(d) in this final rule. *See* Interim Procedure for Requesting Recalculation of the Patent Term Adjustment With Respect to Information Disclosure Statements Accompanied by a Safe Harbor Statement, 83 FR 55102 (Nov. 2, 2018).

Comment 5: One commenter presented a number of scenarios and requested advice on whether an applicant could file a statement under § 1.704(d)(1) in these scenarios. The commenter also requested clarification of the definition of certain terms found in § 1.704(d)(1).

Response: The Office did not propose any changes to the statement required by § 1.704(d)(1) and is not adopting any changes to the statement required by § 1.704(d)(1) in this final rule. As such, this comment is outside the scope of this action. However, for information on the terms used in, and the application of, § 1.704(d)(1), the Office refers the commenter to the Office's guidance on patent term adjustment. Specifically, the statement required by § 1.704(d)(1) to take advantage of the ''safe harbor'' of § 1.704(d) is set forth in chapter 2700 of the Manual of Patent Examining Procedure (MPEP) (9th ed., rev. 7.2022,

February 2023), which may be viewed or downloaded free of charge from the USPTO website at *https://www.uspto.gov/MPEP* and is available to search online at *https://mpep.uspto.gov.*

Rulemaking Considerations

A. Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez* v. *Mortg. Bankers Ass'n,* 135 S. Ct. 1199, 1204 (2015) (Interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers.'' (citation and internal quotation marks omitted)); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.). This final rule revises 37 CFR 1.704(d) to require that the statement under 37 CFR 1.704(d)(1) be submitted on the Office form PTO/SB/133 using the appropriate document code (PTA.IDS). This final rule also provides that, if an applicant submits their own statement under 37 CFR 1.704(d)(1), as required for the ''safe harbor'' of 37 CFR 1.704(d), an applicant will need to request reconsideration of the patent term adjustment under 37 CFR 1.705(b) for the Office to consider a statement under 37 CFR 1.704(d)(1) when making a determination of the patent term adjustment.

Accordingly, prior notice of and an opportunity for public comments on the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez,* 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency ''issue[s] an initial interpretive rule'' nor ''when it amends or repeals that interpretive rule.''); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))). However, the Office chose to seek public comments before implementing the rule to benefit from the public's input.

B. Regulatory Flexibility Act: For the reasons set forth in this notice, the Senior Counsel for Regulatory and Legislative Affairs, Office of General Law, of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes in this rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

This rulemaking does not impose any additional fees on applicants. This final rule revises 37 CFR 1.704(d) to require that the statement under 37 CFR 1.704(d)(1) be submitted on the Office form PTO/SB/133 using the appropriate document code (PTA.IDS), and to provide that if an applicant submits their own statement under 37 CFR 1.704(d)(1), as required for the ''safe harbor'' of 37 CFR 1.704(d), the applicant will need to request reconsideration of the patent term adjustment under 37 CFR 1.705(b) for the Office to consider a statement under 37 CFR 1.704(d)(1) when making a determination of the patent term adjustment. This new requirement only seeks to facilitate the current statement requirement, pursuant to 37 CFR 1.704(d)(1) and set forth in MPEP 2732, subsection IV, through the use of an existing Office form containing the required statement language.

For the foregoing reasons, the changes in this rule will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across Government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), the USPTO will submit a report containing any final rule resulting from this rulemaking and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on

competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. The rules of practice pertaining to patent term adjustment and extension have been reviewed and approved by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) under OMB control number 0651–0020. Although this final rule requires the use of Office form PTO/SB/133 when making a statement under 37 CFR 1.704(d)(1), the OMB has determined that, under 5 CFR 1320.3(h), form PTO/SB/133 does not collect ''information'' within the meaning of the Paperwork Reduction Act of 1995. Because the changes in this rulemaking would not affect the information collection requirements or fees associated with the information collections approved under OMB control number 0651–0020 or any other information collection, the Office is not resubmitting an information collection package to the OMB for its review and approval.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

P. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and record keeping requirements, Small businesses.

For the reasons set forth in the preamble, the USPTO amends 37 CFR part 1 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.704 is amended by adding paragraph (d)(3) to read as follows:

§ 1.704 Reduction of period of adjustment of patent term.

* * * * *

(d) * * *

(3) The statement under paragraph (d)(1) of this section must be submitted on the Office form (PTO/SB/133) provided for such a patent term adjustment statement using the appropriate document code (PTA.IDS). Otherwise, the paper or request for continued examination will be treated as not accompanied by a statement under paragraph (d)(1) of this section unless an application for patent term adjustment, in compliance with § 1.705(b), is filed, establishing that the paper or request for continued examination was accompanied by a statement in compliance with paragraph (d)(1) of this section. No changes to statements on this Office form may be made. The presentation to the Office (whether by signing, filing, submitting, or later advocating) of this form, whether by a practitioner or non-practitioner, constitutes a certification under § 11.18(b) of this chapter that the existing text and any certification statements on this form have not been altered.

* * * * *

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2023–12712 Filed 6–14–23; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2023–0195; FRL–10612–02–R10]

Air Plan Approval; Idaho; Inspection and Maintenance Program Removal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 30, 2023, the Environmental Protection Agency (EPA) proposed to approve revisions to the Idaho State Implementation Plan (SIP) submitted by the State of Idaho (Idaho or the State) on December 29, 2022. The SIP revision, applicable in the Boise-Northern Ada County Carbon Monoxide area (Northern Ada County CO area) in Idaho, removes the Inspection and Maintenance (I/M) program, which was previously approved into the SIP for use as a control measure in the State's plan to address motor vehicle emissions in the nonattainment area. The SIP revision included a demonstration that the requested revision would not interfere with attainment or maintenance of any national ambient air quality standard (NAAQS) or with any other applicable requirement of the Clean Air Act (CAA). The EPA is taking final action to approve Idaho's December 29, 2022, submission.

DATES: This action is effective on July 17, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2023–0195. 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.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER**

INFORMATION CONTACT section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Claudia Vaupel, EPA Region 10 at (206) 553–6121, or *vaupel.claudia@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, it means the EPA.

I. Background

On December 29, 2022, Idaho submitted a SIP revision to remove the Inspection and Maintenance (I/M) program in the Northern Ada County Carbon Monoxide (CO) area. The submission included a demonstration that the requested revision would not interfere with attainment or maintenance of any national ambient air quality standard (NAAQS) or with any other applicable requirement of the Clean Air Act (CAA). Idaho's submission also requested that the EPA remove the ordinances in Table 1 of this preamble from the Idaho SIP.

TABLE 1—LOCAL I/M ORDINANCES THAT IDAHO REQUESTS BE REMOVED FROM THE NORTHERN ADA COUNTY CO SIP

Local agency	Ordinance title	Local agency approval date
Air Quality Board	Motor Vehicle Emissions Control Ordinance	1/1/2010
Ada County	The 1999 Motor Vehicle Emissions Control Ordinance	6/15/1999
City of Boise	The 1999 Motor Vehicle Emissions Control Ordinance	7/20/1999
City of Eagle	The 1999 Motor Vehicle Emissions Control Ordinance	4/27/1999
City of Garden City	The 1991 Vehicle Emission Control Ordinance	8/13/1996
City of Meridian	The 1999 Motor Vehicle Emissions Control Ordinance	6/1/1999

The EPA proposed to approve Idaho's SIP revision on March 30, 2023 (88 FR 19030). Subsequently, on April 21, 2023, the EPA made a correction to the docket number in the proposed rule and extended the public comment period to May 22, 2023 (88 FR 24522). An explanation of the CAA requirements, a detailed analysis of the submission, and the EPA's reasons for approval were provided in the notice of proposed rulemaking. The EPA did not receive comments on the proposed rulemaking and is taking final action to approve Idaho's December 29, 2022, submission.

II. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. The EPA is removing the local ordinances identified in section I of this preamble from the Idaho State Implementation Plan, which is incorporated by reference under 1 CFR part 51.

III. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Idaho did not evaluate EJ considerations as part of its SIP submission; 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. 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.

This action is subject to the Congressional Review Act, 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).

Under section 307(b)(1) of the CAA, 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 action 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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 8, 2023.

Casey Sixkiller,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 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 N—Idaho

■ 2. In § 52.670:

■ a. The table in paragraph (c) is amended by removing entries ''Ada County Ordinance'', ''City of Boise Ordinance'', ''City of Eagle Ordinance'', ''City of Garden City Ordinance'' and ''City of Meridian Ordinance''; and

■ b. The table in paragraph (e) is amended by adding an entry for ''Northern Ada County Carbon Monoxide Limited Maintenance Plan Revision'' at the end of the table.

The addition reads as follows:

§ 52.670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Northern Ada County Carbon Monoxide Limited Maintenance Plan Revision.	Northern Ada County ..	12/29/2022	6/15/2023, [INSERT **Federal Register** CITATION].	Removal of I/M program.

[FR Doc. 2023–12699 Filed 6–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0425; FRL–10618–02–R9]

Disapproval of Clean Air Plans; Sacramento Metro, California; Contingency Measures for 2008 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to disapprove under the Clean Air Act (CAA or ''Act''), state implementation plan (SIP) submissions from the State of California that address contingency measures requirements for the 2008 ozone national ambient air quality standards (NAAQS) in the Sacramento Metro, California ozone nonattainment area. The EPA is finalizing this disapproval because the SIP submissions do not provide for contingency measures that would be triggered if the area fails to attain the NAAQS or make reasonable further progress (RFP).

DATES: This rule is effective on July 17, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2020–0425. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability 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 Lawrence, EPA Region IX, (415) 972–3407, *lawrence.laura@epa.gov.*

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

Table of Contents

I. Summary of Proposed Action

A. Regulatory Background

On March 28, 2023, the EPA proposed to disapprove under the CAA, SIP submissions from the State of California that address the contingency measures requirements for the 2008 ozone NAAQS for the Sacramento Metro, California ozone nonattainment area.[1] This proposed disapproval addressed the contingency measures portions of the following two SIP submissions: the ''Sacramento Regional 2008 NAAQS 8-hour Ozone Attainment and Reasonable

[1] 88 FR 18286.

Further Progress Plan,'' submitted in 2017 (''2017 Sacramento Regional Ozone Plan''), and the Sacramento Metro portion of the ''2018 Updates to the California State Implementation Plan,'' submitted in 2018 (''2018 SIP Update''). In this same rulemaking, we also proposed to make a protective finding for the Sacramento Metro area under the transportation conformity rule.[2] The Sacramento Metro ozone nonattainment area consists of Sacramento and Yolo counties, and portions of El Dorado, Placer, Solano, and Sutter counties, and is regulated by the California Air Resources Board (CARB or ''State'') and five local air districts (''Districts'').[3] The area has a classification of ''Severe-15'' for the 2008 ozone NAAQS, with an attainment date of December 31, 2024. Accordingly, the area is subject to the requirements for Severe ozone nonattainment areas, including the requirement to submit contingency measures consistent with CAA 172(c)(9) and 182(c)(9), as discussed further in Section I.C of this document.

Our proposed action includes additional information about ozone and its precursor emissions, the Sacramento Metro nonattainment area, and the CAA regulatory framework for ozone nonattainment areas, including submittal requirements established in the EPA's SIP Requirements Rule for the 2008 ozone NAAQS.[4]

B. State Submissions and Previous EPA Actions

CARB submitted the 2017 Sacramento Regional Ozone Plan to the EPA as a revision to the California SIP on December 18, 2017,[5] and submitted the 2018 SIP Update to the EPA as a revision to the California SIP on December 11, 2018.[6] The 2018 SIP Update provides updates to prior SIP submittals for eight California nonattainment areas, including the Sacramento Metro area, in response to the decision by the U.S. Court of Appeals for the Ninth Circuit (''Ninth Circuit'') in *Bahr* v. *EPA*.[7] Both submittals address nonattainment area requirements for the Sacramento Metro area concerning the 2008 ozone NAAQS, including the contingency measures requirements.[8] In 2020, CARB [9] and the Districts [10] committed to supplement the contingency measures elements in the 2017 Sacramento Regional Ozone Plan and the 2018 SIP Update by adopting and submitting, within 12 months of a final conditional approval of the contingency measures element, additional contingency measures that would be triggered upon the area's failure to attain or to meet RFP.

The EPA previously approved the 2017 Sacramento Regional Ozone Plan and the 2018 SIP Update as meeting the emissions inventory, attainment demonstration, reasonable further progress, reasonable available control measures, and motor vehicle emissions budgets requirements for the 2008 ozone NAAQS for the Sacramento Metro nonattainment area.[11]

Regarding the contingency measures requirements, on October 29, 2020, we proposed to conditionally approve the contingency measures element of the 2017 Sacramento Regional Ozone Plan and the 2018 SIP Update, based on the commitments by the Districts and CARB to submit the new and amended District rules to the EPA within 12 months of a final conditional approval of the contingency measures element for the Sacramento Metro area.[12] On August 26, 2021, the Ninth Circuit issued a decision in *Association of Irritated Residents* v. *U.S. Environmental Protection Agency* [13] (''*AIR* v. *EPA*'') which remanded the EPA's conditional approval of contingency measures for the San Joaquin Valley nonattainment area, another nonattainment area in California. Our proposed conditional approval of the contingency measures requirements for the Sacramento Metro area had relied on a similar approach as the one remanded by the court in *AIR* v. *EPA.* Based on the Ninth Circuit's decision in *AIR* v. *EPA,* we did not finalize our proposed conditional approval of the contingency measures element for the Sacramento Metro area.[14] Our March 28, 2023 proposed disapproval action [15] replaced our October 29, 2020 proposed conditional approval of the contingency measures element.

Our proposed disapproval action includes more information about CARB's submittals for the 2008 ozone NAAQS and the EPA's previous actions on these submittals.[16]

C. Contingency Measures Requirements

Ozone nonattainment areas classified under subpart 2 of the CAA as ''Serious'' or above must include in their SIPs contingency measures consistent with CAA sections 172(c)(9) and 182(c)(9). Contingency measures are additional controls or measures to be implemented in the event that an area fails to make RFP or to attain the NAAQS by the attainment date. CAA section 172(c)(9) requires states with nonattainment areas to provide for the implementation of specific measures to be undertaken if the area fails to make RFP or to attain the NAAQS by the applicable attainment date. Such measures must be included in the SIP as contingency measures to take effect in any such case without further action by the state or the EPA. Similarly, CAA section 182(c)(9) requires states with an ozone nonattainment area classified as Serious or above to provide contingency measures in the event that the area fails to meet any applicable RFP milestone.

Contingency measures must be designed so as to be implemented prospectively; control measures that have already been implemented may not serve as contingency measures even if they provide emissions reductions

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[2] Id. at 18289. For an explanation of the consequences of a protective finding under the transportation conformity rule, see footnote 19 in Section III of this document.

[3] The five local air districts with jurisdiction in the area are the El Dorado County Air Quality Management District (EDCAQMD), the Feather River Air Quality Management District (FRAQMD), the Placer County Air Pollution Control District (PCAPCD), the Sacramento Metropolitan Air Quality Management District (SMAQMD), and the Yolo-Solano Air Quality Management District (YSAQMD).

[4] 88 FR 18286, 18287–18289.

[5] Letter dated December 18, 2017, from Richard Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region IX.

[6] Letter dated December 5, 2018, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX (submitted electronically December 11, 2018).

[7] *Bahr* v. *EPA,* 836 F.3d 1218 (9th Cir. 2016). In this case, the court rejected the EPA's longstanding interpretation of CAA section 172(c)(9) as allowing for early implementation of contingency measures. The court concluded that a contingency measure must take effect at the time the area fails to make RFP or attain by the applicable attainment date, not before. See also *Sierra Club* v. *EPA,* 985 F.3d 1055 (D.C. Cir. 2021), reaching a similar decision.

[8] For a more complete description of the 2017 Sacramento Regional Ozone Plan and 2018 SIP Update as they relate to the Sacramento Metro nonattainment area for the 2008 ozone NAAQS, see 85 FR 68509, 68512 (October 29, 2020).

[9] Letter dated July 7, 2020, from Richard W. Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX.

[10] Letter dated May 26, 2020, from Alberto Ayala, Ph.D., M.S.E, Executive Officer/Air Pollution Control Officer, SMAQMD, Dave Johnston, Air Pollution Control Officer, EDCAQMD, Christopher Brown, AICP, Air Pollution Control Officer, FRAQMD, Erik White, Air Pollution Control Officer, PCAPCD, and Mat Erhardt, P.E., Executive Director/Air Pollution Control Officer, YSAQMD, to Richard Corey, Executive Officer, CARB, Subject: ''Commitments from the Sacremento Regional 2008 NAAOS 8-Hour Zone Attainment and Reasonable Further Progress Plan.''

[11] 86 FR 58581 (October 22, 2021).

[12] 85 FR 68509.

[13] 10 F.4th 937 (9th Cir. 2021).

[14] 86 FR 58581, 58590 (responding to comments on proposed approval of contingency measures element submitted by Air Law for All, Ltd. on behalf of the Center for Biological Diversity and Center for Environmental Health).

[15] 88 FR 18266.

[16] Id. at 18288.

beyond those needed for any other CAA purpose.[17] The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measure or measures will be implemented without significant further action by the state or the EPA.[18]

As noted in Section I.B of this document and in our proposed action, the EPA previously proposed a conditional approval of the contingency measures requirements for the Sacramento Metro area, based upon commitments by the Districts and CARB to adopt and submit additional contingency measure provisions in District rules within 12 months of the final conditional approval. Because the EPA did not finalize the conditional approval, the Districts and CARB did not submit the additional contingency measure provisions. Thus, the relevant submittals before us are limited to the portions of the 2017 Sacramento Regional Ozone Plan and 2018 SIP Update that address the contingency measures requirements for the Sacramento Metro area.

These submittals provide only an analysis of surplus emissions, and do not include specific measures to be triggered upon a failure to attain or to meet an RFP milestone. As described in detail in our proposed action, this approach is inconsistent with CAA sections 172(c)(9) and 182(c)(9), in light of the Ninth Circuit's decisions in *Bahr* v. *EPA* and *AIR* v. *EPA.* For this reason, we are taking final action to disapprove these portions of the 2017 Sacramento Regional Ozone Plan and 2018 SIP Update as contingency measures for the Sacramento Metro area for the 2008 ozone NAAQS.

II. Public Comments

Our proposed action provided for a 30-day comment period, during which we received no comments.

III. Final Action and Clean Air Act Consequences

For the reasons summarized herein and presented in more detail in the proposed action, we are taking final action to disapprove the 2017 Sacramento Regional Ozone Plan and 2018 SIP Update with respect to CAA contingency measures requirements under CAA sections 172(c)(9) and 182(c)(9) for the Sacramento Metro area for the 2008 ozone NAAQS. We are also making a protective finding under the transportation conformity rule because, notwithstanding the disapproval of the contingency measures element, the 2017 Sacramento Regional Ozone Plan, as modified by the 2018 SIP Update, reflects adopted control measures and contains enforceable commitments that fully satisfy the emissions reductions requirements for RFP and attainment for the 2008 ozone NAAQS.[19]

As a consequence of this final disapproval of the contingency measures element, the EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months of the effective date of this action. In addition, under 40 CFR 52.35, the offset sanction in CAA section 179(b)(2) will be imposed 18 months after the effective date of this action, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadline.

IV. 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 SIP disapproval does not in-and-of itself create any new information collection burdens, but simply disapproves certain state requirements for inclusion in the SIP.

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. This SIP disapproval does not in-and-of itself create any new requirements but simply disapproves certain state requirements for inclusion in the SIP.

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 disapproves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, 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 revision that the EPA is disapproving would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, 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

[17] See *Bahr* v. *EPA,* 836 F.3d at 1235–1237 (9th Cir. 2016).

[18] For more information about the contingency measures requirements, see the 1997 Ozone Phase 2 Implementation Rule at 70 FR 71612 (November 29, 2005) and the 2008 Ozone SRR at 80 FR 12264, 12285.

[19] 40 CFR 93.120(a)(3). Without a protective finding, this disapproval action would result in a conformity freeze, under which only projects in the first four years of the most recent conforming Regional Transportation Plan (RTP) and Transportation Improvement Programs (TIP) can proceed. Generally, during a freeze, no new RTPs, TIPs, or RTP/TIP amendments can be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, the EPA finds the motor vehicle emissions budget(s) in the plan revision adequate pursuant to 40 CFR 93.118 or approves the submission, and conformity to the implementation plan revision is determined. Under a protective finding, disapproval of the contingency measures element will not result in a transportation conformity freeze in the Sacramento Metro ozone nonattainment area and the local metropolitan planning organizations may continue to make transportation conformity determinations.

the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this SIP disapproval does not in-and-of itself create any new regulations, but simply disapproves certain state requirements for inclusion in the SIP.

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. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

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 disapproves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

Neither CARB nor the Districts evaluated environmental justice considerations as part of their SIP submittals; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an environmental justice analysis and did not consider environmental justice in this action. Consideration of environmental justice is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

K. 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).

L. 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

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

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

Dated: June 7, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

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 F—California

■ 2. Section 52.237 is amended by adding paragraph (a)(14) to read as follows:

§ 52.237 Part D disapproval.

(a) * * *

(14) The contingency measures element of the ''Sacramento Regional 2008 NAAQS 8-hour Ozone Attainment and Reasonable Further Progress Plan,'' adopted November 16, 2017, as modified by the ''2018 Updates to the California State Implementation Plan,'' adopted October 25, 2018, for the Sacramento Metro area with respect to the 2008 ozone NAAQS.

* * * * *

[FR Doc. 2023–12634 Filed 6–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0092; FRL–10674–02–R9]

Air Plan Revisions; California; Eastern Kern Air Pollution Control District; Oxides of Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of a revision to the Eastern Kern Air Pollution Control District (EKAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_X) from stationary gas turbines. Under the authority of the Clean Air Act (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources and identifies deficiencies with the rule that must be corrected for the EPA to grant full approval of the rule.

DATES: This rule is effective July 17, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R09–OAR–2023–0092. All documents in the docket are listed on the *https://www.regulations.gov*

website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability 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: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3245 or by email at *evanshopper.lakenya@epa.gov.*

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

Table of Contents

I. Proposed Action

On March 29, 2023 (88 FR 18496), the EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
EKAPCD	425	Stationary Gas Turbines (Oxides of Nitrogen)	01/11/18	05/23/18

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. These provisions include the following:

1. Relaxation of NO_X limits for the Westinghouse W251B10 turbine in section (V)(B) has not been sufficiently justified as meeting the Reasonably Available Control Technology (RACT) requirement and was not accompanied by sufficient explanation as to why the change does not interfere with attainment of the National Ambient Air Quality Standards (NAAQS) or reasonable further progress.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received one comment from a member of the public. The full text of this comment is available in the docket for this rulemaking. The comment does not indicate disagreement with the EPA's proposal, and instead raises two questions: how do changes to emissions of stationary gas turbines affect the output of the turbines, and what are the costs and benefits of the proposed rule change? The EPA notes that information surrounding the impact of the proposed changes to the rule, including information about economic costs and benefits and air quality impacts, are included in the District's staff report accompanying the Rule's submission, and included in the docket for this rulemaking. The EPA notes in particular, the District's analysis of energy impacts in part IX.D. of the Staff Report.[1] The District reports that ''[t]he use of NO_X reduction technologies would generally have some level of fuel energy penalty or may require small amounts of energy for their operation.'' [2] The Staff Report provides a number of examples, and notes in particular that for selective catalytic reduction (SCR), ''[t]he use of SCR results in a 0.7 percent fuel penalty.'' With respect to costs and benefits, it is expected that there are a range of costs and benefits associated with units of different sizes and layouts. The District did not provide detailed calculations of cost-effectiveness for different units, but did provide some discussion of the costs and benefits of the rule in sections VI—Cost Effectiveness and IX—Impacts. The District also noted that pursuant to state law, districts with a population under 500,000, such as Eastern Kern County, are exempt from the requirement to assess socioeconomic impacts of proposed rules.[3]

The comment does not raise concerns about the EPA's proposed rulemaking and does not suggest that the EPA should not finalize its action as proposed. The comment also does not indicate that the submission fails to comply with any relevant requirement of the Clean Air Act. After reviewing this comment, the EPA has determined that the comment is not adverse to our proposed finding that EKAPCD Rule 425 satisfies the requirements of CAA sections 110 and part D, which focuses the rule evaluation on enforceability, stringency, and interference with CAA requirements, and does not change our evaluation of the submitted rule.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3) and 301(a), the EPA is simultaneously finalizing a limited disapproval of the rule.

As a result, the EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months.

In addition, the offset sanction in CAA section 179(b)(2) will be imposed 18 months after the effective date this action, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadline.

Note that the submitted rule has been adopted by the EKAPCD, and the EPA's final limited disapproval does not prevent the local agency from enforcing it. The limited disapproval also does 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.*

[1] Rule 425—Stationary Gas Turbines (Oxides of Nitrogen): Final Staff Report, January 11, 2018. (Staff Report).

[2] Id. at 14.

[3] Id. at 3.

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 finalizing the incorporation by reference of EKAPCD Rule 425, Stationary Gas Turbines (Oxides of Nitrogen), amended January 11, 2018, which regulates NO_X and CO for stationary gas turbine engines with ratings equal to or greater than 0.88 MW. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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 is finalizing a limited approval and limited disapproval of state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

The State 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 E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

K. 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).

L. 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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: June 7, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(B)(*5*) and (c)(518)(i)(F) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(194) * * *

(i) * * *

(B) * * *

(*5*) Previously approved on March 1, 1996, in paragraph (c)(194)(1)(B)(*2*) of this section and now deleted with replacement in (c)(518)(i)(F)(*1*): Rule 425, adopted on August 16, 1993.

* * * * *

(518) * * *

(i) * * *

(F) Eastern Kern Air Pollution Control District.

(*1*) Rule 425, ''Stationary Gas Turbines (Oxides of Nitrogen),'' amended on January 11, 2018.

(*2*) [Reserved]

* * * * *

[FR Doc. 2023–12635 Filed 6–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0493; FRL–10992–01–OCSPP]

Mefenoxam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of mefenoxam in or on multiple commodities identified and discussed in this document. Syngenta Crop Protection, LLC. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 15, 2023. Objections and requests for hearings must be received on or before August 14, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0493, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The 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 and the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the **Federal Register** Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0493 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 14, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0493, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 30, 2022 (87 FR 52868) (FRL–9410–04), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petitions (PP 1F8970 and 1F8971) by Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide, mefenoxam, (methyl *N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl)-*D*-alaninate), in or on leafy greens subgroup 4–16A (except spinach) at 5 parts per million (ppm); *Brassica* leafy greens subgroup 4–16B at 5 ppm; *Brassica* head and stem vegetable crop group 5–16 at 2 ppm; stalk and stem vegetable subgroup 22A (except celtuce, florence fennel and kohlrabi) at 7 ppm; celtuce at 5 ppm; florence fennel at 5 ppm; kohlrabi at 2 ppm; leaf petiole vegetable subgroup 22B at 5 ppm; fruiting vegetables subgroup 8–10 at 1 ppm; succulent shelled pea and bean crop subgroup 6B at 0.2 ppm; cottonseed crop subgroup 20C at 0.1 ppm; and sugarcane at 0.1 ppm (PP 1F8971). That document referenced a summary of the petition prepared by Syngenta Crop Protection, LLC., the registrant, which is available in the docket, *http://www.regulations.gov.* Two comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is establishing the tolerances at different levels than requested. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified therein, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for mefenoxam including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with mefenoxam follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections of the rule that repeat what has been previously published in tolerance rulemakings for the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings, and EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published a number of tolerance rulemakings for mefenoxam in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to mefenoxam and established tolerances for residues of that chemical. EPA is incorporating previously published sections from those rulemakings as described further in this rule, as they remain unchanged.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Mefenoxam (metalaxyl-m) is a systemic phenylamide fungicide which inhibits protein synthesis in fungi. Mefenoxam is an R-isomer enriched formulation. Metalaxyl is the racemic R/S isomer formulation. The Agency compared the available chemistry and toxicity data for mefenoxam and metalaxyl and concluded that metalaxyl data may be used in support of mefenoxam regulatory actions because the two chemicals have similar toxicity.

Specific information on the studies received and the nature of the adverse effects caused by mefenoxam as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in Unit III.A. of the final rule published in the **Federal Register** of December 21, 2018 (83 FR 65541) (FRL–9985–52).

B. Toxicological Points of Departure/Levels of Concern

A summary of the toxicological endpoints for mefenoxam used for human health risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of December 21, 2018 (83 FR 65541) (FRL–9985–52).

C. Exposure Assessment

Much of the exposure assessment remains the same although updates have occurred to accommodate exposures from petitioned-for tolerances. These updates are discussed in this section; for a description of the rest of the EPA approach to and assumptions for the exposure assessment, please reference Unit III.C of the December 2018 rulemaking.

1. *Dietary exposure from food and feed uses.* EPA's dietary exposure assessments have been updated to include the additional exposure from the petitioned-for tolerances of mefenoxam on the crops requested in this action. In evaluating dietary exposure to mefenoxam, EPA considered exposure under the petitioned-for tolerances as well as all existing mefenoxam and metalaxyl tolerances in 40 CFR 180.546 and 40 CFR 180.408, respectively.

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The acute dietary assessment is based on tolerance levels adjusted to account for all of the residues of concern and assumes 100 percent crop

treated (PCT). The assessment was conducted using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 4.02. EPA with 2005–2010 food consumption information from the United States Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). Empirical processing factors were included where available. Otherwise, DEEM–FCID default processing factors were used.

ii. *Chronic exposure.* There is no increase in toxicity from the acute duration studies. Toxicity did not increase with an increase in exposure duration. Therefore, a chronic dietary POD was not selected. The acute endpoint and dietary exposure assessment are protective of potential effects from chronic duration dietary exposures.

iii. *Cancer.* EPA has concluded that mefenoxam does not pose a cancer risk to humans based on no evidence of carcinogenicity observed in the relevant studies. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

2. *Dietary exposure from drinking water.* Exposure modeling for mefenoxam is not necessary because exposure estimates for metalaxyl are expected to exceed those for mefenoxam and are therefore protective. Maximum annual application rates for metalaxyl, up to 12.3 lb ai/A, were modeled. These rates are approximately twice those of mefenoxam. The maximum estimated drinking water concentrations (EDWCs) based on metalaxyl are 350 µg/L for acute exposure (which is based on surface water sources) and 135 µg/L for chronic exposure (which is based on groundwater sources).

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). There are no uses for mefenoxam being proposed as part of this action or that have been added since the most recent risk assessment that would impact the residential (non-occupational) or residential post-application exposure and risk estimates found in the most recent risk assessment of mefenoxam; therefore, EPA relied on the previously assessed residential exposure for assessing aggregate risk.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to mefenoxam and metalaxyl with any other substances and mefenoxam and metalaxyl do not appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that mefenoxam and metalaxyl have a common mechanism of toxicity with other substances.

D. Safety Factor for Infants and Children

EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor to 1X. See Unit III.D. of the December 2018 rulemaking for a discussion of the Agency's rationale for that determination.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing dietary exposure estimates to the aPAD and chronic population-adjusted dose (cPAD). Short-, intermediate-, and chronic-term aggregate risks are evaluated by comparing the estimated total aggregate food, water, and residential exposure to the appropriate points of departure (PODs) to ensure that an adequate margin of exposure (MOE) exists.

1. *Acute risk.* The acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water is 27% of the acute population-adjusted dose (aPAD) for the general U.S. population, and 56% of the aPAD for the highest exposed population group, children 1–2 years old. Because these levels are below the Agency's level of concern (LOC) of 100% of the aPAD, the Agency concludes that aggregate exposure to mefenoxam will not pose an acute risk.

2. *Chronic risk.* No hazard endpoint was selected for chronic dietary exposure for mefenoxam; therefore, a chronic aggregate assessment was not warranted. However, chronic dietary exposure was estimated for inclusion in the aggregate analysis.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Mefenoxam is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to mefenoxam.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 270 for children 1–2, the most highly exposed group. Because EPA's level of concern for mefenoxam is 100, which means any MOE below 100 may indicate risks of concern, this MOE is not of concern.

4. *Intermediate-term risk.* There are no intermediate-term residential exposures for mefenoxam, and therefore an intermediate-term aggregate exposure assessment was not warranted.

5. *Aggregate cancer risk for U.S. population.* Mefenoxam is classified as ''not likely to be carcinogenic to humans'', therefore, EPA concludes that exposure to mefenoxam will not pose an aggregate cancer risk.

6. *Determination of safety.* Therefore, based on the risk assessments and information described above, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to mefenoxam residues. More detailed information on this action can be found in the document titled ''Metalaxyl, Mefenoxam (Metalaxyl-M). Human Health Risk Assessment for the Petition for Amendment of Tolerances for Residues in/on Leafy Greens Subgroup, 4–16A (Except Spinach), and *Brassica* Leafy Greens Subgroup 4–16B; *Brassica* Head and Stem Vegetable Crop Group 5–16; Expansions of Crop Tolerances to Stalk and Stem Vegetable Subgroup 22A and Leaf Petiole Vegetable Subgroup 22B; Fruiting Vegetables Crop Group 8–10; Succulent Shelled Pea & Bean Subgroup 6B; and Cottonseed Crop Subgroup 20C. Establishment of an Inadvertent Tolerance for Residues in/on Sugarcane.'' in docket ID number EPA–HQ–OPP–2022–0493.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available enforcement analytical methods, see Unit IV.A. of the December 21, 2018, rulemaking.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

While Codex has not established MRLs for mefenoxam, it has established tolerances for residues of metalaxyl. Since compliance with U.S. tolerances for mefenoxam is determined by measuring metalaxyl residues, EPA is evaluating harmonization of the mefenoxam tolerances by comparing to the metalaxyl MRLs. Codex has not established MRLs for metalaxyl for leafy greens, subgroup 4–16A; *Brassica* leafy greens, subgroup 4–16B; stalk and stem vegetable, subgroup 22A; leaf petiole vegetable, subgroup 22B; fruiting vegetables, group 8–10; succulent shelled pea and bean, subgroup 6B and sugarcane; thus, harmonization with Codex is not an issue for these commodities and groups/subgroups.

Codex has established MRLs for metalaxyl on several members of the *Brassica* head & stem vegetable, group 5–16: 2 ppm for Chinese cabbage and cauliflower (members of *Brassica* (cole) leafy vegetables group 5–16) and 0.5 ppm for residues in/on broccoli, cabbage, and Brussels sprouts (members of *Brassica* (cole) leafy vegetables group 5–16). EPA's tolerance for group 5–16 is harmonized with the higher Codex MRL for commodities in this group. Codex has an MRL for residues in/on cottonseed at 0.05 ppm while the U.S. tolerance is set at 0.1 ppm. EPA is not harmonizing since the lower tolerance level may result in residues exceeding the tolerance from application consistent with approved labeling; however, this does not create a barrier to import as the US tolerance is inclusive of the Codex MRL.

C. Response to Comments

Two comments were received in response to the notice of filing. One comment was received from an anonymous commenter applauding the government's process to petition for new uses. The second comment argued against the use of mefenoxam on greens and expressed concern about the overall toxicity of pesticides. The commenter has provided no information that would support a determination that these tolerances are unsafe. Although the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops, the existing legal framework provided by FFDCA section 408 authorizes EPA to establish tolerances when it determines that the tolerance is safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that these mefenoxam tolerances are safe. The commenter has provided no information supporting a contrary conclusion.

D. Revisions to Petitioned-For Tolerances

EPA is establishing the tolerance on Leafy vegetable, Crop Group 4–16 (except spinach) at 5 ppm rather than the petitioned-for Leafy Greens Subgroup 4–16A (except spinach) and Brassica Leafy Greens Subgroup 4–16B. The entire crop group 4–16 is inclusive of both subgroups. Additionally, the Agency is not establishing separate tolerances for Celtuce, Florence fennel and Kohlrabi and excepting them from Stalk and Stem Vegetable Subgroup 22A. The proposed tolerance of 7 ppm for Stalk and Stem Vegetable Subgroup 22A is greater than the proposed tolerances of 5, 5, and 2 ppm, for celtuce, Florence fennel, and kohlrabi respectively, and is therefore inclusive of these tolerances. Lastly, because the final Phase VI crop group rule has been published, the commodity definition for Succulent Shelled Pea and Bean Crop Subgroup 6B has been revised to be Vegetable, legume, bean, succulent shelled, subgroup 6–22C and Vegetable, legume, pea, succulent shelled, subgroup 6–22D. The Phase VI crop group rule was published on September 21, 2022, and was effective on November 21, 2022 (87 FR 57627) (FRL–5031–13–OCSPP).

V. Conclusion

Therefore, tolerances are established for residues of mefenoxam, [methyl *N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl)-D-alaninate], in or on Cottonseed, subgroup 20C at 0.1 ppm; Leaf petiole, subgroup 22B at 5 ppm; Leafy Vegetable, Crop Group 4–16 (except spinach) at 5 ppm; Sugarcane at 0.1 ppm; Vegetable, *Brassica,* head and stem, group 5–16 at 2 ppm; Vegetable, fruiting, group 8–10 at 1 ppm; Vegetable, legume, bean, succulent shelled, subgroup 6–22C at 0.2 ppm; Vegetable, legume, pea, succulent shelled, subgroup 6–22D at 0.2 ppm; Vegetable, stalk and stem, subgroup 22A at 7 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency

has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 25, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.546:

■ a. In paragraph (a) amend table 1 by adding entries for the commodities ''Cottonseed, subgroup 20C'', ''Leaf petiole, subgroup 22B'', ''Leafy Vegetable, Crop Group 4–16 (except spinach)'', ''Vegetable, *Brassica,* head and stem, group 5–16'', ''Vegetable, fruiting, group 8–10'', ''Vegetable, legume, bean, succulent shelled, subgroup 6–22C'', ''Vegetable, legume, pea, succulent shelled, subgroup 6–22D'', ''Vegetable, stalk and stem, subgroup 22A'', in alphabetical order; and

■ b. Revise paragraph (d).

The additions and revision read as follows:

§ 180.546 Mefenoxam; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Cottonseed, subgroup 20C	0.1
* * * * *	
Leaf petiole, subgroup 22B	5
Leafy Vegetable, Crop Group 4–16 (except spinach)	5
* * * * *	
Vegetable, *Brassica,* head and stem, group 5–16	2
Vegetable, fruiting, group 8–10	1
Vegetable, legume, bean, succulent shelled, subgroup 6–22C	0.2
Vegetable, legume, pea, succulent shelled, subgroup 6–22D	0.2
Vegetable, stalk and stem, subgroup 22A	7

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for indirect or inadvertent residues of mefenoxam in or on the food commodities when present therein as a result of the application of mefenoxam to growing crops listed in paragraph (a) of this section and other non-food crops to read as follows:

TABLE 2 TO PARAGRAPH (d)

Commodity	Parts per million
Sugarcane	0.1

[FR Doc. 2023–12544 Filed 6–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

Tolerances and Exemptions for Pesticide Chemical Residues in Food

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In Title 40 of the Code of Federal Regulations, Parts 150 to 189, revised as of July 1, 2022, in section 180.415, in the table to paragraph (a), revise the entry for ''Pepper/eggplant, subgroup 8–10'' to add a footnote to read as follows:

§ 180.415 Aluminum tris (*O*-ethylphosphonate); tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Pepper/eggplant, subgroup 8–10B[1]	0.01
* * * * *	

[1] There are no US registrations as of December 23, 2014.

* * * * *

[FR Doc. 2023–12936 Filed 6–14–23; 8:45 am]

BILLING CODE 0099–10–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 726, 729, 731, and 752

RIN 0412–AB04

Acquisition Regulation: Foreign Tax Reporting, Conference Planning, and Trade and Investment Activities

AGENCY: U.S. Agency for International Development.

ACTION: Final rule.

SUMMARY: The United States Agency for International Development (USAID) is amending its Acquisition Regulation (AIDAR) regarding contractor requirements on foreign tax reporting, conference planning, and trade and investment activities. These revisions are intended to bring the AIDAR into compliance with revised Agency policies and procedures and statutory requirements.

DATES: Effective July 17, 2023.

FOR FURTHER INFORMATION CONTACT: Kelly Miskowski, USAID M/OAA/P, at 202–916–2752 or *policymailbox@usaid.gov* for clarification of content or information pertaining to status or publication schedules. All inquiries regarding this rule must cite RIN No. 0412–AB04.

SUPPLEMENTARY INFORMATION:

A. Background

USAID published a proposed rule in the **Federal Register** at 87 FR 22843 on April 18, 2022, to amend the AIDAR regarding contractor requirements on foreign tax reporting, conference planning, and trade and investment activities as outlined in 48 CFR parts 726, 729, 731, and 752.

B. Discussion and Analysis

Two respondents submitted public comments in response to the proposed rule. A discussion of the comments is provided as follows:

1. Summary of Changes

USAID reviewed the public comments in the development of the final rule; however, no changes were made as a result of the public comments received. Some administrative changes were made to revise the title of subpart 726.71 and to correct the title of § 752.226–70 to read: Trade and Investment Activities and the ''Impact on U.S. Jobs'' and ''Workers' Rights'' and to revise capitalization throughout.

2. Analysis of Public Comments

Below are the Agency's responses to comments on the proposed rule.

(i) Foreign Tax Reporting

A. Comment: One commenter (#1) indicated that some countries require that contractors withhold income tax from vendors in a manner similar to employee income tax withholding. They requested that USAID confirm that this type of withholding is exempt from the foreign tax reporting requirements in section 752.229–71.

Response: USAID cannot confirm on a blanket basis whether the vendor taxes described would be exempt as this is a fact-specific inquiry. The determination needs to be made at the country level by the Department of State based on the specific tax code. We recommend reaching out to your Contracting Officer for country-specific guidance.

B. Comment: Commenter #1 also expressed a concern that there is confusion as to when the cost of VAT or customs taxes may be allowable. They requested that the regulation be revised to be more similar to USAID's Mandatory Standard Provision for Federal assistance awards to include language that indicates that host government taxes (such as VAT) are not allowable where the Contracting Officer provides the necessary means to the contractor to obtain an exemption or refund of the taxes, and the contractor fails to take reasonable steps to obtain this exemption.

Response: The issue of foreign tax allowability is outside the scope of this rule. This rulemaking pertains to foreign tax reporting. Some foreign tax payments may need to be reported, even if allowable. Questions about allowability should be coordinated with your relevant Contracting Officer as this is a fact-specific inquiry and depends on the country of taxation. For further information, please see USAID's Procurement Executive Bulletin (*PEB) 2017–02,* ''Exemptions and Allowability of Host Government Taxes''.

C. Comment: A commenter (#2) requested information on how USAID/Washington will communicate to Mission Directors to renegotiate and revise procedures for exemption of reimbursement of taxes.

Response: Internal agency communications are outside of the scope of this rulemaking. However, USAID will communicate the contents of this rule through existing communications channels with missions.

D. Comment: Commenter #2 also recommended revised language in 752.229–71 to indicate ''the mission controller'' rather than ''point of contact at the Embassy, Mission . . .'' to identify where the report must be submitted.

Response: USAID appreciates the recommendation but does not believe a change is necessary. The specifics on where the reporting must be submitted will be included in each solicitation and resulting award.

(ii) Conference Planning and Approvals

A. Comment: Commenter #2 requested that the text specify that USAID is required to report to Congress on conferences as a main reason for the requirement.

Response: USAID appreciates the recommendation but does not believe a change is necessary.

B. Comment: Commenter #2 also requested clarity on what costs are associated with ''costs to ensure the safety of attending government officials.''

Response: These terms and definitions come directly from OMB Memo M–12–12 (''Promoting Efficient Spending to Support Agency Operations''), as amended by OMB Memo M–17–08. OMB notes that ''Conference expenses include any associated authorized travel and per diem expenses, hire of rooms for official business, audiovisual use, light refreshments, registration fees, ground transportation, and other expenses as defined by the FTR. . .The FTR provides some examples of direct and indirect conference costs included within conference expenses. See 41 CFR 301–74.2. Conference expenses should be net of any fees or revenue received by the Agency through the conference and should not include costs to ensure the safety of attending governmental officials.'' (See OMB Memo M–17–08, footnote 2) USAID, in implementing these OMB memos, adopts these terms as defined in the OMB memos and Federal Travel Regulations and considers a wide array of scenarios for ''costs to ensure the safety of attending government officials''. Although not exhaustive, illustrative examples include: the additional costs related to selecting a safe location with historically low crime rates and a venue offering protective services such as security guards and restrictive access technology.

C. Comment: Commenter #2 requested amending the definition of USAID employee to include ''Foreign Service Limited''.

Response: USAID believes that the definition as drafted is inclusive of all USAID employees for purposes of conference planning policy—including staff hired under the Foreign Service Limited appointments.

D. Comment: Commenter #2 also indicated that the exceptions should be reviewed for compliance with any reporting under relevant appropriations.

Response: USAID acknowledges the comment and confirms that this clause has been reviewed internally to comply with relevant appropriations requirements.

E. Comment: Commenter #2 suggested deletion of paragraph (c)(4) of the clause 752.231–72 as these conferences are not funded by USAID.

Response: USAID appreciates the recommendation but does not believe a change is necessary. This section outlines a circumstance when USAID funding is not being used for the venue but is being used for costs associated with USAID employees and/or Personal Services Contractors attending or light refreshments. Although USAID is partially funding costs associated with the conference, prior approval is not required in this very specific situation to reduce burden on contractors.

F. Comment: Commenter #2 also requested clarity on whether the information outlined in (f)(1)–(6) is needed to request approval of a conference.

Response: The information required to request prior approval of a conference is outlined in section 752.231–72(f)(1) through (7). These items must be submitted.

(iii) Trade and Investment Activities

A. Comment: Commenter #2 requested definitions for the terms ''gray area'', ''prohibited activity'', and ''activity'' generally.

Response: The Agency makes a determination whether the clause applies or not during the planning phase, in accordance with Agency policy outlined in *Automated Directives System (ADS) Chapter 225* (used as a reference here). The term ''gray area'' is not included in the contract clause 752.226–70 and does not need to be defined. For informational purposes, contractors may review definitions and guidance of these terms as outlined in ADS 225. USAID is not establishing any new definition of ''activity.'' Rather, ''activity'' has the same meaning as used throughout the AIDAR. More specifically, an activity relates to any effort performed by the contractor within the scope of work.

B. Comment: Commenter #2 requested more clarity on the phrase ''authorized by USAID'' to ask who would be responsible for authorization. They referred specifically to AIDAR 752.226–70(a) which indicates that ''no funds . . . may be used'' unless ''specifically set forth in this contract or otherwise authorized by USAID in writing''.

Response: Contractors should communicate with their Contracting Officer who will issue an approval in accordance with Agency guidance.

C. Regulatory Considerations and Determinations

Executive Orders 12866, 13563, and 14094

Executive Order (E.O.) 12866, Regulatory Planning and Review, as amended and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' and E.O. 14094, ''Modernizing Regulatory Review,'' directs agencies to assess all 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined ''nonsignificant'' under E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

USAID does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

E. Paperwork Reduction Act

This rule contains information collection requirements that have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). This information collection requirement has been assigned OMB Control Number 0412–0619, entitled ''AIDAR: Foreign Tax Reporting, Conference Planning, and Trade and Investment Activities''.

List of Subjects in 48 CFR Chapter 7 Parts 726, 729, 731, and 752

Government procurement.

For the reasons discussed in the preamble, USAID amends 48 CFR Chapter 7 as set forth below:

■ 1. The authority citation for 48 CFR part 726 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

PART 726—OTHER SOCIOECONOMIC PROGRAMS

Subpart 726.71—Trade and Investment Activities and the ''Impact on U.S. Jobs'' and ''Workers' Rights''

■ 2. Revise the heading for subpart 726.71 to read as set forth above.

■ 3. Revise section 726.7101 to read as follows:

726.7101 Trade and Investment Activities and the ''Impact on U.S. Jobs'' and ''Workers' Rights.''

(a) *Policy.* USAID policy and required procedures in ADS Chapter 225 (Program Principles for Trade and Investment Activities and the ''Impact on U.S. Jobs'' and ''Workers' Rights'') implement statutory prohibitions on obligation and expenditure of appropriated funds. ADS Chapter 225 requires Agency operating units to analyze a project or activity to ensure compliance with U.S. foreign policy objectives as stated in Section 601 of the Foreign Assistance Act (FAA) of 1961, as amended; the U.S. Government's trade and development objectives set forth in trade legislation; and related policy documents. If the analysis concludes that the project or activity meets the criteria for what the ADS chapter describes as ''gray-area activities'' or if the contract statement of work has the potential to evolve into what the chapter defines as a prohibited activity, then the planner must include in the procurement request language appropriately tailored to the specific circumstances for the contract statement of work.

(b) *Special contract requirement.* The contracting officer must insert in Section H of the uniform contract format a clause substantially the same as the clause in 752.226–70 when informed by the requesting operating unit that the statement of work or statement of objectives includes gray-area activities or investment-related activities where specific activities are not identified at the time of obligation but could be for investment-related activities, as described in ADS Chapter 225.

§ 726.7102 [Removed]

■ 4. Remove § 726.7102.

PART 729—TAXES

■ 5. The authority citation for 48 CFR part 729 is revised to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

Subpart 729.4—Contract Clauses

■ 6. Revise § 729.402–70 to read as follows:

729.402–70 Foreign contracts.

(a) The annual Department of State, Foreign Operations, and Related Programs Appropriations Act (SFOAA) requires USAID to take certain steps to prevent countries from imposing taxes, including value added tax (VAT) and customs duties, on U.S. foreign assistance, or if imposed, requires the countries to reimburse the assessed taxes or duties. The SFOAA also requires certain reporting to Congress on host country taxation. Because countries imposing such taxes assess them directly on contractors, USAID requires contractors to report annually on whether taxes have been imposed and, if so, whether the foreign government reimbursed the taxes.

(b) The contracting officer must insert the clause at § 752.229–71, Reporting of Foreign Taxes, in solicitations and resulting contracts when:

(1) A contract is fully or partially funded with funds appropriated under titles III through VI of an SFOAA making appropriations for the Department of State, foreign operations, and related programs, and

(2) The contract is to be performed wholly or partly in a foreign country.

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 7. The authority citation for 48 CFR parts 731 and 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

Subpart 731.2—Contracts With Commercial Organizations

■ 8. Revise § 731.205–43 to read as follows:

731.205–43 Trade, business, technical and professional activity costs—USAID conference approval requirements.

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

Conference means a seminar, meeting, retreat, symposium, workshop, training activity or other such event that is funded in whole or in part by USAID.

Net conference expense means the total conference expenses excluding: any fees or revenue received by the Agency through the conference, costs to ensure the safety of attending governmental officials, and salary of USAID employees and USAID personal services contractors.

Personal Services Contractor (PSC) means any individual who is awarded a personal services contract in accordance with AIDAR appendix D or J of this chapter.

Temporary duty (TDY) travel means official travel at least fifty (50) miles from both the traveler's home and duty station for a period exceeding twelve (12) hours.

USAID employee means a USAID direct-hire employee or a direct-hire Federal employee from another U.S. government agency detailed to USAID.

(b) *Prior approval.* USAID policy requires contractors to obtain contracting officer approval of the following, unless an exception in paragraph (c) of the clause at 752.231–72 applies:

(1) A conference funded in whole, or in part, by USAID when ten (10) or more USAID employees or personal services contractors are required to travel on temporary duty status to attend the conference; or

(2) A conference funded in whole, or in part, by USAID when the net conference expense funded by USAID is expected to exceed $100,000, regardless of the number of USAID employees or USAID personal services contractors who will participate in the conference.

(c) *Allowability of cost.* Costs associated with a conference that meets the criteria above, incurred without USAID prior written approval, are unallowable.

(d) *Solicitation provision and contract clause.* Contracting officers must insert the clause at 752.231–72 in all USAID-funded solicitations and contracts anticipated to include a requirement for a USAID-funded conference.

Subpart 731.3—Contracts With Educational Institutions

■ 9. Add § 731.374 to read as follows:

731.374 Conference approval requirements.

USAID's policies regarding conference approval requirements are set forth in (48 CFR) AIDAR 731.205–43. These policies are also applicable to contracts with educational institutions.

Subpart 731.7—Contracts With Nonprofit Organizations

■ 10. Add § 731.775 to read as follows:

731.775 Conference approval requirements.

USAID's policies regarding conference approval requirements are set forth in (48 CFR) AIDAR 731.205–43. These policies are also applicable to contracts with nonprofit organizations.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.2—Text of Provisions and Clauses

■ 11. Add 752.226–70 to read as follows:

752.226–70 Trade and Investment Activities and the ''Impact on U.S. Jobs'' and ''Workers' Rights.''

As prescribed in 48 CFR 726.7101(b), insert a clause substantially as follows:

Trade and Investment Activities and the ''Impact on U.S. Jobs'' and ''Workers' Rights'' (Jul 2023)

(a) Except as specifically set forth in this contract or otherwise authorized by USAID in writing, no funds or other support provided under this contract may be used for any activity that: provides financial incentives and other assistance for U.S. companies to relocate operations abroad if it is likely to result in the loss of U.S. jobs; contributes to violations of internationally recognized workers' rights defined in 19 U.S.C. 2467(4); or provides financial incentives for entities located outside the United States to relocate or transfer jobs from the United States to other countries or provide financial incentives that would adversely affect the labor force in the United States.

(b) In the event the Contractor is requested to provide services in any of the above areas or requires clarification from USAID as to whether an activity would be consistent with the limitation set forth above, the Contractor must notify the Contracting Officer and provide a detailed description of the expected impact of the proposed activity. The Contractor must not proceed with the activity until advised by USAID in writing that it may do so.

(c) The Contractor must ensure that its employees and subcontractors providing trade and investment support services are made aware of the restrictions set forth in this clause and must include this clause in all subcontracts.

(End of clause)

■ 12. Revise 752.229–71 to read as follows:

752.229–71 Reporting of Foreign Taxes

As prescribed in (48 CFR) AIDAR 729.402–70(b), insert the following clause in applicable solicitations and resulting contracts. The contracting officer must insert the address and point of contact at the Embassy, Mission, or M/CFO/CMP as appropriate under paragraph (d) of this clause.

Reporting of Foreign Taxes (Jul 2023)

(a) *Definitions.* As used in this clause—

Foreign government includes any foreign governmental entity.

Foreign taxes include value-added taxes and customs duties but not individual income taxes assessed to local staff.

Local staff means Cooperating Country National employees.

(b) *Annual report.* (1) The Contractor must submit a report detailing foreign taxes assessed under this contract during the prior U.S. government fiscal year. The report must be submitted annually by April 16.

(2) A report is required even if the Contractor did not pay any foreign taxes during the reporting period. A cumulative report may be provided if the Contractor is performing more than one award in the foreign country.

(c) *Contents of report.* The report must contain:

(1) Contractor name.

(2) Contact name with phone number and email address.

(3) Contract number(s).

(4) Amount of foreign taxes assessed by each foreign government (listed separately) under this contract during the prior U.S. Government fiscal year.

(i) Taxes assessed on any individual transaction of less than $500 should not be reported.

(ii) The Contractor must report only foreign taxes assessed by a foreign government receiving U.S. assistance under this contract. The Contractor must not report on foreign taxes assessed by a third-party foreign government.

(5) Any reimbursements of foreign taxes received by the Contractor on the taxes reported in paragraph (c)(4) of this clause received through the date of the report.

(d) *Submission of report.* The Contractor must submit the report to: [*Contracting Officer must insert address and point of*

contact at the Embassy or Mission in the country in which the contract will be performed, or CFO/CMP for USAID/W-issued contracts, as appropriate], with a copy to the Contracting Officer's Representative.

(e) *Subcontracts.* The Contractor must include this reporting requirement in all subcontracts issued under this contract. The Contractor shall collect and incorporate into the Contractor's report all information received from subcontractors pursuant to this clause.

(End of clause)

■ 13. Revise 752.231–72 to read as follows:

752.231–72 Conference planning and required approval

As prescribed in (48 CFR) AIDAR 731.205–43(d), insert the following clause in section H of all USAID-funded solicitations and contracts anticipated to include a requirement for a USAID-funded conference.

Conference Planning and Required Approval (Jul 2023)

(a) *Definitions.* As used in this clause—

Conference means a seminar, meeting, retreat, symposium, workshop, training activity or other such event that is funded in whole or in part by USAID.

Net conference expense means the total conference expenses excluding: any fees or revenue received by the Agency through the conference, costs to ensure the safety of attending governmental officials, and salary of USAID employees and USAID personal services contractors.

Personal Services Contractor (PSC) means any individual who is awarded a personal services contract in accordance with AIDAR appendix D or J of this chapter.

Temporary duty (TDY) travel means official travel at least fifty (50) miles from both the traveler's home and duty station for a period exceeding twelve (12) hours.

USAID employee means a USAID direct-hire employee or a direct-hire Federal employee from another U.S. government agency detailed to USAID.

(b) *Prior approval.* Unless an exception in paragraph (c) applies, the Contractor must obtain prior written approval from the Contracting Officer at least 30 days prior to committing costs, for the following:

(1) A conference funded in whole or in part by USAID when ten (10) or more USAID employees or Personal Services Contractors are required to travel on temporary duty status to attend the conference; or

(2) A conference funded in whole or in part by USAID and attended by USAID employees or USAID Personal Services Contractors, when the net conference expense funded by USAID is expected to exceed $100,000, regardless of the number of USAID participants.

(c) *Exceptions.* Prior USAID approval is not required for the following:

(1) Co-creation conferences to facilitate the design of programs or procurements.

(2) Events funded and scheduled by the Center for Professional Development within the USAID Office of Human Capital and Talent Management.

(3) A single course presented by an instructor conducted at a U.S. Government training facility (including the Washington Learning Center or other USAID training facilities), a commercial training facility, or other venue if a U.S. Government training facility is not available.

(4) Conferences conducted at a U.S. Government facility or other venue not paid directly or indirectly by USAID, when travel of USAID employees or USAID Personal Services Contractors, light refreshments and, if applicable, costs associated with participation of the Contractor's staff are the only direct costs associated with the event.

(d) *Allowability of cost.* Costs associated with a conference that meet the criteria above, incurred without USAID prior written approval, are unallowable.

(e) *Post-award.* Conferences approved at the time of award will be incorporated into the contract. The Contractor must submit subsequent requests for approval of conferences on a case-by-case basis, or requests for multiple conferences may be submitted at one time.

(f) *Documentation.* Requests for approval of a conference that meets the criteria in paragraphs (b) of this clause must include:

(1) A brief summary of the proposed event;

(2) A justification for the conference and alternatives considered, *e.g.,* teleconferencing and video-conferencing;

(3) The estimated budget by line item (*e.g.,* travel and per diem, venue, facilitators, meals, equipment, printing, access fees, ground transportation);

(4) A list of USAID employees or PSCs attending and a justification for each, and the number of other USAID-funded participants (*e.g.,* Contractor personnel);

(5) A cost comparison for at least three potential venues (including a U.S. Government owned or leased facility) and a justification if the lowest cost facility is not selected;

(6) If meals will be provided to local USAID employees or PSCs (a local employee would not be in travel status), a statement on whether the meals are a necessary expense to support the conference objectives; and

(7) A statement signed by an employee of the Contractor with authority to bind the Contractor, confirming that strict fiscal responsibility has been exercised in making decisions regarding conference expenditures, the proposed costs are comprehensive and represent the greatest cost advantage to the U.S. Government, and that the proposed conference representation has been limited to the minimum number necessary to support the conference objectives.

(End of clause)

Mark Walther,

Chief Acquisition Officer.

[FR Doc. 2023–12569 Filed 6–14–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230608–0145]

RIN 0648–BM00

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 54

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Amendment 54 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Gulf) (Amendment 54), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule and Amendment 54 revise Gulf greater amberjack sector allocations and catch limits. The purposes of this final rule and Amendment 54 are to end overfishing of Gulf greater amberjack and to update catch limits to be consistent with the best scientific information available.

DATES: This final rule is effective July 17, 2023, except for the revisions for §§ 622.39(a)(1)(v) and 622.41(a)(1)(iii), which are effective on June 15, 2023.

ADDRESSES: Electronic copies of Amendment 54, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-54-modifications-greater-amberjack-catch-limits-sector-allocation-and-rebuilding.*

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, telephone: 727–824–5305, or email: *Kelli.ODonnell@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes greater amberjack, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On March 2, 2023, NMFS published a notice of availability for Amendment

54 and requested public comment (88 FR 13077). NMFS approved Amendment 54 on May 26, 2023. On March 10, 2023, NMFS published a proposed rule for Amendment 54 and requested public comment (88 FR 14964). The proposed rule and Amendment 54 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 54 and implemented by this final rule is described below.

All weights in this final rule are in round weight unless otherwise noted.

Background

Greater amberjack in the Gulf exclusive economic zone (EEZ) are managed as a single stock with commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs) (quotas). The allocation of the stock ACL between the commercial and recreational sectors is 27 percent commercial and 73 percent recreational and was implemented through Amendment 30A to the FMP in 2008 (73 FR 38139, July 3, 2008). In Amendment 30A, the Council initially decided to establish sector allocations based on the long-term average landings from the recreational and commercial sectors from 1981 through 2004. However, during that amendment's development, the Council noted that the early years of the time series were primarily recreational landings (84 percent of landings from 1981–1987) while the most recent years in the allocation time series (2001–2004) had increasing landings by the commercial sector (32 percent of landings from 2001–2004). Ultimately, the Council then agreed to an allocation that reassigned 2 percent of the commercial allocation to the recreational sector and established the current sector allocation.

Greater amberjack has been under a rebuilding plan since 2003. This rebuilding plan was implemented with Secretarial Amendment 2 and was expected to rebuild the stock by 2010 (68 FR 39898, July 3, 2003). In 2006, the Southeast Data, Assessment, and Review (SEDAR) 9 assessment showed that the greater amberjack stock was not recovering as previously projected. The stock continued to be overfished and was experiencing overfishing. The Council developed Amendment 30A to end overfishing and rebuild the stock by 2010, consistent with the time frame of the original rebuilding plan. In 2010, the SEDAR 9 Update was completed and indicated that the stock remained overfished and was continuing to experience overfishing. In response, the Council developed Amendment 35 to the FMP (77 FR 67574, December 13, 2012). The management measures implemented in Amendment 35 were expected to end overfishing; however, it could not be determined if the stock would meet its rebuilding schedule until a new benchmark assessment was completed. In 2014, the SEDAR 33 benchmark stock assessment was completed and showed that greater amberjack remained overfished, was experiencing overfishing as of 2012, and did not meet the rebuilding time established in Secretarial Amendment 2. In 2015, the Council developed a framework action that further reduced the sector ACLs and ACTs in an effort to end overfishing and rebuild the stock by the end of 2019 (80 FR 75432, December 2, 2015). In 2016, the SEDAR 33 Update assessment was completed and showed that greater amberjack was still overfished and undergoing overfishing as of 2015 and the stock would not be rebuilt by 2019 as previously projected. In 2017, NMFS notified the Council that the stock was not making adequate progress towards rebuilding and the Council developed a framework action to modify the rebuilding time and the catch levels. The framework action, which was implemented in 2018, reduced sector ACLs and ACTs in an effort to end overfishing and rebuild the stock by 2027 (82 FR 61485, December 28, 2017).

The SEDAR 70 assessment for Gulf greater amberjack was completed in November 2020, and indicated that the Gulf greater amberjack stock continued to be overfished and undergoing overfishing, but could rebuild by 2027 with reduced yields. NMFS informed the Council of these determinations in a letter dated April 7, 2021, and the Council began work on Amendment 54 to update the greater amberjack rebuilding plan.

The SEDAR 70 assessment used updated recreational catch and effort data from the Marine Recreational Information Program (MRIP) Access Point Angler Intercept Survey (APAIS) and Fishing Effort Survey (FES). MRIP began incorporating a new survey design for APAIS in 2013 and replaced the Coastal Household Telephone Survey (CHTS) with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). As explained in Amendment 54, total recreational fishing effort estimates generated from MRIP–FES are generally higher than both the MRFSS and MRIP–CHTS estimates. Although both MRIP–CHTS and MRIP–FES generate estimates measured in pounds of fish, these estimates are not directly comparable. To signify that the estimates use different scales, this rule uses the terms ''MRIP–CHTS units'' and ''MRIP–FES units'' to describe the recreational catch limits. To illustrate the difference in the survey estimates, the Southeast Fisheries Science Center (SEFSC) conducted an analysis to determine what the current greater amberjack stock ACL of 1,794,000 lb (813,745 kg) (MRIP–CHTS units) would be in MRIP–FES units. That analysis showed that greater amberjack stock ACL would be estimated at 2,930,000 lb (1,329,026 kg) (MRIP–FES units). This difference in the stock ACL is because MRIP–FES is designed to more accurately measure fishing effort, not because there was a sudden increase in fishing effort.

Based on the results of SEDAR 70, the Council's Scientific and Statistical Committee (SSC) recommended a decrease in the overfishing level (OFL) and acceptable biological catch (ABC) to end overfishing of greater amberjack and allow the stock to meet its current rebuilding time. Since these catch level recommendations assumed status quo sector allocations (27 percent commercial and 73 percent recreational), which were based in part on 1981–2004 landings estimates generated using data generated by MRFSS, the Council requested that the SEFSC provide alternative catch level projections based on sector allocation alternatives that used MRIP–FES data and several different time series: the same time series used in Amendment 30A (1981–2004); a time series that begins when commercial greater amberjack landings were identified by species and ends prior to the implementation of the current sector allocations, sector catch limits, and accountability measures (AMs) (1993–2007); and a time series that begins when commercial greater amberjack landings were identified by species and ends with the most recent data available at the time the alternatives were developed (1993–2019). The Council's SSC reviewed these alternative sector allocation analyses and affirmed its prior determination that SEDAR 70 represented, and the projections produced by the assessment are, the best scientific information available.

The commercial and recreational allocation percentages impact the catch level projections. As more of the stock ACL is allocated to the recreational sector, the proportion of recreational discards increases. The recreational discard mortality rate (10 percent) is assumed to be less than the commercial discard mortality rate (20 percent). However, the magnitude of recreational

discards is considerably greater than commercial discards because there are more recreational fishermen. Generally, a fish caught and released by a recreational fishermen has a greater likelihood of survival than a fish released by a commercial fishermen because of the differences in how and where the sectors fish. However, because of the greater numbers of greater amberjack that are released by the recreational sector versus the commercial sector, the total number of discards that die from the recreational fishing exceeds those attributed to commercial fishing. This results in additional mortality for the stock and a lower projected annual yield, which results in a reduced OFL, ABC, and stock ACL. However, this is not a result of any change in how the recreational sector prosecutes the fishery but occurs because MRIP–FES estimates higher levels of fishing effort, and consequently a greater number of fish being caught, which includes discards and the associated mortality of discarding fish.

In Amendment 54, the Council recognized that maintaining the current sector allocation percentages would disproportionally impact on the recreational sector given the transition to MRIP–FES and that maintaining the current time series updated with MRIP–FES data would disproportionally impact the commercial sector by failing to account for the fact that commercial landings of greater amberjack prior to 1993 may not have been properly identified. The Council decided to adjust the allocation in Amendment 54 using the 1993–2019 time series because this represents the longest time series during which commercial greater amberjack landings have been identified by species. This results in a shift of the commercial and recreational allocation from 27 percent and 73 percent, respectively, to 20 percent and 80 percent, respectively.

The catch levels recommended by the SSC would increase the allowable harvest each year through the end of the rebuilding plan in 2027. However, the Council determined that because the greater amberjack stock has not rebuilt as expected under the current and previous rebuilding plans, a more cautious approach is necessary. Therefore, Amendment 54 and this proposed rule would adopt a constant catch strategy and modify the OFL and ABC to be 2,033,000 lb (922,153 kg) and 505,000 lb (229,064 kg), respectively. The stock ACL would be equal to the ABC.

Management Measures Contained in This Final Rule

This final rule revises the sector ACLs and ACTs for Gulf greater amberjack.

ACLs

The current stock ACL for Gulf greater amberjack is equal to the ABC of 1,794,000 lb (813,745 kg), and the current sector ACLs for Gulf greater amberjack are 484,380 lb (219,711 kg) for the commercial sector and 1,309,620 lb (594,034 kg) for the recreational sector. These catch levels are based on the results of SEDAR 33 Update, which used data from MRIP–CHTS. As explained above, had the current stock ACL been derived using MRIP–FES data, it would have been 2,930,000 lb (1,329,026 kg). Amendment 54 would reduce the stock ACL for Gulf greater amberjack to 505,000 lb (229,064 kg). Applying the allocation selected by the Council in Amendment 54 results in a revised commercial ACL of 101,000 lb (45,813 kg) and a revised recreational ACL of 404,000 lb (183,251 kg).

ACTs

The Council applied its ACL/ACT Control Rule using landings data for 2013–2016 to set the current commercial and recreational sector buffers between the ACL and ACT. This results in reduction in the buffer between the commercial ACL and ACT from 13 percent to 7 percent. The buffer between the recreational ACL and ACT remains at 17 percent. Applying these buffers results in a revised commercial ACT of 93,930 lb (42,606 kg) and a revised recreational ACT of 335,320 lb (152,099 kg).

Management Measures in Amendment 54 Not Codified Through This Final Rule

OFL and ABC

The current OFL and ABC for Gulf greater amberjack are 2,167,000 lb (982,935 kg) and 1,794,000 lb (813,745 kg), respectively, and are based on the Council's SSC's recommendations from the SEDAR 33 Update, which used recreational landings estimates from MRIP–CHTS. Amendment 54 uses a constant catch OFL and ABC based on SEDAR 70 and consistent with the SSC's recommendations. The revised OFL is 2,033,000 lb (922,153 kg) and the revised ABC is 505,000 lb (229,064 kg).

Sector Allocations

The current sector allocation of the stock ACL (equal to the ABC) is 27 percent to the commercial sector and 73 percent to the recreational sector. Amendment 54 revises the Gulf greater amberjack allocation between the commercial and recreational sectors by using the average landings from 1993–2019 using MRIP–FES landings for this time series. This results in a new allocation of the Gulf greater amberjack stock ACL of 20 percent for the commercial sector and 80 percent for the recreational sector.

Comments and Reponses

NMFS received 6 comments on the notice of availability for Amendment 54 and 13 comments on the proposed rule. In general, the comments supported the proposed measures to end overfishing and meet the rebuilding timeline for Gulf greater amberjack. However, some comments expressed concern about the change to MRIP–FES units and the increased percentage of the total ACL allocated to the recreational sector under the reduced catch limits. One comment stated that the Council is unconstitutional. Other comments stated the stock is fine and no catch limit reductions are needed. Some comments suggested changes to management measures that are outside the scope of the Amendment 54 and the proposed rule, such as modifying the recreational bag limit, implementing a recreational vessel limit, modifying the commercial size limit, or modifying fixed closed seasons; these comments are not addressed further.

No changes were made to this final rule as a result of public comment.

Specific comments related to Amendment 54 and the proposed rule are grouped by topic and summarized below, followed by NMFS' respective responses.

Comment 1: The Council did not follow its Allocation Review Policy, which states that ''prior to each allocation review, the Council will determine the suite of ecological, biological, economic, and social factors consistent with the NMFS Allocation Review Policy to be included in the review.'' Instead the Council only reviewed a presentation that identified where in Amendment 54 an allocation review took place.

Response: The Council did not follow its Allocation Review Guidelines in developing Amendment 54 because those guidelines were not applicable in this situation. As explained in the Allocation Review Guidelines, ''[i]n some instances, *e.g.,* following a stock assessment, the Council may elect to skip a formal allocation review and directly proceed with the development of an FMP amendment. In these cases, these guidelines would not apply.'' That is what occurred with Amendment 54, which was developed in response to the

most recent stock assessment (SEDAR 70) that indicated that the greater amberjack stock was not making adequate progress towards rebuilding. Because that stock assessment also incorporated the updated MRIP–FES recreational landings estimates, the Council also used Amendment 54 to review the sector allocations to determine whether an adjustment to the allocation was appropriate.

Comment 2: Amendment 54 is inconsistent with section 303(a)(15) of the Magnuson-Stevens Act because the OFL and ACLs include only landed fish, not both landed and discarded fish as required by the National Standard (NS) 1 (NS 1) Guidelines.

Response: Section 303(a)(15) of the Magnuson-Stevens Act requires the FMP to include ACLs, at a level such that overfishing does not a occur, and AMs. The NS 1 Guidelines define catch as including both landed fish and dead discards (50 CFR 600.310(f)(3)(i)). However, the NS 1 Guidelines also state that the ABC, on which the ACLs are based, may be expressed in terms of landings as long as estimates of bycatch and any other fishing mortality not accounted for in the landings are incorporated into the determination of ABC. The OFL, ABC, and ACLs specified in Amendment 54 are derived from SEDAR 70, which accounts for dead discards (see Sections 2.3.2 and 3.1 at *https://sedarweb.org/documents/sedar-70-gulf-of-mexico-greater-amberjack-final-stock-assessment-report/*).

Comment 3: The allocation adopted by the Council in Amendment 54 increases the risk of overfishing because of the high level of dead discards from the recreational sector.

Response: The allocation adopted by the Council in Amendment 54 does not increase the risk of overfishing. The OFLs and ABCs recommended the SSC were derived from SEDAR 70, which accounts for dead discards by both sectors, and the risk of overfishing to the stock is the same under all of the allocation alternatives considered by the Council. The alternative OFLs (shown in the Action 1 Tables in Amendment 54 (pages 13–15)) are based on a 0.5 probability of overfishing (P*). A P* of 0.5 means that there is a 50 percent chance of overfishing at that level of harvest. The alternative ABCs in Amendment 54 are substantially below the OFL alternatives and correspond to a 50 percent chance of rebuilding by 2027. Further, while the total ACL is set equal to the ABC, there is a buffer between each sector's respective ACL and ACT.

Comment 4: It is arbitrary to automatically reallocate from the commercial sector to the recreational sector based on the revised MRIP–FES landing estimates. In addition, the adjusted historical recreational landings estimates are uncertain and reservations about the data should be resolved before they are used for allocation decisions.

Response: The inclusion of the MRIP–FES landings estimates in SEDAR 70 did not result in an automatic sector reallocation. However, this change in the recreational landings estimates did prompt the Council to review the current commercial and recreational allocation to determine whether it was still appropriate. The Council conducted this review in Amendment 54 and considered four allocation alternatives: maintaining the current percentages; maintaining the time series used to set the current allocation (1981–2004) updated with MRIP–FES landings estimates; updating the time series to start when commercial greater amberjack landings began to be identified to species level and end when the current allocation was implemented (1993–2007); and updating the time series to start when commercial greater amberjack landings began to be identified to species level and end with the most recent year of data available at the time Council work on this amendment began (1993–2019). The Council determined, and NMFS agrees, that it is appropriate to update the sector allocations using the MRIP–FES adjusted data from 1993–2019 because this represented the longest time series during which commercial greater amberjack landings have been identified to the species level.

NS 2 requires that conservation and management measures be based upon the best scientific information available. NMFS has determined that Amendment 54 is consistent with NS 2 and that the MRIP–FES landings estimates represent the best scientific information available. This determination is supported by a February 2, 2023, memorandum from the SEFSC as well as the recommendations from the Council's SSC. The SEDAR 70 stock assessment incorporated landings data from the MRIP–FES survey, which is considered a better survey than the prior MRIP–CHTS survey (see *https://www.fisheries.noaa.gov/recreational-fishing-data/effort-survey-improvements*). In July 2020, the Council's SSC held a workshop on calibrating MRIP–FES and MRIP–CHTS (*https://gulfcouncil.org/ssc/archive/;* July 2020). The SSC examined the differences in methodology and outcomes between the fishing effort estimates produced by the different surveys. At that time, the SSC recommended that the Council wait for a stock assessment before adopting a different data unit for quota monitoring, which was done for the greater amberjack stock. As discussed in the Section 2.1 of Amendment 54 (page 15), the SSC accepted SEDAR 70 as the best scientific information available, specifically acknowledging that it utilizes MRIP–FES recreational landings estimates.

Comment 5: Amendment 54 violates NS 4 because the revised sector allocation is not fair and equitable by forcing the commercial sector to subsidize dead discards in the recreational sector. The revised allocation also fails to promote conservation by allowing for an increase in recreational dead discards, reducing overall yield, and increasing the risk of overfishing.

Response: National Standard 4 requires, in relevant part, that any allocation be fair and equitable, and reasonably calculated to promote conservation. NMFS has determined that Amendment 54 is consistent with NS 4. As explained in response to *Comment 4,* the Council considered four allocation alternatives and chose to update the allocation using the time series that uses the updated MRIP–FES recreational landings estimates, beginning when commercial greater amberjack landings began to be identified to species level and ending with the most recent year of data available at the time work on this amendment began (1993–2019). The Council determined, and NMFS agrees, that this results in an allocation that is fair and equitable because it accounts for both the transition to MRIP–FES and the fact that commercial landings of greater amberjack prior to 1993 may not have been properly identified to the species level.

The commercial sector is not subsidizing dead discards from the recreational sector. Recreational fishing for greater amberjack (and many other reef fish species) typically involves higher levels of discards than for the commercial sector. The allocation implemented through this final rule does result in less total annual harvest by both sectors. However, the commercial and recreational sectors have different objectives, and operate differently to achieve those objectives. Participants in the commercial sector tend to seek to maximize harvest and efficiency while participants in the recreational sector tend to seek to maximize access and opportunities. These different goals and objectives impact fishing behavior, which

generally results in more discards by the recreational sector. The Council and NMFS must consider and account for these differences when determining whether an allocation fairly and equitably allocates fishing privileges and provides the greatest overall benefit to the Nation with respect to both food production and recreational opportunities. Further, the reduction that results from the shift in allocation is relatively minor. Using the new allocation results in an ABC/stock ACL of 505,000 lb (229,064 kg) while using the previous allocation would have resulted in an ABC/stock ACL of 521,000 lb (236,322 kg). The large reduction in the total allowable harvest in Amendment 54 is not a result of the shift in allocation but the result of SEDAR 70 and the determination that the stock is not making adequate progress towards rebuilding.

With respect to promoting conservation, the NS 4 Guidelines state that a conservation and management measure ''may promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product.'' The revised allocation promotes wise use by considering both the biological impacts to the greater amberjack stock, and the economic and social impacts to fishery participants. The allocation and associated catch limits are consistent with the result of SEDAR 70 and the SSC's recommendations, and are expected to allow the stock to rebuild by 2027. As explained previously, the revised allocation results in a relatively minor reduction of the total yield while maintaining the historical balance between recreational access and commercial harvest. And, as explained in response to *Comment 3,* the risk of overfishing is the same for all of the allocation alternatives. To further reduce the risk, the seasons for the commercial and recreational sectors are determined based on the ACT, which is reduced from each sector's ACL. For the recreational sector, the Council retained the buffer between the ACL and ACT of 17 percent to better account for the uncertainty in monitoring recreational landings. Further, if recreational landings exceed the recreational ACL, the recreational ACL and ACT are reduced the following year by the amount of the recreational ACL overage. The Council also selected a constant catch reduced catch limit to be more conservative and increase the chances of meeting rebuilding.

With respect to dead discards, SEDAR 70 assumes that dead discards from the recreational sector increase as the allocation to that sector increases, but does not take into account that fishermen are able to specifically target greater amberjack and a catch and release fishery is already occurring in the recreational sector. Thus, discards are not expected to substantially increase, even under the reduced catch limits.

Comment 6: Amendment 54 violates NS 9 because the revised allocation would increase bycatch and dead discards from the recreational sector.

Response: NS 9 requires that conservation and management measures, ''to the extent practicable: (1) minimize bycatch; and (2) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.'' Conservation and management measures must also be consistent with the other national standards. As the National Standard Guidelines explain, several factors should be considered when determining consistency with NS 9. These factors include population effects for the bycatch species; changes in the economic, social, or cultural value of fishing activities, and non-consumptive uses of fishery resources; changes in the distribution of benefits and costs; and social effects (50 CFR 600.305(d)(3)). As explained in response to *Comment 3,* the impacts to the greater amberjack stock are similar under all of the allocation alternatives considered by the Council because the alternative OFLs are based on a fixed level of fishing mortality. When the inputs into the stock assessment model include more recreational harvest than previously assumed, this leads to lower OFL and ABC estimates at equilibrium. Therefore, the new allocation allows for less total harvest than the current allocation. However, the difference between the reduced ABCs under all of the action alternatives is minimal, and a substantial reduction in the total ACL is required under any of the allocation alternatives. In addition, the new allocation addresses the updated recreational landings estimates using MRIP–FES and issues with commercial reporting prior to 1993, as well as to incorporate landings data from more recent years. Given the numerous factors that the Council must consider in selecting the appropriate allocation, Amendment 54 does minimize bycatch and bycatch mortality to the extent practicable.

Comment 7: The greater amberjack stock seems healthy and, therefore, the actions in Amendment 54 are not needed.

Response: The first stock assessment of greater amberjack was completed in 2000 and indicated that the stock was overfished and undergoing fishing. The greater amberjack stock was then put under a rebuilding plan with Secretarial Amendment 2 in 2003 and has been in one ever since. Since the initial stock assessment, several more assessments have shown that greater amberjack continues to undergo overfishing and is not rebuilding as projected. SEDAR 70 was completed in October 2020, and used a terminal year of 2018. SEDAR 70 updated recreational catch and effort data from MRIP–APAIS and CHTS to FES, which collectively estimated larger catch and effort data than previously calculated for the recreational sector. The assessment concluded that greater amberjack in the Gulf was overfished and experiencing overfishing and has been overfished and undergoing overfishing almost continuously since 1980. It also indicated that a significant reduction in harvest is necessary to rebuild by the stock by 2027, the rebuilding time established by the Council in 2017. For the purposes of OFL and ABC, these projections recommended by the SSC form the basis for the allocation alternatives in Amendment 54. Amendment 54 is based on the best scientific information available that was in place at the time of its development. The Council began work on this amendment in January 2021, and took final action to submit the amendment for review and implementation during its October 2022 meeting.

Comment 8: The reduction in the total ACL will have extreme adverse economic effects on the commercial sector and associated businesses. These adverse economic effects to the commercial sector and associated businesses will be amplified by the change in the sector allocation.

Response: The economic analysis in Amendment 54 indicates that the reduction in the total ACL and change in the sector allocation will have adverse economic effects on the commercial sector. However, in combination with the action to reduce the buffer between the commercial ACL and ACT, the estimated reduction in economic profits to commercial harvesting businesses is only 1.6 percent because greater amberjack only accounts for about 1.7 percent of commercial fishing vessels' average annual revenue. Given that economic profits are approximately 38 percent of these vessels' annual average gross revenue, this reduction would not be considered extreme. In comparison, the estimated reduction in economic profits to for-hire fishing businesses as a result of the actions in Amendment 54 is much larger at more than 13 percent.

Further, the reduction to the commercial ACT as a result of the actions in Amendment 54 is expected to reduce the amount of greater amberjack available for purchase by dealers and other businesses up the seafood supply chain. However, greater amberjack only accounts for about 1 percent of seafood purchases by dealers who buy greater amberjack. Therefore, the adverse economic effects to dealers and other businesses as a result of the reduction in the commercial ACT are expected to be relatively small.

Comment 9: The Council process under the Magnuson-Stevens Act violates the Appointments, Executive Vesting, and Take Care clauses of the U.S. Constitution and, as a result, this rulemaking is legally invalid. Council members are not properly appointed to their positions as officers of the United States. Because they make policy decisions for Federal fisheries management in their region, Council members are 'principal' or at minimum 'inferior' Federal officers. But because they are improperly appointed, unsupervised, and immune from removal, they hold office unlawfully and lack the Federal authority to issue Amendment 54.

Response: The commenters misunderstand the function and authority of the Council, which is neither an ''unaccountable'' or ''illegally constituted'' body. The Magnuson-Stevens Act establishes the Council structure in order for state officials, fishermen, scientists, and other stakeholders to provide important expert input on fishery management. But the Council acts as an advisory body only: authority to issue Federal regulations to implement fishery management measures that impact fishermen is vested solely in the Secretary of Commerce. This final rule implements Amendment 54, which NMFS, through delegation of authority from the Secretary, has approved as consistent with the Magnuson-Stevens Act and other applicable law. Under section 304 of the Magnuson-Stevens Act, NMFS, acting through delegated authority from the Secretary, retains significant discretion to reject Council recommendations, including the proposed regulations that the Council submitted to NMFS to implement Amendment 54.

In addition, Federal courts have held that fishery management councils are not considered Federal agencies for the purposes of the Administrative Procedure Act and that Council members are not Federal ''officers'' under the U.S. Constitution as suggested by the commenters. Council members do not occupy continuing positions or exercise significant authority. As simply stated by one court, fishery management councils have ''no authority to do anything'' because final decision-making power rests with the Secretary. In light of this lack of Federal agency status and decision making authority, the council members are not Federal officers and need not be appointed in a specific way to be consistent with the U.S. Constitution. The commenters' view that council members act as Federal officers is inaccurate; although council members are engaged in important work that helps manage regional fisheries, it is the Secretary who exercises the authority of the Magnuson-Stevens Act by promulgating the regulations that affect the commenters.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 54, the FMP, other provisions of the Magnuson-Stevens Act, the U.S. Constitution, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866. The Magnuson-Stevens Act provides the legal basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS' response to one public comment regarding the IRFA and the Executive Order 12866 analysis is in this **SUPPLEMENTARY INFORMATION** section of the preamble (see *Comment #8* in the Comments and Responses). A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The objectives of this final rule are to end overfishing and rebuild the greater amberjack stock as required by the Magnuson-Stevens Act, and update existing greater amberjack catch limits and allocations to be consistent with the best scientific information available, FMP objectives, and contemporary data collection methods. All monetary estimates in the following analysis are in 2020 dollars.

This final rule revises the sector allocations of the total ACL for Gulf greater amberjack from 73 percent for the recreational sector and 27 percent for the commercial sector to 80 percent for the recreational sector and 20 percent for the commercial sector. The current OFL, ABC, and total ACL are 2.167 million lb (982,935 kg), 1.794 million lb (813,745 kg), and 1.794 million lb (813,745 kg), respectively. The recreational portion of these values are based on MRIP–CHTS data. This final rule changes the OFL and ABC to 2.033 million lb (922,153 kg) and 505,000 lb (229,064 kg), respectively, consistent with the results of the most recent stock assessment and the recommendations of the Council's SSC, and set the total ACL equal to the ABC of 505,000 lb (229,064 kg). The recreational portion of these values are based on MRIP–FES data. Applying the new sector allocations changes the recreational ACL from 1,309,620 lb (594,033 kg) in MRIP–CHTS units to 404,000 lb (183,251 kg) in MRIP–FES units and reduces the commercial ACL from 484,380 lb (219,675 kg) to 101,000 lb (45,812 kg). This final rule retains the current 17 percent buffer between the recreational ACL and ACT. As such, the recreational ACT is revised from 1,086,985 lb (493,048 kg) in MRIP–CHTS units to 335,320 lb (152,099 kg) in MRIP–FES units given the final reduction in the recreational ACL. This final rule also decreases the buffer between the commercial ACL and ACT from 13 percent to 7 percent, and thereby reduces the commercial ACT from 421,411 lb (191,148 kg) to 93,930 lb (42,606 kg) given the reduction in the commercial ACL. As a result, this final rule is expected to regulate commercial and charter vessel/headboat (for-hire) fishing businesses that harvest Gulf greater amberjack.

A valid commercial Gulf reef fish vessel permit is required in order for commercial fishing vessels to legally harvest greater amberjack in the Gulf. At the end of 2020, 837 vessels possessed a valid commercial Gulf reef fish vessel permit. However, not all vessels with a commercial Gulf reef fish permit actually harvest greater amberjack in the Gulf. From 2016 through 2020, the average number of vessels that commercially harvested Gulf greater amberjack was 201. Ownership data regarding vessels that harvest Gulf greater amberjack is incomplete. Therefore, accurately determining affiliations between these particular vessels is not currently feasible. Because of the incomplete ownership data, for purposes of this analysis, NMFS assumes each of these vessels is independently owned by a single

business, which NMFS expects to result in an overestimate of the actual number of businesses directly regulated by this final rule. Thus, NMFS assumes this final rule would regulate and directly affect 201 commercial fishing businesses.

Although the changes to the recreational ACL and ACT would apply to recreational anglers, the RFA does not consider recreational anglers to be entities. Small entities include small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601(6) and 601(3)–(5)). Recreational anglers are not businesses, organizations, or governmental jurisdictions and so they are outside the scope of this analysis (5 U.S.C. 603).

A valid charter vessel/headboat Gulf reef fish vessel permit is required in order for for-hire vessels to legally harvest greater amberjack in the Gulf. NMFS does not possess complete ownership data regarding vessels that hold charter vessel/headboat Gulf reef fish vessel permits, and thus potentially harvest greater amberjack. Therefore, accurately determining affiliations between these vessels and the businesses that own them is not currently feasible. As a result, for purposes of this analysis, NMFS assumes each for-hire vessel is independently owned by a single business, which NMFS expects to result in an overestimate of the actual number of for-hire fishing businesses regulated by this final rule.

This final rule is only expected to alter the fishing behavior of for-hire vessels that target greater amberjack in the Gulf (*i.e.,* the behavior of for-hire vessels that incidentally harvest greater amberjack in the Gulf is not expected to change). Therefore, only for-hire vessels that target greater amberjack in the Gulf are expected to be directly affected by this final rule. NMFS does not possess data indicating how many for-hire vessels actually harvest or target Gulf greater amberjack in a given year. However, in 2020, there were 1,289 vessels with valid charter vessel/headboat Gulf reef fish vessel permits. Further, Gulf greater amberjack is primarily targeted in waters off the west coast of Florida. Of the 1,289 vessels with valid charter vessel/headboat Gulf reef fish vessel permits, 803 were homeported in Florida. Of these permitted vessels, 62 are primarily used for commercial fishing rather than for-hire fishing purposes and thus are not considered for-hire fishing businesses. In addition, 46 of these permitted vessels are considered headboats, which are considered for-hire fishing businesses. However, headboats take a relatively large, diverse set of anglers to harvest a diverse range of species on a trip, and therefore do not typically target a particular species. Therefore, NMFS assumes that no headboat trips would be canceled, and thus no headboats would be directly affected as a result of this final rule. However, charter vessels often target greater amberjack. Of the 803 vessels with valid charter vessel/headboat Gulf reef fish vessel permits that are homeported in Florida, 695 vessels are charter vessels. A recent study reported that 76 percent of charter vessels with valid charter vessel/headboat permits in the Gulf were active in 2017 (*i.e.,* 24 percent were not fishing). A charter vessel would only be directly affected by this final rule if it is fishing. Given this information, the best estimate of the number of charter vessels that are likely to target Gulf greater amberjack in a given year is 528. Thus, this final rule is estimated to regulate and directly affect 528 for-hire fishing businesses.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily involved in the commercial fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts (revenue) are not in excess of $11 million for all of its affiliated operations worldwide. From 2016 through 2020, the maximum annual gross revenue earned by a single commercial reef fish vessel during this time was about $1.73 million, while the average annual gross revenue for a vessel commercially harvesting Gulf greater amberjack was $190,612. Based on this information, all commercial fishing businesses regulated by this final rule are determined to be small entities for the purpose of this analysis.

For other industries, the Small Business Administration has established size standards for all major industry sectors in the U.S., including for-hire businesses (North American Industry Classification System (NAICS) code 487210). A business primarily involved in for-hire fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has annual receipts (revenue) not in excess of $12.5 million for all its affiliated operations worldwide. NMFS does not have the necessary data to estimate the maximum annual gross revenue for all regulated charter vessels. However, the maximum annual gross revenue for a single headboat in the Gulf was about $1.38 million in 2017. On average, annual gross revenue for headboats in the Gulf is about three times greater than annual gross revenue for charter vessels. Based on this information, all for-hire fishing businesses regulated by this final rule are determined to be small businesses for the purpose of this analysis.

NMFS expects this final rule to directly affect 201 of the 837 vessels with commercial Gulf reef fish permits, or approximately 24 percent of those commercial fishing businesses. Further, this final rule is expected to directly affect 528 of the 1,227 for-hire fishing businesses with valid charter vessel/headboat permits in the Gulf reef fish fishery, or approximately 43 percent of those for-hire fishing businesses. All regulated commercial and for-hire fishing businesses have been determined, for the purpose of this analysis, to be small entities. Based on this information, this final rule is expected to affect a substantial number of small businesses.

For vessels that commercially harvest greater amberjack in the Gulf, currently available data indicates that economic profits are approximately 38 percent of annual average gross revenue. Given that their average annual gross revenue is $190,612, annual average economic profit per vessel is estimated to be approximately $72,433. The action to change the sector allocations and the total ACL would reduce the commercial ACL and thus also reduce the commercial ACT (commercial quota). The commercial quota, which is used to constrain harvest, will decrease from 421,411 lb (191,149 kg) to 87,870 lb (39,857 kg). However, average commercial landings of Gulf greater amberjack were 429,113 lb (194,642 kg) from 2015–2019. Thus, the reduction in commercial landings is expected to be 341,243 lb (154,785 kg), or 328,119 lb (148,832 kg), gutted weight. This reduction in commercial landings is not expected to increase the average ex-vessel price due to the relatively high number of substitute products (*e.g.,* imports, other reef fish species landed in the Gulf and South Atlantic, *etc.*). Thus, assuming the average ex-vessel price of $1.92 per lb, gutted weight, from 2016–2020, annual gross revenue is expected to decrease by $629,988, and economic profit is expected to decrease by $239,395. On a per vessel basis, annual gross revenue and economic profit are expected to decrease by $3,134 and $1,191, respectively.

Based on the most recent information available, average annual economic profits are approximately $27,000 per

charter vessel. The action to change the sector allocations and the total ACL revises the recreational ACL and thus also revises the recreational ACT, which is used to constrain harvest. The change to the recreational ACT is expected to change the length of the recreational fishing season. The recreational ACT reduction is expected to reduce the recreational season length from 123 days to 20 days. From 2018 through 2021, the average number of trips targeting Gulf greater amberjack by charter vessels was 14,379. The expected number of target trips under the projected season length of 20 days is 1,221 trips, and thus target trips are expected to decline by 13,158 trips. Net Cash Flow per Angler Trip (CFpA) is the best available estimate of profit per angler trip by charter vessels. CFpA on charter vessels is estimated to be $143 per angler trip. Thus, the estimated reduction in charter vessel profits from this action is expected to be about $1.882 million, or $3,564 per for-hire fishing business. Thus, economic profits are expected to be reduced by more than 13 percent on average per for-hire fishing business.

The action to reduce the buffer between the commercial ACL and ACT from 13 percent to 7 percent will increase the commercial ACT by 6,060 lb (2,749 kg), or 5,827 lb (2,643 kg), gutted weight, relative to what it would be under the action to decrease the commercial ACL. Given the significant reduction in the commercial ACL relative to recent average commercial landings, these additional pounds are expected to be harvested. The expected increase in commercial landings is expected to increase average annual gross revenue by $11,188 and thus economic profit by $4,251. On a per vessel basis, annual gross revenue and economic profit are expected to increase by $56 and $21, respectively.

Based on the action to reduce the commercial catch limits and the reduction in the buffer between the commercial ACL and ACT, the total reductions in gross revenue and economic profits for commercial fishing businesses from this rule are expected to be $618,800 and $235,144, respectively. On a per vessel basis, the total reductions in annual gross revenue and economic profit are expected to be $3,079 and $1,170, respectively. Thus, economic profits are expected to be reduced by approximately 1.6 percent on average per commercial fishing business.

Five alternatives, including the status quo, were considered for the action to revise the sector allocations, OFL, ABC, total ACL, and sector ACLs for greater amberjack in the Gulf. The first alternative, the status quo, would have retained the current allocation of the total ACL between the recreational and commercial sectors at 73 percent and 27 percent, respectively. It also would have maintained the OFL, ABC, total ACL, recreational ACL, and commercial ACL at 2.167 million lb (982,935 kg), 1.794 million lb (813,745 kg), 1.794 million lb (813,745 kg), 1,309,620 lb (594,033 kg), and 484,380 lb (219,675 kg), respectively. This alternative was not selected as it would not be based on the best scientific information available and therefore is inconsistent with National Standard 2 of the Magnuson-Stevens Act. Further, this alternative is inconsistent with the SSC's OFL and ABC recommendations.

The second alternative would have maintained the allocation of the total ACL at 73 percent recreational and 27 percent commercial. This alternative would have also revised the OFL and ABC as recommended by the SSC based on this sector allocation and the most recent stock assessment, set the total ACL equal to the ABC, and increased the OFL, ABC, total ACL, and sector ACLs each year through 2027. This alternative would be based on the best scientific information available and is consistent with the SSC's OFL and ABC recommendations. However, this alternative was not selected by the Council because it is partly based on MRFSS data, which significantly underestimates historical landings and effort in the recreational sector and thus does not accurately reflect the importance of Gulf greater amberjack to the recreational sector during the time period used as the basis for the status quo allocation (*i.e.,* 1981–2004).

The third alternative would have revised the allocation of the total ACL to 84 percent recreational and 16 percent commercial based on landings from the same timeframe as the status quo allocation (*i.e.,* 1981–2004), but using recreational landings based on MRIP–FES data. This alternative would have also revised the OFL and ABC as recommended by the SSC based on this sector allocation and the most recent stock assessment, set the total ACL equal to the ABC, and increased the OFL, ABC, total ACL, and sector ACLs each year through 2027. The Council recognized that the greater amberjack stock is overfished and has not rebuilt as expected under the current and previous rebuilding plans. This alternative was not selected by the Council because the allocation is based on years during which commercial landings of greater amberjack were not identified at the species level. In addition, the catch limits increased over time and the Council determined that a more cautious approach was warranted with respect to establishing future catch levels.

The fourth alternative would have revised the allocation of the total ACL to 78 percent recreational and 22 percent commercial based on MRIP–FES average landings during the years 1993 through 2007. This alternative would have also revised the OFL and ABC as recommended by the SSC based on this sector allocation and the most recent stock assessment, set the total stock ACL equal to the ABC, and increased the OFL, ABC, total ACL, and sector ACLs each year through 2027. The Council recognized that the greater amberjack stock is overfished and has not rebuilt as expected under the current and previous rebuilding plans. This alternative was not selected by the Council because the allocation does not include the more recent years, which reflect current participation. In addition, the catch limits would increase over time and the Council determined that a more cautious approach was warranted with respect to establishing future catch levels.

The fifth alternative would have revised the allocation of the total ACL to 80 percent recreational and 20 percent commercial based on MRIP–FES average recreational landings during the years 1993 through 2019. This alternative would have also revised the OFL and ABC as recommended by the SSC based on this sector allocation and the most recent stock assessment, set the total stock ACL equal to the ABC, and increased the OFL, ABC, total ACL, and sector ACLs each year through 2027. The Council did not select this alternative because the greater amberjack stock is overfished and has not rebuilt as expected under the current and previous rebuilding plans. Therefore, the Council determined that a more cautious approach was warranted with respect to establishing future catch levels.

Two alternatives, including the status quo, were considered for the action to decrease the buffer between the commercial ACL and ACT from 13 percent to 7 percent. The first alternative, the status quo, would have retained the current 13 percent buffer. This alternative was not selected by the Council because it is based on commercial landings data from 2013–2016 and more recent commercial landings data are available and considered to be more representative of current commercial fishing practices.

The second alternative would have reduced the buffer between the

commercial ACL and ACT from 13 percent to 7 percent, but would have also reduced the recreational buffer from 17 percent to 13 percent, based on landings data from 2017–2020. This alternative was not selected by the Council because landings in 2020 were likely affected by the COVID–19 pandemic, as reflected by the lack of closures that are common in this fishery, and thus are likely not representative of typical recreational fishing practices.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. Copies of this final rule are available from the Southeast Regional Office, and the guide, *i.e.,* fishery bulletin, will be sent to all known industry contacts in the Gulf reef fish fishery and be posted at: *https://www.fisheries.noaa.gov/tags/small-entity-compliance-guide?title=&field_species_vocab_target_id=&field_region_vocab_target_id%5B1000001121%5D=1000001121&sort_by=created.* The guide and this final rule will be available upon request.

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

NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date for changes to the commercial quota and ACL specified in 50 CFR 622.39(a)(1)(v) and 622.41(a)(1)(iii). The most recent landings estimates indicate that commercial harvest of greater amberjack for this fishing year has reached the revised commercial quota and ACL implement in this final rule. The commercial AMs require NMFS to prohibit harvest of greater amberjack when commercial landings reach or are projected to reach the commercial ACT (quota) and if commercial landings exceed the commercial ACL, then during the following fishing year, both the commercial quota and the commercial ACL must be reduced by the amount of any commercial ACL overage. Commercial harvest of greater amberjack is prohibited during March, April, and May each year under 50 CFR 622.36(a), reopening on June 1. NMFS is unable to prohibit further commercial harvest under the AMs unless the reduced quota in this final rule is effective. If harvest continues during the 2023 fishing year, it is likely to result in a significant overage of the new commercial ACL, which would require NMFS to reduce the commercial quota for the 2024 fishing year. If the overage exceeds the reduced quota in this final rule, no commercial harvest of greater amberjack would be permitted in 2024. Therefore, it is necessary to have the revised commercial catch levels in this final rule effective upon publication. This will allow NMFS to implement the required AM based on the revised quota and provide commercial harvest opportunities in 2024 by limiting any required reduction in the 2024 quota. A waiver of the 30-day delay in effectiveness for the recreational quota and ACL specified in 50 CFR 622.39(a)(2)(ii) and 622.41(a)(2)(iii) is not necessary because recreational harvest is prohibited until August 1, as a result of an annual seasonal closure.

List of Subjects in 50 CFR Part 622

Annual catch limits, Commercial, Fisheries, Fishing, Greater amberjack, Gulf of Mexico, Recreational.

Dated: June 8, 2023.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 622 as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. Effective June 15, 2023, in § 622.39, revise paragraph (a)(1)(v) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(v) Greater amberjack—93,930 lb (42,606 kg), round weight.

* * * * *

■ 3. Effective July 17, 2023, § 622.39 is further amended by revising paragraph (a)(2)(ii) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(2) * * *

(ii) *Recreational quota for greater amberjack.* The recreational quota for greater amberjack is 335,320 lb (152,099 kg), round weight.

* * * * *

■ 4. Effective June 15, 2023, in § 622.41, revise paragraph (a)(1)(iii) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) * * *

(1) * * *

(iii) The commercial ACL for greater amberjack, in round weight, is 101,000 lb (45,813 kg).

* * * * *

■ 5. Effective July 17, 2023, § 622.41 if further amended by revising paragraph (a)(2)(iii) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) * * *

(2) * * *

(iii) The recreational ACL for greater amberjack, in round weight, is 404,000 lb (183,251 kg).

* * * * *

[FR Doc. 2023–12633 Filed 6–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 230607–0144; RTID 0648–XC461]

Pacific Island Pelagic Fisheries; 2023 U.S. Territorial Longline Bigeye Tuna Catch Limits

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

ACTION: Final specifications.

SUMMARY: NMFS specifies a 2023 limit of 2,000 metric tons (t) of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI), the territories). NMFS will allow each territory to allocate up to 1,500 t in 2023 to U.S. longline fishing vessels through specified fishing agreements that meet established criteria. The overall allocation limit among all territories, however, may not exceed 3,000 t. As an accountability measure, NMFS will monitor, attribute, and restrict (if

necessary) catches of longline-caught bigeye tuna, including catches made under a specified fishing agreement. These catch limits and accountability measures support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

DATES: The final specifications are effective June 15, 2023, through December 31, 2023. The deadline to submit a specified fishing agreement pursuant to 50 CFR 665.819(b)(3) for review is December 12, 2023.

ADDRESSES: Copies of the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP) are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, or *www.wpcouncil.org.*

Pursuant to the National Environmental Policy Act, the Council and NMFS prepared environmental analyses that support this action and are available at *https://www.regulations.gov/docket/NOAA-NMFS-2022-0117.*

FOR FURTHER INFORMATION CONTACT: Keith Kamikawa, NMFS PIRO Sustainable Fisheries, 808–725–5177.

SUPPLEMENTARY INFORMATION: NMFS is specifying a 2023 catch limit of 2,000 t of longline-caught bigeye tuna for each U.S. Pacific territory. NMFS is also authorizing each territory to allocate up to 1,500 t of its 2,000 t bigeye tuna limit, not to exceed a 3,000 t total annual allocation limit among all the territories, to U.S. longline fishing vessels permitted to fish under the FEP. A specified fishing agreement with the applicable territory must identify those vessels.

NMFS will monitor catches of longline-caught bigeye tuna by the longline fisheries of each U.S. Pacific territory, including catches made by U.S. longline vessels operating under specified fishing agreements. The criteria that a specified fishing agreement must meet, and the process for attributing longline-caught bigeye tuna, will follow the procedures in 50 CFR 665.819. When NMFS projects that the fishery will reach a territorial catch or allocation limit, NMFS will, as an accountability measure, prohibit the catch and retention of longline-caught bigeye tuna by vessels in the applicable territory (if the territorial catch limit is projected to be reached), and/or vessels in a specified fishing agreement (if the allocation limit is projected to be reached).

You may find additional background information on this action in the preamble to the proposed specifications published on March 29, 2023 (88 FR 18509). Regardless of the final specifications, all other existing management measures will continue to apply in the longline fishery.

Comments and Responses

On March 29, 2023, NMFS published the proposed specifications and request for public comments (88 FR 18509); the comment period closed on April 28, 2023. NMFS received one anonymous comment supporting the specifications, suggesting an incentive program to reduce bigeye catch, and expressing concerns with overfishing of bigeye (and salmon and yellowtail), ecosystem impacts, and bycatch of juvenile tuna.

Response: There are two stocks of Pacific bigeye tuna: the Western and Central Pacific stock and the Eastern Pacific stock. According to the most recent stock assessments, neither stock is overfished or subject to overfishing. The fishery does not target or catch salmon or yellowtail and would therefore not influence stock status for these species. In developing the territorial bigeye tuna catch and allocation limits, NMFS and the Council considered a range of catch and allocation limits, taking into consideration sustainability of the stock, decisions of regional fishery management organizations, protected species bycatch, and the needs of Pacific Island fishing communities.

An incentive program to reduce bigeye tuna catch was not one of the alternatives considered. Consistent with the FEP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the catch and allocation limits in this action authorize an optimum level of fishing intended to both prevent overfishing and allow sustainable fishing that supplies local demand and supports the local economy, while supporting fisheries development in the U.S. territories. A program in which fishery participants are incentivized to fish below this optimum level would not meet these goals. Thus, an incentive program was not considered for this action.

NMFS monitors bycatch each fishing season. Bycatch of juvenile bigeye tuna is not a major concern, as longline fishing gear targets larger fish and juvenile bigeye are often not captured. When juvenile fish are caught they are usually returned alive. The 2023 allocation limits allow for the sustainability of the bigeye tuna stock and are consistent with the FEP, the Magnuson-Stevens Act, and other applicable laws.

Changes From the Proposed Specifications

No changes were made to the proposed specifications.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator (AA) has determined that this final rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

The AA has also determined that because measures in this rule relieve a restriction, it is exempt from the otherwise-applicable requirement of a 30-day delay in the date of effectiveness, pursuant to 5 U.S.C. 553(d)(1). Consistent with Conservation and Management Measure 2021–01 adopted by the WCPFC at its December 2021 meeting, the bigeye tuna catch limit for U.S. longline fisheries in the western and central Pacific in 2023 is 3,554 t. This limit is implemented by separate rulemaking and codified at 50 CFR 300.224(a)). When NMFS projects the limit will be reached, NMFS must close the fishery for bigeye tuna in the WCPO. This rule allows U.S. vessels identified in a valid specified fishing agreement to continue fishing in the WCPO subject to the territorial limits even after NMFS closes the U.S. longline fishery for bigeye tuna.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed specifications would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for the certification in the proposed specifications, and we do not repeat it here. NMFS received no comments relevant to this certification; as a result, a final regulatory flexibility analysis is not required, and none has been prepared.

This action is exempt from review under Executive Order 12866.

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

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

Dated: June 9, 2023.

Samuel D. Rauch, III,

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

[FR Doc. 2023–12711 Filed 6–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230306–0065; RTID 0648–XC988]

Fisheries of the Exclusive Economic Zone Off Alaska; Rock Sole, Flathead Sole, Alaska Plaice, and Other Flatfish in the Herring Savings Areas of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for rock sole, flathead sole, Alaska plaice, and other flatfish by vessels using trawl gear in the Herring Savings Areas of the Bering Sea and Aleutian Islands (BSAI). This action is necessary to prevent exceeding the 2023 herring bycatch allowance specified for the rock sole, flathead sole, Alaska plaice, and other flatfish fisheries in the BSAI. This action includes prohibiting directed fishing for rock sole, flathead sole, other flatfish by vessels participating in the Community Development Quota Program.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), June 15, 2023, through 1200 hours, A.l.t., March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

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

The 2023 herring bycatch allowance specified for the rock sole, flathead sole, Alaska plaice, and other flatfish fisheries in the BSAI is 99 metric tons as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023).

The Administrator, Alaska Region, and NMFS, has determined that the 2023 herring bycatch allowance specified for the rock sole, flathead sole, Alaska plaice, and other flatfish fisheries in the BSAI has been caught. Consequently, in accordance with § 679.21(e)(7)(vi), NMFS is closing directed fishing for rock sole, flathead sole, Alaska plaice, and other flatfish by vessels using trawl gear in the three Herring Savings Areas of the BSAI. The Summer Herring Savings Area 1 is that part of the Bering Sea subarea that is south of 57°N latitude and between 162°W longitude and 164°W longitude from 1200 hours, A.l.t., June 15, 2023 through 1200 hours, A.l.t., July 1, 2023. The Summer Herring Savings Area 2 is that part of the Bering Sea subarea that is south of 56°30″N latitude and between 164°W longitude and 167°W longitude from 1200 hours, A.l.t., July 1, 2023 through 1200 hours A.l.t., August 15, 2023. The Winter Herring Savings Area is that part of the Bering Sea subarea that is between of 58° and 60°N latitude and between 172°W longitude and 175°W longitude from 1200 hours, A.l.t., September 1, 2023 through 1200 hours, A.l.t., March 1, 2024.

While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of directed fishing for rock sole, flathead sole, Alaska plaice, and other flatfish by vessels using trawl gear in the Summer and Winter Herring Savings Areas of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 9, 2023.

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

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

Dated: June 12, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–12836 Filed 6–14–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 115
Thursday, June 15, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1299; Airspace Docket No. 22–AEA–18]

RIN 2120–AA66

Amendment of Very High Frequency (VHF) Omnidirectional Range (VOR) Federal Airway V–469 and Revocation of VOR Federal Airways V–164, V–423, and V–576; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Very High Frequency (VHF) Omnidirectional Range (VOR) Federal Airway V–469; and to revoke VOR Federal Airways V–164, V–423, and V–576 in support of the FAA's VOR Minimum Operational Network (MON) Program. The purpose is to enhance the efficiency of the National Airspace System (NAS) by transitioning from ground-based navigation aids to a satellite-based navigation system.

DATES: Comments must be received on or before July 31, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1299 and Airspace Docket No. 22–AEA–18 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

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

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

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

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal airway V–469; and to revoke VOR Federal airways V–164, V–423, and V–576 in support of the FAA's VOR MON Program. The purposed changes facilitate the scheduled decommissioning of the following navigation aids: Williamsport, PA (FQM), VOR/Distance Measuring Equipment (DME); Stonyfork, PA (SFK), VOR/DME; Danville, VA (DAN), VOR; Hancock, NY (HNK), VOR/DME; and Delancey, NY (DNY), VOR/DME. The proposed changes are described below.

V–164: V–164 extends from the Stonyfork, PA (SFK), VOR/DME to the East Texas, PA (ETX), VOR/DME. The route is dependent upon the Stonyfork, PA (SFK), VOR/DME and the Williamsport, PA (FQM), VOR/DME which are scheduled to be decommissioned. Without this navigation facility, V–164 is no longer viable, so the FAA proposes to remove the entire route.

V–423: V–423 extends from the Williamsport, PA (FQM), VOR/DME to the Binghamton, NY (CFB), VOR/DME. The route is dependent upon the Williamsport, PA (FQM), VOR/DME which is scheduled to be decommissioned. Without this navigation facility, V–423 is no longer viable, so the FAA proposes to remove the route.

V–469: V–469 extends from the Danville, VA (DAN), VOR to the Woodstown, NJ (OOD), VOR/Tactical Air Navigation System (VORTAC). The Danville, VA (DAN), VOR is scheduled to be decommissioned. The FAA proposes to remove the route segment between the Danville, VA (DAN), VOR to the Lynchburg, VA (LYH), VOR/DME.

V–576: V–576 extends from the Philipsburg, PA (PSB), VORTAC to the DeLancey, NY (DNY), VOR/DME. The route is dependent upon the Williamsport, PA (FQM), VOR/DME, the Hancock, NY (HNK), VOR/DME, and the DeLancey, NY (DNY), VOR/DME which are scheduled to be decommissioned. Without these navigation facilities, V–576 is no longer viable, so the FAA proposes to remove the entire route.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–164 [Removed]

* * * * *

V–423 [Removed]

* * * * *

V–469 [Amended]

From Lynchburg, VA; INT Lynchburg 347° and Elkins, WV, 142° radials; Elkins; Morgantown, WV; INT Morgantown 010° and Johnstown, PA, 260°; Johnstown; St. Thomas, PA; Harrisburg, PA; Dupont, DE; to Woodstown, NJ.

* * * * *

V–576 [Removed]

* * * * *

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

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–12746 Filed 6–14–23; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 39

RIN 3038–AF21

Derivatives Clearing Organization Risk Management Regulations To Account for the Treatment of Separate Accounts by Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On April 14, 2023, the Commodity Futures Trading Commission (Commission or CFTC) published in the **Federal Register** a notice of proposed rulemaking (NPRM) titled Derivatives Clearing Organization Risk Management Regulations To Account for the Treatment of Separate Accounts by Futures Commission Merchants. The comment period for the NPRM closes on June 13, 2023. The Commission is extending the comment period for this NPRM by an additional 17 days.

DATES: The comment period for the NPRM titled Derivatives Clearing Organization Risk Management Regulations To Account for the Treatment of Separate Accounts by Futures Commission Merchants, published April 14, 2023 at 88 FR 22934, is extended through June 30, 2023.

ADDRESSES: You may submit comments, identified by RIN 3038–AF21, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Chief Counsel, Division of Clearing and Risk, at 202–418–5092 or *rwasserman@cftc.gov,* or Daniel O'Connell, Special Counsel, Division of Clearing and Risk, at 202–418–5583 or *doconnell@cftc.gov,* at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On April 14, 2023, the Commission published in the **Federal Register** an NPRM proposing to amend the CFTC's derivatives clearing organization (DCO) risk management regulations adopted under section 5b of the Commodity Exchange Act to permit futures commission merchants that are clearing members to treat the separate accounts of a single customer as accounts of separate entities for purposes of Commission regulation § 39.13(g)(8)(iii).[2] The proposed amendments would add a new paragraph (j) to regulation § 39.13 establishing the conditions under which a DCO may permit such separate account treatment. The comment period for the NPRM closes on June 13, 2023. As requested by a commenter, the Commission is extending the comment period for this NPRM by an additional 17 days.[3] This extension of the comment period will allow interested persons additional time to analyze the proposal and prepare their comments.

Issued in Washington, DC, on June 12, 2023, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

NOTE: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Derivatives Clearing Organization Risk Management Regulations To Account for the Treatment of Separate Accounts by Futures Commission Merchants—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2023–12832 Filed 6–14–23; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

[2] Derivatives Clearing Organization Risk Management Regulations To Account for the Treatment of Separate Accounts by Futures Commission Merchants, 88 FR 22934 (Apr. 14, 2023).

[3] FIA Letter dated June 9, 2023 to Christopher J. Kirkpatrick.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2023–0462]

RIN 1625–AA08

Special Local Regulation; Back River, Baltimore County, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish temporary special local regulations for certain waters of Back River. This action is necessary to provide for the safety of life on these navigable waters located in Baltimore County, MD during a high-speed power boat event on July 15, 2023, (alternate date on July 16, 2023). This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port, Maryland-National Capital Region or the Coast Guard Event Patrol Commander. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 30, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0462 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Samuel M. Danus, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2519, email *MDNCRMarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Patrol Commander
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

Tiki Lee's Dock Bar of Sparrows Point, MD, notified the Coast Guard that they will be conducting the 2023 Tiki Lee's Shootout on the River from 9 a.m. to 5 p.m. on July 15, 2023. The individually-timed power boat speed runs event consists of approximately 40 participants competing on a designated, marked linear course located on Back River between Porter Point to the south and Stansbury Point to the north. The event is being staged out of Tiki Lee's Dock Bar, 4309 Shore Road, Sparrows Point, in Baltimore County, MD. In the event of inclement weather on July 15, 2023, the event will be conducted from 9 a.m. to 5 p.m. on July 16, 2023. Hazards from the high-speed power boat event include participants operating within and adjacent to the designated navigation channel and interfering with vessels intending to operate within that channel, as well as operating within approaches to local marinas and boat facilities and waterfront residential communities. The COTP Maryland-National Capital Region has determined that potential hazards associated with

the high-speed power boat event would be a safety concern for anyone intending to participate in this event and for vessels that operate within specified waters of Back River.

The purpose of this rulemaking is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041. The Coast Guard is requesting that interested parties provide comments within a shortened comment period of 15 days instead of the typical 30 days for this notice of proposed rulemaking. The Coast Guard believes the 15-day comment period still provides for a reasonable amount of time for interested parties to review the proposal and provide informed comments on it while also ensuring the Coast Guard has time to review and respond to any significant comments and has a final rule in effect in time for the scheduled event to protect against the identified hazards.

III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region proposes to establish special local regulations from 8 a.m. to 6 p.m. on July 15, 2023. The regulated area would cover all navigable waters of Back River within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23'' W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. The regulated area is approximately 4,200 yards in length and 1,200 yards in width.

This proposed rule provides additional information about areas within the regulated area and their definitions. These areas include ''Course Area,'' ''Buffer Area,'' and ''Spectator Areas.''

The proposed duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat event, scheduled from 9 a.m. to 5 p.m. on July 15, 2023, (alternate date on July 16, 2023). The COTP and the Coast Guard Event PATCOM would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for 2023 Tiki Lee's Shootout on the River participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators would be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF–FM channel 16. Vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF–FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area in a manner that would not endanger event participants or any other craft. A spectator vessel must not loiter within the navigable channel while within the regulated area. Official patrol vessels would direct spectators to the designated spectator area. Only participant vessels would be allowed to enter the aerobatics box. The Coast Guard would publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

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

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small, designated area of Back River for 10 total enforcement hours. This waterway supports mainly recreational vessel traffic, which at its peak, occurs during the summer season. Although this regulated area extends across the entire width of the waterway, the rule would allow vessels and persons to seek permission to enter the regulated area, and vessel traffic would be able to transit the regulated area as instructed by Event PATCOM. Such vessels must operate at safe speed that minimizes wake and not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see

ADDRESSES) explaining why you think it qualifies and how and to what degree this rulemaking would economically affect it.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 10 total enforcement hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0462 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or 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 *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.501T05–0161 to read as follows:

§ 100.501T05–0161 2nd Annual Tiki Lee's Shootout on the River, Back River, Baltimore County, MD.

(a) *Locations.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of Back River, within an area

bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to and terminating at the point of origin. The aerobatics box and spectator areas are within the regulated area.

(2) *Course Area.* The course area is a polygon in shape measuring approximately 1,400 yards in length by 50 yards in width. The area is bounded by a line commencing at position latitude 39°16′14.98″ N, longitude 076°26′57.38″ W, thence east to latitude 39°16′15.36″ N, longitude 076°26′55.56″ W, thence south to latitude 39°15′33.40″ N, longitude 076°26′49.70″ W, thence west to latitude 39°15′33.17″ N, longitude 076°26′51.60″ W, thence north to and terminating at the point of origin.

(3) *Buffer Area.* The buffer area is a polygon in shape measuring approximately 100 yards in east and west directions and approximately 150 yards in north and south directions surrounding the entire course area described in the preceding paragraph of this section. The area is bounded by a line commencing at position latitude 39°16′18.72″ N, longitude 076°27′01.74″ W, thence east to latitude 39°16′20.36″ N, longitude 076°26′52.39″ W, thence south to latitude 39°15′29.27″ N, longitude 076°26′45.36″ W, thence west to latitude 39°15′28.43″ N, longitude 076°26′54.94″ W, thence north to and terminating at the point of origin.

(4) *Spectator Areas*—(i) *East Spectator Fleet Area.* The area is a polygon in shape measuring approximately 2,200 yards in length by 450 yards in width. The area is bounded by a line commencing at position latitude 39°15′20.16″ N, longitude 076°26′17.99″ W, thence west to latitude 39°15′17.47″ N, longitude 076°26′27.41″ W, thence north to latitude 39°16′18.48″ N, longitude 076°26′48.42″ W, thence east to latitude 39°16′25.60″ N, longitude 076°26′27.14″ W, thence south to latitude 39°15′40.90″ N, longitude 076°26′31.30″ W, thence south to and terminating at the point of origin.

(ii) *Northwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 750 yards in length by 150 yards in width. The area is bounded by a line commencing at position latitude 39°16′01.64″ N, longitude 076°27′11.62″ W, thence south to latitude 39°15′47.80″ N, longitude 076°27′06.50″ W, thence southwest to latitude 39°15′40.11″ N, longitude 076°27′08.71″ W, thence northeast to latitude 39°15′45.63″ N, longitude 076°27′03.08″ W, thence northeast to latitude 39°16′01.19″ N, longitude 076°27′05.65″ W, thence west to and terminating at the point of origin.

(iii) *Southwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 400 yards in length by 175 yards in width. The area is bounded by a line commencing at position latitude 39°15′30.81″ N, longitude 076°27′05.58″ W, thence south to latitude 39°15′21.06″ N, longitude 076°26′56.14″ W, thence east to latitude 39°15′21.50″ N, longitude 076°26′52.59″ W, thence north to latitude 39°15′29.75″ N, longitude 076°26′56.12″ W, thence west to and terminating at the point of origin.

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

Aerobatics Box is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of an aerobatics box within the regulated area defined by this section.

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Event Patrol Commander or *Event PATCOM* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means a person or vessel registered with the event sponsor as participating in the ''2nd Annual Tiki Lee's Shootout on the River'' event, or otherwise designated by the event sponsor as having a function tied to the event.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

Spectator area is an area described by a line bound by coordinates provided in latitude and longitude within the regulated area defined by this section that outlines the boundary of an area reserved for non-participant vessels watching the event.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter a designated spectator area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels are allowed to enter and remain within the aerobatics box.

(5) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the

regulated area by other federal, state, and local agencies.

(e) *Enforcement periods.* This section will be enforced from 8 a.m. to 6 p.m. on July 15, 2023, and, if necessary due to inclement weather on July 15, 2023, from 8 a.m. to 6 p.m. on July 16, 2023.

Dated: June 9, 2023.

David E. O'Connell,

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

[FR Doc. 2023–12749 Filed 6–14–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2019–0647; FRL–10975–01–R10]

Air Plan Approval; WA; Excess Emissions, Startup, Shutdown, and Malfunction Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Washington, through the Department of Ecology on November 12, 2019. The revisions were submitted by Washington in response to an EPA's June 12, 2015 ''SIP call'' in which EPA found a substantially inadequate Washington SIP provision providing affirmative defenses that operate to limit the jurisdiction of the Federal court in an enforcement action related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is proposing approval of the SIP revisions and proposing to determine that removal of the substantially inadequate provision corrects the deficiency identified in the June 12, 2015, SIP call.

DATES: Comments must be received on or before July 17, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2019–0647, at *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 electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Randall Ruddick, EPA Region 10, 1200 Sixth Avenue (Suite 155), Seattle, WA 98101, (206) 553–1999; or email *ruddick.randall@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' or ''our,'' is used, it refers to EPA.

Table of Contents

I. Background

On February 22, 2013, the EPA issued a **Federal Register** notice of proposed rulemaking outlining EPA's policy at the time with respect to SIP provisions related to periods of SSM. EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the Clean Air Act (CAA) with regard to excess emission events.[1] For each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5).[2] On September 17, 2014, EPA issued a supplemental proposal revising what the Agency had previously proposed on February 22, 2013, in light of a D.C. Circuit decision that determined EPA does not have authority under the CAA to create or approve affirmative defense provisions applicable to private civil suits.[3] EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate.[4]

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' (80 FR 33840, June 12, 2015), hereinafter referred to as the ''2015 SSM SIP Action.'' The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states (including Washington State) were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

In October 2020, EPA issued a SSM Memorandum (2020 Memorandum).[5] Importantly, the 2020 Memorandum stated that it ''did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.'' Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to Washington in 2015. The 2020 Memorandum did, however, indicate EPA's intent at the time to review SIP

[1] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (Feb. 22, 2013).

[2] The term ''SIP Call'' refers to the requirement for a revised SIP in response to a finding by the EPA that a SIP is ''substantially inadequate'' to meet CAA requirements pursuant to CAA section 110(k)(5), titled ''Calls for plan revisions.''

[3] The term *affirmative defense provision* means a state law provision in a SIP that specifies particular criteria or preconditions that, if met, would purport to preclude a court from imposing monetary penalties or other forms of relief for violations of SIP requirements in accordance with CAA section 113 or CAA section 304. 80 FR 33839, June 12, 2015.

[4] See79 FR 55920, September 17, 2014.

[5] October 9, 2020, memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' from Andrew R. Wheeler, Administrator.

calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA withdrew the 2020 Memorandum and announced EPA's return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).[6] As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including overburdened communities, receive the full health and environmental protections provided by the CAA.[7] The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum of EPA's plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA's intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the agency takes action on SIP submissions, including the November 12, 2019 SIP submittal provided by Washington in response to the 2015 SIP call.

The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. With regard to the Washington SIP, EPA determined that, to the extent that Wash. Admin. Code (WAC) 173–400–107 was intended to be an affirmative defense, it was not consistent with the requirements of the CAA. Therefore, EPA issued a SIP call with respect to this provision. Washington subsequently submitted a SIP revision on November 12, 2019, in response to the SIP Call issued in the 2015 SSM SIP Action. In its submission, Washington removed WAC 173–400–107 from the SIP in its entirety.

Washington also included SIP revisions that are not subject to the 2015 SSM SIP in the 2019 SIP submittal. These additional SIP revisions set alternate emission standards for short-term modes of operations of sources such as startup, shutdown, and scheduled maintenance for some source categories; establish the process for defining facility-specific alternate emission standards; remove excess emission provisions not consistent with EPA's 2015 SSM policy; revise cross-references as necessary to align with updates to the analogous Federal laws or EPA's 2015 SSM policy; and remove some provisions in deference to equally or more stringent relevant Federal laws. Many of the revisions are conditioned to only take effect upon the effective date of EPA's removal of WAC 173–400–107 from the Washington SIP.

II. Analysis of SIP Submission

A. Geographic Applicability

EPA's analysis and proposed actions related to WAC 173–400 in the 2019 SIP submittal similarly apply to geographic areas and source categories under the direct jurisdiction of Ecology and Benton Clean Air Agency (BCAA), a local air agency in Washington, because BCAA's SIP-approved regulations state, in Article 1, Section 1.03, that BCAA implements and enforces WAC 173–400 ''as in effect now and including all future amendments, except where specific provisions of BCAA Regulation 1 apply.'' The 2019 SIP submittal contains no substantive changes to the minor differences between the two agencies' jurisdictional applicability of subparts of WAC 173–400.

B. The Provision Subject to the 2015 SIP Call

In the 2015 SSM SIP Action, EPA identified WAC 173–400–107 as inconsistent with CAA requirements because it contained affirmative defense provisions. Washington then submitted a SIP revision on November 12, 2019, that removed WAC 173–400–107 from the SIP.

We are proposing to find that the removal of WAC 173–400–107 from the Washington SIP will satisfy the 2015 SIP Call because the removal of WAC 173–400–107 from the SIP will no longer provide for an affirmative defense.

C. Additional SIP Revisions Submitted But Not Specified in the 2015 SIP Call

Washington adopted additional revisions to the State's excess emissions provisions that were not specified in the 2015 SSM SIP Call. These revisions were adopted in three different state rulemaking actions, two in 2018 for provisions in WAC 173–400, General Air Regulations for Air Pollution Sources, and one additional rulemaking in 2019 revising WAC 173–405, Kraft Pulping Mills; WAC 173–410, Sulfite Pulping mills; and WAC 173–415, Primary Aluminum Plants.

WAC 173–400, General Air Regulations for Air Pollution Sources.

In its November 12, 2019 SIP submission, Washington requests approval of revisions to WAC 173–030, Definitions; WAC 173–400–040, General Standards for maximum emissions; WAC 173–400–070, Emission standards for certain source categories; WAC 173–400–081, Startup and Shutdown; WAC 173–400–082, Alternative emission limit that exceeds an emission standard in the SIP; WAC 173–400–107, Excess emissions; and WAC 173–400–171, Public involvement. Many of the revisions are non-substantive changes.

WAC 173–400–030, Definitions. Washington revised this section to aid in implementation of provisions such as those addressing transient (short-term) modes of operation—including startup and shutdown, and to clarify commonly used 'terms of art' (such as ''hog fuel'').[8] Most definitions in WAC 173–400–030 remain unchanged since our last approval;[9] however, the addition of new definitions resulted in changes to the numbering sequence. Even though the text of those definitions remains as approved, the state effective date changed to reflect the numbering sequence changes. Therefore, Washington requested EPA approve all of WAC 173–400–030 as submitted on November 12, 2019, except definition (96) related to toxic air pollutants or odors, because it is outside the scope of CAA section 110 requirements for SIPs.[10] A complete redline/strikeout analysis of the updated definitions in WAC 173–400–030 is included in the docket for this action.[11] Updating the state effective date for those definitions in WAC 173–400–030 previously approved into Washington's SIP that remain unchanged will have no effect on emissions.

The two revisions to existing definitions in WAC 173–400–030 were to:

(32)[12] ''Excess emissions'': to clarify that the term also includes emissions

[6] September 30, 2021, memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' from Janet McCabe, Deputy Administrator.

[7] See 80 FR 33840 (June 12, 2015).

[8] For more details, see Chapter 2 of Washington's November 12, 2019, submission, included in the docket for this action as *102_state submittal_SIP_SSM_400_405_410_415.pdf.*

[9] EPA reviewed those definitions and approved them in a previous action (85 FR 10302, February 24, 2020).

[10] Definition (96) was excluded for the same reasons in our February 24, 2020 approval.

[11] See *102_state submittal_SIP_SSM_400_405_410_415.pdf,* included in the docket for this action.

[12] ''Excess Emissions'' was previously codified as WAC 173–400–030(30), state effective December 29, 2012. EPA approved the December 29, 2012 versions of Washington's definitions of ''excess emissions'' and ''federally enforceable'' in a November 3, 2014 action (79 FR 59653). Since that action, EPA has approved more recent versions of

Continued

above limits established in permits or orders, including alternative emission limits. This definition comports with our 2015 SSM Policy; [13] and

(38) [14] ''Federally enforceable'': to include emission limitations during startup and shutdown.

Washington also adopted several new definitions which are discussed below:

'' 'Alternative emission limit' or 'limitation' '': to clarify implementation of the provisions for transient (short-term) modes of operation such as startup and shutdown provisions in WAC 173–400–040(2), 081 and 082, 107, 108 and 109. This definition is defined substantively the same as in our 2015 SSM Policy,[15]

''Hog fuel'' to define what has been used as a 'term of art' for wood waste especially hogged wood waste, utilized for burning and to clarify implementation of emissions standards for boilers in WAC 173–400–040-(2) and WAC 173-400-070(2). This definition, while narrower, is generally in keeping with the Federal definition for *biomass or bio-based solid fuel* for boilers and process heaters in EPA's National Emission Standard for Hazardous Air Pollutants (NESHAP) for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, codified at 40 C.F.R. Part 63, Subpart DDDDD (hereinafter ''Subpart DDDDD''); [16]

(83) ''Shutdown'' and (89) ''Startup:'' to clarify the general meanings of the terms [17] for purposes of implementation of WAC 173–400. the meaning of these terms is further clarified in WAC 173–400–040–(2) in the context of startup and shutdown requirements for boilers, similar to these those terms are used in Subpart DDDDD;

(97) ''Transient mode of operation'': to include short-term operating periods, including periods of startup and shutdown. This term is used for facilitating development of alternative emission limitations (AELs) for startup and shutdown periods, as well as other short-term modes of operations such as soot blowing (also known as boiler lancing), grate cleaning, and refractory curing, during which a source is unable to meet otherwise applicable emissions limits;

(100) ''Useful thermal energy'': to clarify implementation of WAC 173-400-040(2)(e). The definition is nearly verbatim from, and is substantively the same as, EPA's Boiler NESHAP.[18]

(103) ''Wigwam'' or ''silo burner'': This definition clarifies the types of units that are now prohibited under WAC 173–400–070(1) [19]

(104) ''Wood-fired boiler'': to clarify implementation of regulations tailored specifically for this unique subset of boilers. This definition is similar to, but more narrowly defined than, ''boiler'' in 40 CFR 63.7575 and in as much as it is used to regulate boilers, comports with the Federal CAA.

For the reasons stated above, EPA is proposing to approve the above changes to Washington's definitions under WAC 173–400–030.

WAC 173–400–040, General Standards for Maximum Emissions.

Washington made numerous revisions to WAC 173–400–040, many of which are non-substantive typographical and stylistic changes that are not specifically identified in this preamble. Several revisions are conditioned to only take effect upon EPA's removal of WAC 173–400–107 from the SIP, which as mentioned above, we are proposing to do in this action. In other words, the redline/strike through version of Washington's SIP rules included in the submittal set forth in some cases two versions of the same rule, one of which is intended to become effective upon EPA removal of –107 from the SIP, and the other intended to be automatically rendered ineffective as a matter of state law.

Substantive changes were made to –040(2) Visible emissions. That provision establishes a general limit on visible emissions, prohibiting emissions greater than twenty percent opacity for more than three minutes during any one-hour period, except as specified in the rule. The effect of the State's November 12, 2019 submittal is to remove some exemptions from WAC 173–400–040(2) and replace them with AELs that apply during transient modes of operation. In the 2015 SSM SIP Action, EPA recommended states consider seven criteria when developing AELs to replace automatic or discretionary exemptions from otherwise applicable SIP requirements. These recommended criteria assure the alternative emission limitations meet basic CAA requirements. The AELs in Washington's submittal are specific to visible emissions (opacity) from certain pre-existing biomass boilers [20] during soot blowing, grate cleaning, and planned startups and shutdowns as well as boilers and lime kilns during refractory curing.

EPA evaluated whether the alternative requirements provided by Washington's 2019 SIP submission are consistent with the Agency's 2015 SSM SIP Action, including the seven criteria recommended therein.[21] In its 2019 submittal, Washington provided an analysis of these criteria as applied to the SIP revisions. For the reasons explained below, EPA finds that the proposed AELs in WAC 173–400–040(2) [22] are consistent with the recommended criteria set forth in that policy. We are therefore proposing to approve these provisions into the Washington SIP.

Washington's 2019 submittal includes detailed analyses of potential impacts from the proposed SIP revisions, which EPA finds show compliance with NAAQS and other CAA requirements such as visibility should not be negatively affected. This is, in part, because the AELs do not equate to a relaxation of limits or an increase in emissions. Rather, provisions in Washington's SIP that serve to exempt or otherwise excuse excess emissions entirely (de facto unlimited emissions) are being replaced with more stringent emissions limitations. We find that particulate matter (PM) emissions will not increase as a result of the revisions for two reasons: (1) Washington's revised rules require compliance with AELs during transient modes of operations, whereas the prior version of the rules (including the SIP-called version of WAC 173–400–107) allowed sources to routinely avoid penalties for excess emissions; and (2) the pre-existing emissions limits remain in place for non-transient modes of operation for these sources.

Washington's definitions rule, but explicitly excluded the definitions for ''excess emissions'' and federally enforceable'' from those actions. This means the 2012 versions of these definitions are currently effective for purposes of the Washington SIP, and it is those versions that EPA is proposing to revise in this action.

[13] See 80 FR 33840, specifically page 33842.

[14] ''Federally enforceable'' was previously codified as WAC 173–400–030(36), state effective December 29, 2012.

[15] See 80 FR 33840, especially page 33912.

[16] See specifically 40 CFR 63.7575.

[17] 40 CFR 63.7575.

[18] See specifically 40 CFR 63.7575 and 63.11237.

[19] Adding these definitions to WAC 173–400–030 does not constitute a prohibition, rather it is for clarification purposes as the terms were not defined elsewhere in WAC 173–400. However, the terms are used in WAC 173–400–070(1) which previously allowed the use of these units for disposal burning of waste wood. Revisions in the 2019 SIP submittal prohibit their use as of January 1, 2020.

[20] Notably, applicability is limited to only hog fuel or wood-fired boilers (defined in WAC 173–400–030) that utilize only dry particulate matter controls such as multiclone, fabric filter or dry electrostatic precipitator (DESP).

[21] See, ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction'' 80 FR 33840, section XI.D.

[22] As provided in Washington's 2019 SIP submittal.

As explained above, Washington's November 12, 2019 submittal includes AELs applicable to three narrow circumstances: soot blowing or grate cleaning at hog fuel or wood-fired boilers; emissions from startup or shutdown at hog fuel or wood-fired boilers; and curing of furnace refractory in a lime kiln or boiler. EPA's analysis of each of the seven criteria as they apply to these AELs is set forth below.

(1) The revision is limited to specific, narrowly defined source categories using specific control strategies (*e.g., cogeneration facilities burning natural gas and using selective catalytic reduction*).

WAC 173–400–040(2)(a), Soot blowing and grate cleaning. The applicability of this AEL for visible emissions [opacity] is limited to hog fuel or wood-fired boilers that use only dry particulate controls. In addition, soot blowing and grate cleaning are work practice activities that decrease emissions. If these activities are not conducted, heat transfer efficiency decreases resulting in stoichiometric increases in emissions as more fuel combustion is required per unit of heat transferred. In addition, the increased combustion shortens the expected useful life of both the unit and control device.

WAC 173–400–040(2)(e), Planned startups and shutdowns. The applicability of AELs for visible emissions (opacity) is limited to hog fuel or wood-fired boilers in operation before January 24, 2018, that use only dry particulate matter controls.

WAC 173–400–040(2)(f), Furnace refractory curing. The applicability of this AEL is limited to furnace refractory in lime kilns and boilers. The AEL does not specify a control strategy. However, EPA believes control strategy specificity is unnecessary because the requirement to engage emission controls as soon as possible, –040(2)(f)(v), is likewise unspecific to type of control strategy.

(2) Use of the control strategy for this source category is technically infeasible during startup or shutdown periods.

WAC 173–400–040(2)(a), Soot blowing and grate cleaning. During soot blowing and grate cleaning activities, it is not technically feasible to meet the SIP's general 20% opacity limit due to operational and control device limitations as permitted in compliance with the CAA. EPA also notes this AEL is not specific to startup or shutdown, but instead applies to activities that are themselves work practices and serve to decrease emissions. If soot blowing and grate cleaning activities are not conducted, heat transfer efficiency decreases resulting in stoichiometric increases in emissions as more fuel combustion is required per unit of heat transferred. In addition, the increased combustion shortens the expected useful life of both the unit and control device. The control devices are not designed to handle these activities in a manner ensuring opacity is limited to 20%.

WAC 173–400–040(2)(e), Planned startups and shutdowns. It is technically infeasible, as reflected in (5)(c)(1) of Table 3 in Subpart DDDDD, to engage dry particulate control devices during boiler startup and shutdown. Engaging these controls risks damaging them as per manufacturer's instructions.

WAC 173–400–040(2)(f), Furnace refractory curing. This AEL is not specific to startup or shutdown. However, the applicability of the AEL is limited to only those periods when compliance with the 20% opacity limit would be impracticable due to the inherent nature of conducting the curing process consistent with manufacturer's instructions.

(3) The alternative emission limitation requires that the frequency and duration of operation in startup or shutdown mode are minimized to the greatest extent practicable.

WAC 173–400–040(2)(a), Soot blowing and grate cleaning. This AEL is limited in both duration and frequency. Specifically, the AEL is limited to no more than one fifteen-minute period in any eight consecutive hours. The AEL also requires the source schedule the activity for the same approximate time(s) each day and notify the permitting authority in writing of the schedule before using the AELs.

EPA also notes that this AEL is not specific to startup or shutdown, but instead applies to activities that are themselves work practices and serve to decrease emissions. If these activities are not conducted, heat transfer efficiency decreases resulting in stoichiometric increases in emissions as more fuel combustion is required per unit of heat transferred. In addition, the increased combustion shortens the expected useful life of both the unit and control device.

WAC 173–400–040(2)(e), Planned startups and shutdowns. The durations of these AELs are modeled after the Federal AELs required for these types of boilers under Subpart DDDDD. Washington's AELs do not impose a frequency limit, but frequency is intrinsically limited as affected types of sources are mainly industrial or commercial boilers operated to facilitate production. Therefore, EPA anticipates that operators will work to maximize total operational hours and minimize downtime as a practical matter.

WAC 173–400–040(2)(f), Furnace refractory curing. This AEL is not specific to startup or shutdown, but duration is limited by the requirement to engage the emissions controls as soon as possible during the curing process while following manufacturers' instructions, and in no event more than 36 hours from the commencement of refractory curing. Frequency is also limited as a practical matter to the installation or repair of refractory.

(4) As part of its justification of the SIP revision, the state analyzes the potential worst-case emissions that could occur during startup and shutdown based on the applicable alternative emission limitation.

WAC 173–400–040(2)(e), Planned startups and shutdowns. Washington's submittal estimates the potential worst-case emission scenario from this AEL based on the potential for startup or shutdown of a boiler coinciding with the maximum four-hourly $PM_{2.5}$ concentrations over a three-year period from monitoring data, which was 130 $\mu g/m^3$. In this scenario, Washington estimates the probability of the AELs resulting in an exceedance of the $PM_{2.5}$ 24-hour NAAQS is once in 810 days. Washington also provides evidence in its submittal demonstrating that the assumed high value of 130 $\mu g/m^3$ used for this estimate is likely attributable to wildfires and not anthropogenic sources. Therefore, it is likely this probability is an overestimate. The State also noted that the estimates are based on data from a time representing source operations when emissions were likely higher than would be expected under the amended rules because less stringent requirements applied during these periods than would now be required by the AELs. The results of these conservative scenarios are that it is unlikely the AELs will cause or contribute to a violation of the $PM_{2.5}$ 24-hour NAAQS.[23]

[23] Given $PM_{2.5}$ 24-hour NAAQS is calculated based on the 3-year average of the 98th percentile of valid data concentrations (see 40 CFR Appendix N to Part 50 4.04.2(a)), exceeding up to 7 days per year (if all 365 days are validated) in all three years would not constitute a violation. Therefore, potential to exceed once every 810 days is unlikely to result in a violation that is calculated on a 1,095-day cycle. Note: the 1 in 810 days probability is based on a 4-hour average that is likely higher than those caused by startups and shutdowns occurring when exceptions that equated to no limit were easy to obtain. Those exceptions are being removed from the SIP and there is no reasonable expectation that sources will increase emissions during these transient modes of operation since the pre-existing exceptions pathway offers no protection from Federal enforcement.

WAC 173–400–040(2)(a), Soot blowing and grate cleaning, and WAC 173–400–040(2)(f), Furnace refractory curing. The State explained in its submittal that these events should not increase and emissions under the AEL are likely to be lower than emissions during the worst-case boiler startup and shutdown scenario analyzed above. In other words, EPA believes the results are also representative of a worst-case scenario for these AELs and indicate it is unlikely the AELs will cause or contribute to a violation of the $PM_{2.5}$ 24-hour NAAQS.

(5) The alternative emission limitation requires that all possible steps are taken to minimize the impact of emissions during startup and shutdown on ambient air quality.

WAC 173–400–040(2)(a), Soot blowing and grate cleaning. The AEL is limited in both duration and frequency as discussed under criteria (3) above. The AEL also requires sources schedule the activity for the same approximate time(s) each day and notify the permitting authority in writing of the schedule before using the AEL. Additionally, any source utilizing the AEL is required to maintain contemporaneous records sufficient to demonstrate compliance. EPA also notes that soot blowing and grate cleaning are relatively straightforward, but necessary maintenance activities for the continued operation of control equipment. In this context, EPA believes the AEL requirements represent all practically available steps to minimize emissions during these events.

WAC 173–400–040(2)(e), Planned startups and shutdowns. This AEL provides two options: comply with a temporary forty percent opacity limit for a period not exceeding three minutes in any hour ((2(e)(vi)(A)); or comply with each of the management practices in (2)(e)(vi)(B)(I) through (V). EPA agrees that allowing sources to increase opacity to forty percent for short periods during startup and shutdown represents a reasonable application of this criterion. Additionally, the option in (2)(e)(vi)(B) requires developing and implementing a plan to minimize startup and shutdown according to manufacturer's recommended procedure, (2)(e)(vi)(B)(V).

WAC 173–400–040(2)(f), Furnace refractory curing. In addition to the forty percent opacity limit, the AEL requires all practical steps be taken to minimize emissions. Specifically, sources must engage emissions controls as soon as possible while following manufacturers' instructions and using clean fuel.

(6) The alternative emission limitation requires that at all times, the facility is operated in a manner consistent with good practice for minimizing emissions and the source uses best efforts regarding planning, design, and operating procedures.

WAC 173–400–040(2)(a), Soot blowing and grate cleaning. This AEL applies to activities that are themselves work practices for maximizing efficiency while minimizing emissions and are conducted in part to facilitate compliance with the otherwise applicable emissions limitation. If these activities are not conducted, heat transfer efficiency decreases resulting in stoichiometric increases in emissions as more fuel combustion is required per unit of heat transferred. In addition, the increased combustion shortens the expected useful life of both the unit and control device. As discussed above, the AEL is limited in both duration and frequency and requires the source schedule the activity for the same approximate time(s) each day and notify the permitting authority in writing of that schedule before using the AEL. EPA also notes that soot blowing and grate cleaning are relatively straightforward, but necessary maintenance activities for the continued operation of control equipment. In this context, EPA believes the soot blowing and grate cleaning AEL requirements represent all practically available steps to minimize emissions during these events.

WAC 173–400–040(2)(e), Planned startups and shutdowns. The AEL includes a requirement that a source develop and implement a written startup and shutdown plan that minimizes the AEL period according to manufacturer's recommended procedures, operate all continuous monitoring systems, as well as document how compliance conditions were met.

WAC 173–400–040(2)(f), Furnace refractory curing. The AEL requires good practices for minimizing emissions throughout the duration of the refractory curing process. Specifically, sources must engage emissions controls as soon as possible while following manufacturers' instructions and using clean fuel. Frequency of refractory curing is also limited as a practical matter to the installation or repair of refractory.

(7) The alternative emission limitation requires that the owner or operator's actions during startup and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

WAC 173–400–040(2)(a), Soot blowing and grate cleaning. Subsection (2)(a)(ii)(C) requires the owner or operator maintain contemporaneous records sufficient to demonstrate compliance which must include date, start, and stop time of each occurrence, and the results of opacity readings conducted during the occurrence.

EPA also notes that, as stated above, this AEL is not specific to startup or shutdown, but instead applies to activities that are themselves work practices and serve to decrease emissions.

WAC 173–400–040(2)(e), Planned startups and shutdowns. Subsection (2)(e)(vii) requires the facility to maintain records to demonstrate compliance including the start and stop times of individual phases and documentation of which AEL was chosen and how the conditions of that option were met.

WAC 173–400–040(2)(f), Furnace refractory curing. This AEL includes requirements to notify the permitting authority at least one working day prior to commencing the curing process, engage the emissions controls as soon as possible during the curing process, follow manufacturer's instructions including temperature increase rates and holding times, and provide a copy of those instructions to the permitting authority. It is in the source's own interest to follow manufacturer's instructions as failure to do so can cause spalling or catastrophic failure of the refractory resulting in additional operation costs associated to repair or replace the damaged refractory.

(8) EPA's Proposed Conclusion Regarding the AEL Criteria.[24]

Based on the analysis discussed above, EPA is proposing to conclude the three AELs included in Washington's SIP submittal are consistent with the criteria set forth in our 2015 SSM Policy. Therefore, we are proposing to approve these revisions into the Washington SIP.

WAC 173–400–070, Emission standards for certain source categories. Washington added language tying effective dates to EPA's removal of –107, updated various cross-references, and made numerous non-substantive typographical, stylistic, and clarifying revisions which we will not detail here. Washington revised the provisions for wigwam and silo burners rendering the operation of them illegal statewide and thereby reducing overall potential emissions. The State also removed visible emissions exemptions for orchard heating devices and hog fuel boilers. The exemption for hog fuel boilers was replaced with the AELs in

[24] Regarding the seven criteria analysis above, we note ''malfunction'' was not mentioned because the State did not submit any AELs for malfunctions.

WAC 173–400–040(2)(a)(ii) by reference. The catalytic cracking unit section was obsolete and subsequently deleted because corresponding Federal regulations, which the State adopts by reference, have more stringent requirements and to reduce unnecessary duplication of Federal requirements.

WAC 173–400–081, Emission limits during startup and shutdown. This section establishes a case-by-case technology-based permitting pathway for establishing startup and shutdown AELs. Numerous non-substantive changes were made to clarify applicability and requirements associated with establishing AELs. The most substantive change is the addition of (4)(b) which requires the permitting authority comply with the applicable requirements in WAC 173–400–082. Under WAC 173–400–081(4)(a), if an emission limitation or other parameter created increases allowable emissions over levels already authorized in Washington's SIP, it will not take effect unless it is approved by EPA as a SIP amendment.

WAC 173–400–082 Alternative emission limit that exceeds an emission standard in the SIP. This is an entirely new section establishing a process for an owner or operator to request—and the State to approve via a regulatory order—an alternative emission limit that would apply during a specified transient mode of operation. This process was designed to establish AELs that meet the seven criteria discussed above. Any AEL established under this section only applies to the specified emissions units at the facility requesting the regulatory order. Moreover, any such AEL only goes into effect if EPA approves the new limit into the SIP.

WAC 173–400–171 Public notice and opportunity for public comment. While many changes were made to this section, the only substantive change is the addition of (3)(o) which requires mandatory public comment periods for orders (permits) establishing AELs under WAC 173–400–081 or –082 that exceed otherwise SIP applicable limits.

The State's 2019 revisions also affect these three source-specific regulations: WAC 173–405, Kraft Pulping Mills; WAC 173–410, Sulfite Pulping Mills; and WAC 173–415, Primary Aluminum Plants. The primary impact of these revisions is to incorporate by reference the AELs described above for hog fuel boilers, wood-fired boilers, and refractory curing into these source-category specific rules. In other words, these revisions do not create additional exemptions or alternatives to the SIP's general opacity limit but reiterate the requirement to comply with applicable AELs as stated in WAC 173–400–040(2) during corresponding transient modes of operation.

Most of the revisions are analogous to, and in several instances direct adoptions of, the revisions in WAC 173–400 discussed above, including: removing exemptions for excess emissions and references to state enforcement discretion provisions, updating cross-references, AELs for soot blowing, grate cleaning, startup and shutdown of hog-fuel boilers, and refractory curing. The analyses provided in the State's submission as well as EPA's analyses stated above equally apply to the sources regulated under WAC 173–405, –410, and –415. Therefore, EPA is proposing to approve the requested revisions for those reasons.

III. Proposed Action

EPA is proposing to approve and incorporate by reference into the Washington SIP the revisions Washington submitted on November 12, 2019. This action includes removal of the provision WAC 173–400–107—identified as inconsistent with CAA requirements—from the Washington SIP, as well as revisions to WAC 173–400–030, –400–040, –400–070, –400–081, –400–082, –400–171, –405–040, –410–040, –415–030; the addition of WAC 173–415–075; and the removal of 173–405–077, –410–067, and –415–070.

The proposed revisions, upon finalization, will apply specifically to the jurisdictions of Washington Department of Ecology and Benton Clean Air Agency. Under the applicability provisions of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012, BCAA does not have jurisdiction for kraft pulp mills, sulfite pulping mills, and primary aluminum plants. For these sources, Ecology retains statewide, direct jurisdiction over these sources.

IV. Incorporation by Reference

In this document, EPA proposes to include in a final rule, regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA proposes to incorporate by reference the provisions described in sections II and III of this document. EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

The EPA is also proposing to remove Washington Administrative Code 173–405–077, –410–067, and –415–070, as described in sections II and III of this document, from the Washington State Implementation Plan, which is incorporated by reference under 1 CFR part 51.

V. Statutory and Executive Orders Review

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the

greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law. Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 8, 2023.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2023–12700 Filed 6–14–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 230418–0104]

RIN 0648–BJ85

International Affairs; Antarctic Marine Living Resources Convention Act

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

ACTION: Proposed rule; reopening of comment period.

SUMMARY: NMFS announces the reopening of the public comment period for 15 days on the proposed rule to revise its Antarctic Marine Living Resources Convention Act regulations that implement the trade-monitoring program for frozen and fresh *Dissostichus* species, commonly marketed or referred to as Chilean seabass or Patagonian toothfish. The original 30-day comment period ended on June 5, 2023. We received comments in the final days of the comment period requesting an extension. We are therefore reopening the comment period from June 15, 2023 to June 30, 2023 to allow more time for submittal of public comments. Comments previously submitted need not be resubmitted.

DATES: Written comments must be received by June 30, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0022, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0022 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Mi Ae Kim, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service, 1315 East-West Highway (F/IS5), Silver Spring, MD 20910.

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

FOR FURTHER INFORMATION CONTACT: Mi Ae Kim, Office of International Affairs, Trade, and Commerce, NMFS (phone 301–427–8365, or email *mi.ae.kim@noaa.gov*).

SUPPLEMENTARY INFORMATION: On May 5, 2023, NMFS proposed revising regulations that implement the trade-monitoring program for frozen and fresh *Dissostichus* species (88 FR 29043). During the comment period, we received requests to extend the public comment period. As these requests were received too late to allow for an extension notice, we are reopening the comment period from June 15, 2023 to June 30, 2023.

Dated: June 9, 2023.

Samuel D. Rauch, III,

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

[FR Doc. 2023–12804 Filed 6–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[RTID 0648–XC845]

Fisheries of the Exclusive Economic Zone Off Alaska; Snow Crab Rebuilding Plan in the Bering Sea and Aleutian Islands

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council)

submitted Amendment 53 to the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs (Crab FMP), to the Secretary of Commerce for review. If approved, Amendment 53 would add a new rebuilding plan for snow crab (*Chionoecetes opilio*) to the Crab FMP. The objective of this amendment is to rebuild the snow crab stock. In order to comply with provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), this action is necessary to implement a rebuilding plan prior to the start of the 2023/2024 fishing season. Amendment 53 is intended to promote the goals and objectives of the Magnuson-Stevens Act, the Crab FMP, and other applicable laws.

DATES: Comments must be received no later than August 14, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0040, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0040 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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

Electronic copies of the draft Environmental Assessment (referred to as the ''Analysis'') prepared for the proposed rule may be obtained from *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Megan Mackey, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. The Council has submitted Amendment 53 to the Secretary for review. This notice announces that proposed Amendment 53 is available for public review and comment.

NMFS manages the crab fisheries in the exclusive economic zone under the Crab FMP. The Council prepared the FMP under the authority of the Magnuson-Stevens Act, (16 U.S.C. 1801 *et seq.*). Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 680.

Through the Crab FMP, the State of Alaska (the State) is delegated management authority over certain aspects of the Eastern Bering Sea (EBS) snow crab fishery. This authority is limited by the Magnuson-Stevens Act and the FMP. For EBS snow crab, the State has established a harvest strategy to set total allowable catch (TAC), and announce season or area closures when the TAC is reached. The State's Bering Sea *C. opilio* Tanner (snow crab) harvest strategy applies during rebuilding, and is provided in the Alaska Administrative Code at 5 AAC 35.517. The State harvest strategy is more conservative than the Crab FMP's control rule parameters for EBS snow crab because, under the harvest strategy, a higher level of biomass is required to open directed fishing than under the overfishing level (F_{OFL}) control rule.

On October 19, 2021, NMFS determined and notified the Council that the EBS snow crab stock was overfished because the estimated mature male biomass was below the minimum stock size threshold specified in the Crab FMP. To comply with provisions of the Magnuson-Stevens Act, the Council developed a rebuilding plan to be implemented prior to the start of the 2023/2024 fishing season.

In February 2023, the Council chose a rebuilding plan for EBS snow crab that would allow bycatch removals and an opportunity for directed harvest during rebuilding if estimates of stock biomass are sufficient to open the fishery under the State's snow crab harvest strategy. The proposed rebuilding plan is consistent with the Magnuson-Stevens Act and with National Standard 1 Guidelines on time for rebuilding, specifically rebuilding within a time (T_{target}) that is as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish with the marine ecosystems. This rebuilding plan would allow directed fishing pursuant to the State harvest strategy and may provide important economic opportunities for harvesters, processors, and Alaska communities. Maintaining this economic opportunity for a limited directed commercial fishery under the State harvest strategy is important for harvesters, processors, and communities, particularly during this time when the majority of commercial crab stocks are in a state of decline and future openings are likely to be limited.

Under the Magnuson-Stevens Act, the time period specified for rebuilding a fishery generally should not exceed 10 years unless the biology of the stock or environmental conditions dictate otherwise. The projected time for rebuilding the EBS snow crab stock, taking into account the biology of the species and current environmental conditions, is 6 years. The main driver in the speed of rebuilding is likely related to recruitment and the ecosystem conditions that allow for increased recruitment into the population. Uncertainty surrounding recruitment and mortality under current ecosystem conditions is expected to heavily influence the rate at which the stock is able to rebuild under the proposed projection parameters. Fishing mortality under the State's current harvest strategy is expected to have only insignificant or minimal impacts on the rate of rebuilding.

Amendment 53 would add Section 6.2.3 to the Crab FMP to include the proposed rebuilding plan for EBS snow crab. Under the proposed rebuilding plan, ecosystem indicators developed for the stock would be monitored during rebuilding. The NMFS EBS bottom-trawl survey provides data for the annual assessment of the status of crab stocks in the BSAI, including EBS snow crab, and would continue throughout rebuilding. The Council's BSAI Crab Plan Team would report stock status and progress towards the rebuilt level in the Stock Assessment and Fishery Evaluation (SAFE) Report for the king and Tanner crab fisheries of the BSAI. Additionally, the State and NMFS monitor directed fishery catch and bycatch of snow crabs in other fisheries. When the fishery is open, the State requires full observer coverage (100 percent) for catcher/processors and partial coverage (30 percent) for catcher

vessels participating in the crab fishery. Observers monitor harvest at sea and landings by catcher vessels and shoreside processors. The State reports the total harvest from the commercial crab fishery, and that report will be included annually in the SAFE. The contribution of the rebuilding plan's assessment and monitoring to stock recovery would be additive to measures already in place that limit the effects of fishing activity on EBS snow crab.

In addition, Amendment 53 will remove rebuilding plans from the Crab FMP for stocks that have since been rebuilt or that have been replaced with new rebuilding plans, including rebuilding plans for Bering Sea Tanner crab (declared overfished on March 3, 1999), Bering Sea snow crab (declared overfished on September 24, 1999), and St. Matthew blue king crab (declared overfished on September 24, 1999).

NMFS is soliciting public comments on proposed Amendment 53 through the end of the comment period (see **DATES**). All relevant written comments received by the end of the applicable comment period will be considered by NMFS in the approval/partial approval/disapproval decision for Amendment 53 and addressed in the response to comments in the final decision. Comments received after the end of the applicable comment period will not be considered in the approval/disapproval decision on Amendment 53. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period (see **DATES**).

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

Dated: June 12, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–12825 Filed 6–14–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 88, No. 115
Thursday, June 15, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0066]

Concurrence With World Organization for Animal Health's Risk Designation for Bovine Spongiform Encephalopathy for France

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our preliminary concurrence with the World Organization for Animal Health's (WOAH) bovine spongiform encephalopathy (BSE) risk designation for France. The WOAH recognizes France as being of negligible risk for BSE. We are taking this action based on our review of information supporting the WOAH's risk designation for France.

DATES: We will consider all comments that we receive on or before August 14, 2023.

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

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0066 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0066, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

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

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Gordon, Senior Staff Officer, Regionalization Evaluation Services, Veterinary Services, APHIS, 920 Main Campus Drive, Raleigh, NC 27606; (919) 855–7741; email: *AskRegionalization@usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 92 subpart B, ''Importation of Animals and Animal Products; Procedures for Requesting BSE Risk Status Classification With Regard To Bovines'' (referred to below as the regulations), set forth the process by which the Animal and Plant Health Inspection Service (APHIS) classifies regions for bovine spongiform encephalopathy (BSE) risk. Section 92.5 of the regulations provides that all countries of the world are considered by APHIS to be in one of three BSE risk categories: Negligible risk, controlled risk, or undetermined risk. These risk categories are defined in § 92.1. Any region that is not classified by APHIS as presenting either negligible risk or controlled risk for BSE is considered to present an undetermined risk. The list of those regions classified by APHIS as having either negligible risk or controlled risk can be accessed on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions.* The list can also be obtained by writing to APHIS at Regionalization Evaluation Services, Veterinary Services, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1238.

Under the regulations, APHIS may classify a region for BSE in one of two ways. One way is for regions that have not received a risk classification from the World Organization for Animal Health (WOAH) to request classification by APHIS. The other way is for APHIS to concur with the classification given to a country or region by the WOAH.

If the WOAH has classified a region as either BSE negligible risk or BSE controlled risk, APHIS will seek information to support concurrence with the WOAH classification. This information may be publicly available information, or APHIS may request that regions supply the same information given to the WOAH. APHIS will announce in the **Federal Register**, subject to public comment, its intent to concur with a WOAH classification.

In accordance with this process, we are giving notice in this document that APHIS intends to concur with the WOAH risk classification of the country of France as a region of negligible risk for BSE.

The WOAH recommendation regarding France can be viewed at *https://www.woah.org/en/disease/bovine-spongiform-encephalopathy/.* The conclusions of the WOAH Scientific Commission for Animal Diseases, regarding France, can be viewed in the ''Report of the Meeting of the OIE Scientific Commission for Animal Diseases, Virtual, 7 to 23 February 2022'' at *https://doc.woah.org/dyn/portal/index.xhtml?page=alo&aloId=42407&espaceId=100* (page 81).

After reviewing any comments that we receive, we will announce our final determination regarding the BSE classification of France in the **Federal Register**, along with a discussion of and response to pertinent issues raised by commenters. If APHIS recognizes France as negligible risk for BSE, the Agency will include this country on the list of regions of negligible risk for BSE that is available to the public on the Agency's website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions.*

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 9th day of June 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–12839 Filed 6–14–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–23–MFH–0018]

Decoupling Rental Assistance: Virtual Public Listening Sessions

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with a Congressional directive in the FY2023

Consolidated Appropriations Act, the Rural Housing Service (RHS or the Agency), a Rural Development agency of the United States Department of Agriculture (USDA), will be hosting two virtual listening sessions to obtain stakeholder information on potential decoupling of section 521 Rental Assistance from section 515 Rural Rental Housing loans at the time of loan maturity. Both sessions will be open to the public.

DATES: The virtual listening sessions will be held on July 19, 2023, beginning at 2:00 p.m. (ET) and on July 25, 2023, beginning at 2:00 p.m. (ET).

ADDRESSES: The listening sessions will convene virtually on the Zoom platform. All participants must pre-register. To register for the July 19, 2023, session, please use the following link: *https://www.zoomgov.com/webinar/register/WN_S8IV8KZ2TjKU-v231VIXhA.* To register for the July 25, 2023, session, please use the following link: *https://www.zoomgov.com/webinar/register/WN_A7a3cdjgRy6D6xWguP24Qw.*

A confirmation email, including the Zoom link and teleconference information for the meeting, will be sent upon receipt of the registration.

FOR FURTHER INFORMATION CONTACT: Stephanie Vergin, Policy Advisor, Multifamily Housing, Rural Housing Service, USDA, STOP 0781, 1400 Independence Avenue SW, Washington, DC 20250–0781, telephone: (651) 602–7820 (this is not a toll-free number); email: *Decoupling@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The section 515 Rural Rental Housing program loan portfolio includes nearly 14,000 Multifamily Housing (MFH) properties in rural areas nationwide. Approximately 80 percent of units financed with a section 515 loan also receive section 521 Rental Assistance (RA), a project-based tenant rent subsidy. By statute, when a section 515 mortgage matures or is terminated, the property is no longer eligible to receive section 521 RA, adversely impacting residents and creating an elevated risk of loss of affordable units in the section 515 portfolio. Between 2023 and 2033, approximately 137,000 affordable housing units will be lost due to maturing section 515 mortgages, with a potential to lose approximately 333,000 units by the year 2050.

For owners willing to continue providing affordable housing upon mortgage maturity, the agency is currently limited to debt modifications and deferrals to keep the section 515 mortgages in place, which enables the continued availability of RA. However, maintaining the section 515 mortgage with currently available preservation tools may adversely impact the property by discouraging critical investments from other local, State, and Federal sources or create a lack of equity for further recapitalization.

Decoupling of section 515 from section 521 Rental Assistance is a tool for preservation of rural multifamily housing properties. It will allow for the continuation of the project-based RA to MFH tenants, who had an average annual household income of approximately $13,000 in Fiscal Year 2022, while also encouraging new third-party investment and recapitalization of the aging MFH portfolio.

Meeting Agenda

The Fiscal Year 2023 President's Budget included a request to decouple section 521 RA from section 515 loans to facilitate the rehabilitation and preservation of the Multifamily Housing loan portfolio. Congress directed USDA to conduct a series of stakeholder meetings and provide a report on how decoupling would be implemented. Therefore, RHS MFH is seeking stakeholder input on how decoupling might impact the current section 515 and section 521 policies, program requirements and operations. In addition to participating in the listening sessions, stakeholders may provide written comments to the agency on MFH decoupling until July 31, 2023. Comments may be submitted to *Decoupling@usda.gov.*

After the listening sessions, a report will be developed for Congress summarizing stakeholder input and identifying strategies for implementation of MFH decoupling.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2023–12778 Filed 6–14–23; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Travel, Tourism, and Outdoor Recreation Data Collection Instrument

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 July 5, 2022 (87 FR 39806) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Economic Development Administration (EDA), Commerce.

Title: Travel, Tourism, and Outdoor Recreation Data Collection Instrument.

OMB Control Number: New information collection.

Form Number(s): None.

Type of Request: Regular submission.

Estimated Number of Respondents and Frequency: 332 award recipients will respond to the electronic survey. Of these, 30 award recipients will also participate in a phone interview. This will be a one-time survey and interview.

Estimated Average Hours per Response: Two hours for the electronic survey and 0.75 hours for each phone interview.

Estimated Burden Hours: 664 hours for the electronic survey and 22.5 hours for the phone interviews.

Needs and Uses: To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of EDA investment assistance. The purpose of this notice is to seek comments from the public and other Federal agencies on a request for a new information collection for recipients of awards under the EDA American Rescue Plan Act (ARPA) Travel, Tourism and Outdoor Recreation. This is aligned with ensuring that Federal travel, tourism and outdoor recreation investments are evidence-based and data-driven, and accountable to participants and the public.

This survey will collect baseline data from awardees that will lay the foundation for a future evaluation of EDA's investments in travel, tourism, and outdoor recreation. The survey questions will fall into two categories: project activities and corresponding specific metrics. The categories of project activities include the following:

—Planning and Assessment Activities
—Expanding the Tourism and Outdoor Recreation Economy
—Increasing Quality of Visitation
—Stakeholder Outreach
—Developing New Products
—Marketing

—Workforce Training, Skills Training and Certifications
—Equity Focused Activities

Affected Public: Recipients of ARPA Travel, Tourism and Outdoor Recreation awards: These include (i) District Organization of an EDA-designated Economic Development District (EDD); (ii) Indian Tribe or a consortium of Indian Tribes; (iii) State, county, city, or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (iv) institution of higher education or a consortium of institutions of higher education; or (v) public or private non-profit organization or association acting in cooperation with officials of a general purpose political subdivision of a State.

Respondent's Obligation: Mandatory.

Legal Authority: The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*).

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.

Sheleen Dumas,

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

[FR Doc. 2023–12768 Filed 6–14–23; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–008]

Gas Powered Pressure Washers From the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Determination of Critical Circumstances

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain gas powered pressure washers (pressure washers) from the Socialist Republic of Vietnam (Vietnam) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is April 1, 2022, through September 30, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable June 15, 2023.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Matthew Palmer, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–1678, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on January 19, 2023.[1]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are gas powered pressure washers from Vietnam. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[4] Northern Tool + Equipment, Inc. (NTE) commented on the scope of the investigation, requesting the addition of exclusion language to the scope as it appeared in the *Initiation Notice.*[5] FNA Group, Inc. (the petitioner) submitted rebuttal comments, requesting the scope remain unchanged.[6] Commerce preliminarily determines the scope language requires no revisions. For further information, *see* the Preliminary Scope Decision Memorandum, dated concurrently with this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to sections 776(a) and (b) of the Act, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, because no Vietnamese producer or exporter of pressure washers participated in this investigation. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical circumstances exist with respect to imports of pressure washers from Vietnam for the Vietnam-wide entity. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[7] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[8] In

[1] *See Gas Powered Pressure Washers from the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 4807 (January 25, 2023); *see also Gas Powered Pressure Washers from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 88 FR 4812 (January 25, 2023) (*Initiation Notice*) (collectively, *Initiation Notices*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Gas Powered Pressure Washers from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

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

[4] *See Initiation Notices.*

[5] *See* NTE's Letter, ''Scope Comments of Northern Tool + Equipment Co.,'' dated February 8, 2023.

[6] *See* Petitioner's Letter, ''Response to Scope Comments,'' dated February 21, 2023.

[7] *See Initiation Notice,* 88 FR at 4811.

[8] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy

Continued

this case, because no respondent qualified for a separate rate, producer/exporter combination rates were not calculated.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist for the period, April 1, 2022, through September 30, 2022:

Producer/exporter	Estimated weighted-average dumping margin (percent)
Vietnam-Wide Entity [9]	225.65

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted-average dumping margin as indicated in the chart above.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise from the Vietnam-wide entity. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of merchandise from all producers and/or exporters of pressure washers from Vietnam that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice in the **Federal Register**.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because Commerce relied entirely on facts available with adverse inferences for the Vietnam-wide entity in accordance with section 776 of the Act, and the applied adverse facts available rate is based solely on the petition, there are no calculations to disclose.

Verification

Because Commerce preliminarily determines in accordance with section 776(b) of the Act that the Vietnam-wide entity has been uncooperative, Commerce will not conduct a verification.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after the deadline date for case briefs.[10] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of pressure washers from Vietnam are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: June 8, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is cold water gas powered pressure washers (also commonly known as power washers), which are machines that clean surfaces using water pressure that are powered by an internal combustion engine, air-cooled with a power take-off shaft, in combination with a positive displacement pump. This combination of components (*i.e.,* the internal combustion engine, the power take-off shaft, and the positive displacement pump) is defined as the ''power unit.'' The scope of this investigation covers cold water gas powered pressure washers, whether finished or unfinished, whether assembled or unassembled, and whether or not containing any additional parts or accessories to assist in the function of the ''power unit,'' including, but not limited to, spray guns, hoses, lances, and nozzles. The scope of this investigation covers cold water gas powered pressure washers, whether or not assembled or packaged with a frame, cart, or trolley, with or without wheels attached.

For purposes of this investigation, an unfinished and/or unassembled cold water gas powered pressure washer consists of, at a minimum, the power unit or components of the power unit, packaged or imported together. Importation of the power unit whether or not accompanied by, or attached to, additional components including, but not

Bulletin 05.1), available on Commerce's website at *https://enforcement.trade.gov/policy/bull05-1.pdf.*

[9] *See* Preliminary Decision Memorandum at section VI., ''Application of Facts Available and Adverse Inferences.''

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

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

limited to a frame, spray guns, hoses, lances, and nozzles constitutes an unfinished cold water gas powered pressure washer for purposes of this scope. The inclusion in a third country of any components other than the power unit does not remove the cold water gas powered pressure washer from the scope. A cold water gas powered pressure washer is within the scope of this investigation regardless of the origin of its engine. Subject merchandise also includes finished and unfinished cold water gas powered pressure washers that are further processed in a third country or in the United States, including, but not limited to, assembly or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope cold water gas powered pressure washers.

The scope excludes hot water gas powered pressure washers, which are pressure washers that include a heating element used to heat the water sprayed from the machine.

Also specifically excluded from the scope of this investigation is merchandise covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof from the People's Republic of China. *See Certain Vertical Shaft Engines Between 99 cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 86 FR 023675 (May 4, 2021).

The cold water gas powered pressure washers subject to this investigation are classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 8424.30.9000 and 8424.90.9040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–12766 Filed 6–14–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–820, C–357–821, A–560–830, C–560–831]

Biodiesel From Argentina and Indonesia: Continuation of Antidumping Duty Orders and Countervailing Duty Orders

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders and countervailing duty (CVD) orders on biodiesel from Argentina and Indonesia would likely lead to the continuation or recurrence of dumping, and countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable June 8, 2023.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3148.

SUPPLEMENTARY INFORMATION:

Background

On January 4, and April 26, 2018, Commerce published in the **Federal Register** the AD and CVD orders on biodiesel from Argentina and India, respectively.[1] On December 1, 2022, the ITC instituted,[2] and Commerce initiated,[3] the first sunset review of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping and countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins of dumping and subsidy rates likely to prevail should the *Orders* be revoked.[4]

On June 8, 2023, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

The product covered by the *Orders* is biodiesel, which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, including biologically-based waste oils or greases, and other biologically-based oil or fat sources. The *Orders* cover biodiesel in pure form (B100) as well as fuel mixtures containing at least 99 percent biodiesel by volume (B99). For fuel mixtures containing less than 99 percent biodiesel by volume, only the biodiesel component of the mixture is covered by the scope of the *Orders.* Biodiesel is generally produced to American Society for Testing and Materials International (ASTM) D6751 specifications, but it can also be made to other specifications. Biodiesel commonly has one of the following Chemical Abstracts Service (CAS) numbers, generally depending upon the feedstock used: 67784–80–9 (soybean oil methyl esters); 91051–34–2 (palm oil methyl esters); 91051–32–0 (palm kernel oil methyl esters); 73891–99–3 (rapeseed oil methyl esters); 61788–61–2 (tallow methyl esters); 68990–52–3 (vegetable oil methyl esters); 129828–16–6 (canola oil methyl esters); 67762–26–9 (unsaturated alkylcarboxylic acid methyl ester); or 68937–84–8 (fatty acids, C12–C18, methyl ester). The B100 product subject to the *Orders* is currently classifiable under subheading 3826.00.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), while the B99 product is currently classifiable under HTSUS subheading 3826.00.3000.

Although the HTSUS subheadings, ASTM specifications, and CAS numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time

[1] *See Biodiesel from the Republic of Argentina and the Republic of Indonesia: Countervailing Duty Orders,* 83 FR 522 (January 4, 2018), and *Biodiesel from the Republic of Argentina and the Republic of Indonesia: Antidumping Duty Orders,* 83 FR 18278 (April 26, 2018) (collectively, *Orders*); *see also Biodiesel from the Republic of Argentina and the Republic of Indonesia: Countervailing Duty Orders,* 83 FR 3114 (January 23, 2018) (correction to the CVD order).

[2] *See Biodiesel from Argentina and Indonesia; Institution of Five-Year Reviews,* 87 FR 73781 (December 1, 2022).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 73757 (December 1, 2022).

[4] *See Biodiesel from Argentina and Indonesia: Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders,* 88 FR 19920 (April 4, 2023), and accompanying Issues and Decision Memorandum (IDM) and *Biodiesel from Argentina and Indonesia: Final Results of Expedited First Sunset Reviews of the Countervailing Duty Orders,* 88 FR 20130 (April 5, 2023), and accompanying IDM.

[5] *See Biodiesel from Argentina and Indonesia,* 88 FR 37579 (June 8, 2023) (*ITC Final Determination*).

of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be June 8, 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 *Orders* 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

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

Dated: June 9, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–12827 Filed 6–14–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council (Council) will hold a meeting to deliberate on recommendations related to promoting the expansion of U.S. exports. Meeting topics will include the Indo-Pacific Economic Framework for Prosperity and strengthening U.S. leadership in technology and innovation. The final agenda will be posted at least one week in advance of the meeting on the President's Export Council website at *https://www.trade.gov/presidents-export-council.*

DATES: June 29, 2023 at 11:00 a.m. ET.

ADDRESSES: The President's Export Council meeting will be broadcast via live webcast on the internet at *https://whitehouse.gov/live.*

FOR FURTHER INFORMATION CONTACT: Tricia Van Orden, Designated Federal Officer, President's Export Council, Room 3424, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: 202–482–5876, email: *tricia.vanorden@trade.gov.*

Press inquiries should be directed to the International Trade Administration's Office of Public Affairs, telephone: 202–482–3809.

SUPPLEMENTARY INFORMATION:

Background: The President's Export Council was first established by Executive Order on December 20, 1973 to advise the President on matters relating to U.S. export trade and to report to the President on its activities and recommendations for expanding U.S. exports. The President's Export Council was renewed most recently by Executive Order 14048 of September 30, 2021, for the two-year period ending September 30, 2023. This Committee is governed in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 1001 *et seq.*

Public Submissions: The public is invited to submit written statements to the President's Export Council. Statements must be received by 5:00 p.m. ET on June 27, 2023 by the following methods:

a. Electronic Submissions

Submit statements electronically to Tricia Van Orden, Designated Federal Officer, President's Export Council via email: *tricia.vanorden@trade.gov.*

b. Paper Submissions

Send paper statements to Tricia Van Orden, Designated Federal Officer, President's Export Council, Room 3424, 1401 Constitution Avenue NW, Washington, DC 20230.

Statements will be posted on the President's Export Council website (*https://www.trade.gov/presidents-export-council*) without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

Meeting minutes: Copies of the Council's meeting minutes will be available within ninety (90) days of the meeting.

Dated: June 12, 2023.

Tricia Van Orden,

Designated Federal Officer, President's Export Council.

[FR Doc. 2023–12780 Filed 6–14–23; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Approved International Trade Administration Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing one upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is: Executive-Led Cybersecurity Business Development Mission to Taiwan, South Korea, and Japan—September 18–26, 2023. A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: *https://www.trade.gov/trade-missions.* For this mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*https://www.trade.gov/trade-missions-schedule*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT: Jeffrey Odum, Events Management Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6397 or email *Jeffrey.Odum@trade.gov.*

SUPPLEMENTARY INFORMATION:

The Following Conditions for Participation Will Be Used for the Mission

Applicants must submit a completed and signed mission application and

[6] *See ITC Final Determination.*

supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that is adequate to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department of Commerce may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be cancelled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content by value.

A trade association/organization applicant must certify to the above for every company it seeks to represent on the mission. In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. firms, services providers and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination markets. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets, including likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.

Balance of company size and location may also be considered during the review process.

Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The applicant will be notified of these exclusions. The Department of Commerce will evaluate applications and inform applicants of selection decisions on a rolling basis until the maximum number of participants has been selected.

Trade Mission Participation Fees

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

Trade mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/*. Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees, accordingly, prepare an agenda for virtual activities, and notify the previously selected applicants with the option to opt-in to the new virtual program.

Definition of Small- and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies as a ''small business'' under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (*https://www.sba.gov/size-standards*) can help you determine the qualifications that apply to your company.

Mission List: (additional information about trade missions can be found at *https://www.trade.gov/trade-missions*).

Executive-Led Cybersecurity Business Development Mission to Taiwan, South Korea, and Japan—September 18–26, 2023

Summary

The United States Department of Commerce, International Trade Administration (ITA), is organizing an Executive-led Cybersecurity Business Development Mission to Taiwan, South Korea, and Japan, September 18–26, 2023.

The purpose of the mission is to introduce U.S. firms to East Asia's information and communication technology (ICT) security and critical infrastructure protection markets, and to assist them in finding business partners and export their products and services to the region. This trade mission will also promote the tenets and adoption of the U.S. National Institute of Standards and Technology (NIST) Cybersecurity Framework globally. The trade mission is intended to include representatives from U.S. companies and U.S. trade associations with members that provide cybersecurity and critical infrastructure protection products and services. The trade mission will visit Taiwan, South Korea, and Japan, where U.S. firms will have access to business development opportunities across East Asia. Participating firms will gain market insights, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. exports of products and services to East Asia. The mission will include customized one-on-one business appointments with pre-screened potential buyers, agents, distributors, and joint venture partners; meetings with officials from government and authorities, as well as industry leaders; and networking events.

Cybersecurity threats exploit the increased complexity and connectivity of critical infrastructure systems, placing a company or economy's security, economy, and public safety and health at risk. Similar to financial and reputational risks, cybersecurity risk affects a company's bottom line. It can drive up costs and affect revenue. It can harm an organization's ability to innovate and to gain and maintain customers. With the ascending growth and sophistication of cyberattacks in recent years, strict compliance and unified security packages are in demand to protect the critical data, infrastructure, and safety of governments, authorities, military, public utilities, banking, financial services, ports, hospitals, and other businesses. The damaging effects of cyber threats and incidents can be felt on many levels from the business to the individual and can spill over across borders. Therefore, Taiwan, South Korea, and Japan are currently increasing resources at the public sector level, as well as at the private sector level, in order to deal with these complex cyber threats. These resources have been well utilized as is evident from the innovations and demand for cyber defense equipment and service technologies. Events in the region have also heightened the importance of improving cybersecurity protection. In 2022, malicious cyber activities disrupted Japanese government websites across various ministries, while Taiwan and South Korea continue their defense against cyberattacks.

The cybersecurity companies of the United States are among the most cutting-edge cybersecurity providers in the world. Whether it is cybersecurity products, such as network-monitoring systems or firewalls, or cybersecurity services, such as security testing and audits or cyber risk consulting, the technology providers of the United States are among the world's leaders in enterprise and consumer cybersecurity solutions. This is why U.S. cybersecurity products and services are continually in high demand overseas and why the U.S. Department of Commerce is focused on promoting U.S. cybersecurity exports around the world. The Asia-Pacific market is one of the most lucrative for U.S. cybersecurity companies.

In 2014, recognizing that national and economic security depends on the reliable functioning of critical infrastructure, NIST released the Cybersecurity Framework, consisting of voluntary guidelines for organizations to manage cybersecurity risk. NIST subsequently released an updated version in 2018 and is currently undertaking a second update. The Cybersecurity Framework, created through collaboration between industry and government, is widely adopted by organizations in the United States, as well as internationally, and is available in several languages including Spanish, Portuguese, Italian, Hebrew, Japanese, Arabic, and Bulgarian.

This trade mission will seek to also support the tenets and adoption of the NIST Cybersecurity Framework globally. While the NIST Cybersecurity Framework was created in the United States, it provides an important risk-based approach that has been adopted by industries across the globe and has influenced the way other governments have formulated their own approaches to cybersecurity risk management. Private sector stakeholders have made it clear that the global alignment of cybersecurity practices and standards is important to avoid confusion and duplication of effort. Countries and economies in Asia are currently considering approaches aligned with the NIST Cybersecurity Framework. The potential adoption of the NIST Cybersecurity Framework by organizations in healthcare, finance, and other critical infrastructure sectors across Asia can facilitate alignment, adoption, and internationalization of a common risk-based approach to managing cybersecurity risk, which provides market access opportunities in the region to U.S. firms with cybersecurity expertise and solutions.

Proposed Timetable

*** Note:** The final schedule and potential site visits will depend on the availability of host government, authorities and business officials; specific goals of mission participants; and ground transportation.

Sunday, September 17, 2023	Trade Mission Participants Arrive in Taipei.
Monday, September 18, 2023	Welcome and Taiwan Briefing; One-on-One business matchmaking appointments; Networking Reception at residence of the Deputy Director of the American Institute in Taiwan (To Be Confirmed).
Tuesday, September 19, 2023	One-on-One business matchmaking appointments; Networking Lunch (No-Host); One-on-One business matchmaking appointments.
Wednesday, September 20, 2023	Trade Mission Participants Travel/Arrive to Seoul.
Thursday, September 21, 2023	Welcome and South Korea Briefing; One-on-One business matchmaking appointments; Networking Reception at Deputy Chief of Mission residence (To Be Confirmed).
Friday, September 22, 2023	One-on-One business matchmaking appointments; Networking Lunch (No-Host); One-on-One business matchmaking appointments.
Saturday, September 23, 2023	Trade Mission Participants Stay in Seoul or Travel to Tokyo.
Sunday, September 24, 2023	Trade Mission Participants Arrive in Tokyo; Welcome cocktail hour with mission delegates and U.S. Embassy officials.

Monday, September 25, 2023	Welcome and Japan Briefing; One-on-One business matchmaking appointments; Networking Reception at U.S. Embassy.
Tuesday, September 26, 2023	Cybersecurity-related engagements and site visits in Tokyo Metropolitan Area.

Participation Requirements

All parties interested in participating in the trade mission must submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined above. A minimum of fifteen and maximum of twenty companies and/or trade associations will be selected to participate in the mission on a rolling basis.

Fees and Expenses

After a firm or trade association has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The fees are as follow:

The participation fee will be $5,900 for a small or medium-sized enterprises (SME) and $7,500 for large firms. There will be a $1,000 fee for each additional firm representative (large firm or SME).

If an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/passports/en/alertswarnings.html.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Department of Commerce trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than June 23, 2023. The Department of Commerce will evaluate applications and inform applicants of selection decisions on a rolling basis until the maximum number of participants has been selected. Applications received after June 23, 2023, will be considered only if space and scheduling constraints permit.

Contacts

U.S. Contact Information

Pompeya Lambrecht, Recruitment Lead, Global Cybersecurity Lead for Trade Promotion, U.S. Commercial Service Northern VA, *Pompeya.Lambrecht@trade.gov,* Tel: 703–8385–3753

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Asia Contact Information

U.S. Embassy—Tokyo, Ross R. Belliveau, Commercial Attache, U.S. Department of Commerce, *Ross.Belliveau@trade.gov*

U.S. Embassy—Seoul, Michael Kim, Commercial Attache, U.S. Department of Commerce, *Michael.Kim@trade.gov*

American Institute in Taiwan, Clint Brewer, Commercial Attache, U.S. Department of Commerce, *Clint.Brewer@trade.gov*

Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2023–12833 Filed 6–14–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–812]

Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Final Results of Antidumping Duty Administrative Reviews; Deferred 2019–2020 Period and Concurrent 2020–2021 Period

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that circular welded carbon-quality steel pipe (CWP) from the Sultanate of Oman (Oman) was sold in the United States at less than normal value (NV) during the periods of review (POR), December 1, 2019, through November 30, 2020, and December 1, 2020, through November 30, 2021.

DATES: Applicable June 15, 2023.

FOR FURTHER INFORMATION CONTACT: Dennis McClure, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5973.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2022, Commerce published the *Preliminary Results* of the deferred 2019–2020 administrative review and the concurrent 2020–2021 administrative review of the antidumping duty order on CWP from Oman.[1] We invited interested parties to

[1] *See Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review; Deferred 2019–2020 Period and Concurrent 2020–2021*

Continued

comment on the *Preliminary Results*.[2] On April 20, 2023, we extended the deadline for the final results of these reviews until June 8, 2023.[3] The administrative review for the 2019–2020 POR covers Al Jazeera Steel Products Co. SAOG (Al Jazeera).[4] The administrative review for the 2020–2021 POR covers four exporters/producers,[5] of which we selected Al Jazeera as the mandatory respondent.[6] For a summary of the events that occurred since the Preliminary Results, see the Issues and Decision Memorandum.[7] Commerce conducted these reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [8]

The merchandise subject to the *Order* is CWP from Oman. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by parties in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade/gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Commerce received no comments and made no changes to the *Preliminary Results* for the 2019–2020 POR. Based on a review of the record and comments received from interested parties regarding our *Preliminary Results* for the 2020–2021 POR, we made certain changes to the preliminary weighted-average dumping margin calculations for Al Jazeera for the 2020–2021 POR.[9] As a result of these changes, the preliminary weighted-average dumping margin also changes for the companies subject to this review, but not selected for individual examination.

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value (LTFV) investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding rates that are zero, *de minimis* (*i.e.,* less than 0.5 percent), or determined entirely on the basis of facts available.

No companies other than Al Jazeera remain under review for the 2019–2020 POR.[10] For the 2020–2021 POR, we calculated a weighted-average dumping margin for Al Jazeera that is not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, Commerce has assigned to companies not individually examined for the 2020–2021 POR a margin of 2.31 percent, which is Al Jazeera's calculated weighted-average dumping margin for the 2020–2021 POR.

Final Results of Review

Commerce determines that the following estimated weighted-average dumping margins exist for the periods December 1, 2019, through November 30, 2020, and December 1, 2020, through November 30, 2021:

Exporter/producer	Weighted-average dumping margin for December 1, 2019 to November 30, 2020 POR (percent)	Weighted-average dumping margin for December 1, 2020 to November 30, 2021 POR (percent)
Al Jazeera Steel Products Co. SAOG	4.61	2.31
Al Samna Metal Manufacturing & Trading Company LLC [11]	Not Applicable	2.31
Bollore Logistics (Oman) LLC [12]	Not Applicable	2.31
Transworld Shipping Trading & Logistics Services LLC [13]	Not Applicable	2.31

Disclosure

We intend to disclose the calculations performed for these final results of review to interested parties within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP)

Period, 87 FR 79865 (December 28, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Preliminary Results,* 87 FR at 79865.

[3] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated April 20, 2023.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 6487 (February 4, 2022) (*Initiation Notice*) at fn. 6.

[5] The four companies are: Al Jazeera; Al Samna Metal Manufacturing & Trading Company LLC (Al Samna); Bollore Logistics (Oman) LLC (Bollore Logistics); and Transworld Shipping Trading & Logistics Services LLC (Transworld Shipping). *See Initiation Notice.*

[6] *See Preliminary Results,* 87 FR at 79865.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Deferred 2019–2020 and Concurrent 2020–2021 Antidumping Duty Administrative Review: Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[8] *See Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, and the United Arab Emirates: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders,* 81 FR 91906 (December 19, 2016) (*Order*).

[9] *See* Issues and Decision Memorandum.

[10] On March 9, 2021, Commerce published the rescission of the administrative review for the 2019–2020 POR with respect to Al Samna, Bollore Logistics, and Transworld Shipping. *See Circular Welded Carbon-Quality Steel Pipe from Oman: Rescission of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 13525 (March 9, 2021).

[11] Commerce rescinded the administrative review for the 2019–2020 POR for this company. *See Preliminary Results,* 87 FR at 79865, at fn. 2.

[12] *Id.*

[13] *Id.*

shall assess, antidumping duties on all appropriate entries for the 2019–2020 POR and the 2020–2021 POR, at the applicable *ad valorem* assessments rates listed for the corresponding review period. Pursuant to 19 CFR 351.212(b)(1), because Al Jazeera reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the 2019–2020 POR and the 2020–2021 POR produced by Al Jazeera for which it did not know that the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[14]

For the companies which were not selected for individual examination for the 2020–2021 POR, we will instruct CBP to assess antidumping duties at a rate equal to the weighted-average dumping margin determined for the non-examined companies. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of these reviews in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews, as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for each company listed above will be equal to the weighted-average dumping margin established in the final results of the 2020–2021 review, except, if that rate is *de minimis,* then the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not subject to this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or the original LTFV investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 7.36 percent that was established in the LTFV investigation.[15] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the 2019–2020 POR and the 2020–2021 POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (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 sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 19 CFR 351.221(b)(5).

[14] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[15] *See Order,* 81 FR at 91908.

Dated: June 8, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–12767 Filed 6–14–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–812]

Certain Carbon and Alloy Steel Cut-To-Length Plate From Belgium: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Industeel Belgium S.A. (Industeel), a producer and exporter subject to this administrative review, made sales of subject merchandise at less than normal value (NV) during the period of review (POR), May 1, 2021, through April 30, 2022. Additionally, we preliminarily determine that one company had no shipments during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Applicable June 15, 2023.

FOR FURTHER INFORMATION CONTACT: Steven Seifert, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3350.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2022, based on timely requests for review in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of an administrative

review of the antidumping duty order [1] on certain carbon and alloy steel cut-to-length plate from Belgium.[2] This review covers Industeel and NLMK Belgium,[3] producers and/or exporters of the subject merchandise. Commerce selected both companies for individual examination.

On January 11, 2023, Commerce extended the preliminary results of this review by 120 days, until May 31, 2023.[4] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[5] A list of topics discussed in the Preliminary Decision Memorandum is included in the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

Preliminary Determination of No Shipments

Based on entry documentation received from U.S. Customs and Border Protection (CBP) [6] and the certification provided by NLMK Belgium,[7] we preliminarily determine that NLMK Belgium had no shipments and, therefore, no reviewable entries, of subject merchandise during the POR. Consistent with Commerce's practice, we will not rescind the review with respect to NLMK Belgium, but, rather, will complete the review and issue appropriate instructions to CBP based on the final results of the review.[8]

Scope of the Order

The products covered by the *Order* are certain carbon and alloy steel cut-to-length plate from Belgium. For a full description of the scope of the *Order, see* Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margin exists for the period May 1, 2021, through April 30, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Industeel Belgium S.A	2.65

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[9] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[11] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] Case and rebuttal briefs should be filed using ACCESS and must be served on interested parties.[13] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[15] Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[16] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, no later than 120 days after the date of publication of this notice, unless otherwise extended.[17]

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries.[18] Pursuant to 19 CFR 351.212(b)(1), if Industeel's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of those same sales. Where either Industeel's weighted-

[1] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096, 24098 (May 25, 2017) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 42144 (July 14, 2022).

[3] Commerce collapsed NLMK Clabecq S.A., NLMK Plate Sales S.A., NLMK Sales Europe S.A., NLMK Manage Steel Center S.A., and NLMK La Louviere S.A. as a single entity (collectively, NLMK Belgium) in the less-than-fair-value investigation. *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part,* 82 FR 16378 (April 4, 2017).

[4] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2021–2022 Antidumping Duty Administrative Review,'' dated January 11, 2023.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2021–2022 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* Memorandum, ''Release of U.S. Customs and Border Protection Information,'' dated November 16, 2022.

[7] *See* NLMK Belgium's Letter, ''No Shipment Certification,'' dated August 5, 2022.

[8] *See* 19 CFR 351.307(b)(1)(v).

[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(c).

[11] Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.303.

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

[15] *See* 19 CFR 351.310(c).

[16] *See* 19 CFR 351.310(d).

[17] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[18] *See* 19 CFR 351.212(b).

average dumping margin is zero or *de minimis,* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[19]

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Industeel for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate established in the original less-than-fair-value (LTFV) investigation (5.40 percent) if there is no rate for the intermediate company(ies) involved in the transaction.[20]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Industeel will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.40 percent, the all-others rate established in the LTFV investigation.[21] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: May 31, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–12828 Filed 6–14–23; 8:45 am]

BILLING CODE 3510–DS–P

[19] *See* 19 CFR 351.106(c)(2).

[20] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[21] *See CTL Plate Order,* 82 FR 24098.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD059]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Space Force Operations at Vandenberg Space Force Base, California

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

ACTION: Notice; receipt of application for regulations and letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Space Force (USSF) for authorization to take small numbers of six species of marine mammals, by Level B harassment only, incidental to rocket and missile launches and other base operations at Vandenberg Space Force Base (VSFB). USSF is requesting a 5-year Letter of Authorization for takes resulting from these activities (2024–2029). Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Space Force's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the Space Force's application and request.

DATES: Comments and information must be received no later than July 17, 2023.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to *ITP.Tucker@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Steven Tucker, (301) 427–8401. An electronic copy of the USSF application 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 email the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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 authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On November 2, 2022 NMFS received an application from the U.S. Space Force, Vandenberg Space Force Base requesting authorization for taking of marine mammals by Level B harassment incidental to base operations. Following extensive exchange of information between NMFS and the applicant, a revised application was submitted on May 25, 2023. The revised application was deemed adequate and complete on May 26, 2023.

Launch sites at VSFB serve as the point of origin for launches conducted by Department of Defense, National Aeronautics and Space Administration, and commercial entities. All launch operations would occur at VSFB, potentially resulting in impacts to marine mammals at VSFB (as a result of launch noise and visual stimuli) and at the Northern Channel Islands (as a result of noise from sonic booms). Therefore, USSF requests authorization to incidentally take marine mammals.

Specified Activities

U.S. Space Force's request describes activities that are conducted to meet mission requirements for VSFB. The base is the primary launch facility on the west coast of the United States for placing commercial, government, and military satellites into polar orbit on unmanned launch vehicles, and for the testing and evaluation of intercontinental ballistic missiles (ICBMs) and sub-orbital target and interceptor missiles. Related operations include surface launches of space vehicles and recovery of first stage boosters, silo launches of intercontinental ballistic missiles, test launches related to the Ground Based Strategic Defense program (GBSD), operation of various aircraft including unmanned aerial systems, and harbor operations. The USSF anticipates an incremental increase in the number of launches, culminating with 15 missile and 110 rocket launches in 2028, the last full calendar year that an authorization would be in effect.

A full description of these activities including descriptions of the types of vehicles, estimated number of launches per year and proposed marine mammal monitoring, is provided in the USSF's request.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning U.S. Space Force's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by U.S. Space Force, if appropriate.

Dated: June 9, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–12788 Filed 6–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0061]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; ED–524 Budget Information Non-Construction Programs Form and Instructions

AGENCY: Office of Finance and Operations (OFO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before July 17, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Cleveland Knight, 202–987–0064.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in

response to this notice will be considered public records.

Title of Collection: ED–524 Budget Information Non-Construction Programs Form and Instructions.

OMB Control Number: 1894–0008.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Private sector.

Total Estimated Number of Annual Responses: 8,800.

Total Estimated Number of Annual Burden Hours: 154,000.

Abstract: The ED–524 form and instructions are included in U.S. Department of Education discretionary grant application packages and are needed in order for applicants to submit summary-level budget data by budget category, as well as a detailed budget narrative, to request and justify their proposed grant budgets which are part of their grant applications.

Dated: June 12, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–12826 Filed 6–14–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2023–FSA–0082]

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) publishes this notice of a modified system of records entitled ''Aid Awareness and Application Processing'' (18–11–21). This system maintains information necessary for the Department to process applications for Federal student financial program assistance under title IV of the Higher Education Act of 1965, as amended (HEA); to perform the responsibilities of the Federal Student Aid (FSA) Ombudsman; to provide Federal student loan repayment relief including under the borrower defense to repayment regulations; to notify aid applicants and aid recipients of aid program opportunities and updates under title IV of the HEA via digital communication channels; and to maintain the *StudentAid.gov* website as the front end for assisting customers with all of their Federal student financial aid needs throughout the student aid lifecycle. Electronic records maintained in the Aid Awareness and Application Processing (AAAP) system are collected by the Department's Digital and Customer Care (DCC) Information Technology (IT) system.

DATES: Submit your comments on this modified system of records notice on or before July 17, 2023.

This modified system of records notice will become applicable on June 15, 2023, unless it needs to be changed as a result of public comment, except for the new and modified routine uses (1)(a), (j), (m), (n), (p), and (q) that are outlined in the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES,'' which will be effective on July 17, 2023, unless they need to be changed as a result of public comment. The Department will publish any changes to the modified system of records notice resulting from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov.* However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov,* please contact one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''FAQ'' tab.

Privacy Note: The Department's policy is to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or aid, please contact one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Rachel Coghlan, Central Processing System (CPS)—System Manager, Student Experience and Aid Delivery, Federal Student Aid (FSA), U.S. Department of Education, Union Center Plaza, 830 First Street NE, Washington, DC 20202–5454. Telephone: 202–377–3205. Email: *Rachel.Coghlan@ed.gov.*

Corey Johnson, FAFSA Processing System (FPS) Information System Owner, Federal Student Aid, U.S. Department of Education, Union Center Plaza, 830 First Street NE, Washington, DC 20202–5454. Telephone: 202–377–3898. Email: *Corey.Johnson@ed.gov.*

Bonnie Latreille, Ombudsman/Director, Ombudsman Group, Federal Student Aid (FSA), U.S. Department of Education, Union Center Plaza, 830 First Street NE, Washington, DC 20202–5454. Telephone: 202–377–3726. Email: *Bonnie.J.Latreille@ed.gov.*

Pardu Ponnapalli, Information System Owner, Technology Directorate, Federal Student Aid, U.S. Department of Education, Union Center Plaza, 830 First Street NE, Washington, DC 20202–5454. Telephone: 240–382–5825. Email: *Pardu.Ponnapalli@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act, the Department proposes to modify the system of records notice entitled ''Aid Awareness and Application Processing'' (18–11–21). As described in greater detail below, these modifications include the addition to the Aid Awareness and Application Processing (AAAP) system of records of the information collected through the Free Application for Federal Student Aid (FAFSA®) Processing System (FPS), which will modernize the legacy Central Processing System (CPS) with new, more efficient technology such as cloud storage. CPS is the information system within the AAAP system of records that currently processes data from the FAFSA. CPS will process award year 2023–2024 data through September 30, 2024. FPS will become operational on or after December 1, 2023, to begin

processing FAFSA data for award year 2024–2025. Therefore, CPS and FPS will process a separate FAFSA cycle for a period of time on or after December 1, 2023, through September 30, 2024. After September 30, 2024, CPS will be decommissioned and fully replaced by FPS within AAAP. FPS will process data for all award years thereafter. (Note: CPS began accepting applications for the 2023–2024 award year (July 1, 2023–June 30, 2024) on October 1, 2022, and will process corrections through September 30, 2024. FPS will begin accepting applications for the 2024–2025 award year (July 1, 2024–June 30, 2025) on or after December 1, 2023, and will process corrections through September 30, 2025. CPS and FPS will process applications for two separate award years between December 1, 2023–September 30, 2024.)

In addition to the incorporation of FPS, the modifications to the AAAP system will also allow the Department to implement two new laws for the 2024–2025 FAFSA award year: the FAFSA Simplification Act, title VII, division FF of Public Law 116–260 (*see:* ''Beginning Phased Implementation of the FAFSA Simplification Act (Electronic Announcement (EA)_ID: General–21–29),'' *available at https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-06-11/beginning-phased-implementation-fafsa-simplification-act-ea-id-general-21-39,* which is an electronic announcement that explains the Department's phased approach to the implementation of the FAFSA Simplification Act), and the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act, Public Law 116–91, which directs the Internal Revenue Service (IRS), upon the written request of the Department, to disclose specific Federal Tax Information (FTI) to an ''authorized person'' for specific purposes, including, but not limited to, determining eligibility for, or repayment obligations under, income-driven repayment (IDR) plans with respect to loans under part D of title IV of the HEA, and determining eligibility for and the amount of student financial aid under subpart 1 of part A, part C, or part D of title IV of the HEA and requires, as a condition of receiving such FTI, compliance by the Department and ''authorized persons'' with IRS Publication 1075, ''Tax Information Security Guidelines for Federal, State and Local Agencies, Safeguards for Protecting Federal Tax Returns and Return Information,'' (IRS Publication 1075) to meet IRS security and privacy requirements. The FAFSA Simplification Act, which includes a significant overhaul of Federal student financial program assistance under title IV of the HEA including the need analysis, will replace the Expected Family Contribution (EFC) with the Student Aid Index (SAI) and will reinstate the eligibility of qualified incarcerated students in Federal and State penal facilities to receive a Federal Pell Grant (starting with the 2023–2024 award year). Thus, this system of records is modified to reflect the receipt of the SAI and the implementation of an Incarcerated Student Indicator Flag that will be used to identify an aid applicant as an incarcerated student. The FUTURE Act will require that a student's SAI be calculated using the FTI that the Department will receive directly from the IRS, which will be maintained by the Department in a separate system covered by the system of records notice entitled ''FUTURE Act System (FAS)'' (18–11–23) that the Department will publish in the **Federal Register**. Hence, this system of records will receive the SAI from the FAS (starting with the 2024–2025 award year). The AAAP system will not store FTI that the IRS will disclose directly to the Department for purposes of FAFSA application processing and aid eligibility determination and to determine eligibility and monthly payment amounts under IDR plans as that will be stored in the FAS.

Specifically, the Department is modifying the section entitled ''SYSTEM LOCATION'' to clarify the system locations for CPS and the DCC IT system, and to add the system locations for FPS.

The Department is modifying the section entitled ''SYSTEM MANAGER(S)'' to add the information system owner for FPS.

The Department is modifying the section entitled ''PURPOSES(S) OF THE SYSTEM'' to update the purposes related to applying for Federal student financial assistance and administering title IV, HEA programs as follows:

(i) Purpose (3) is updated to also include verifying the identity of an individual who applies for an FSA ID until CPS is decommissioned after September 30, 2024.

(ii) Purpose (5) is updated to revise the reference to duly authorized matching programs between the Department and ''State or local agencies'' to instead read ''State or local governments, or agencies thereof,'' as entities with which the Department may engage in duly authorized matching programs and report the matching results to applicants, IHEs, third-party servicers, State agencies designated by the applicant, and Departmental and investigative components where the Department is required by law to do so or where it would be essential to the conduct of the matching program to report, such as for the imposition of criminal, civil, or administrative sanctions.

The Department is modifying the section entitled ''PURPOSE(S) OF THE SYSTEM'' to update the purposes related to managing customer engagement as follows:

(i) Purpose (7) is updated to reference additional borrower defense to repayment regulations that enable the Department to carry out its duties and responsibilities in governing the program; and

(ii) Purpose (8) is updated to reflect the language used in the Department's borrower defense to repayment regulations effective July 1, 2023, pursuant to which the Department will pursue the recovery of liabilities from an institution of higher education (IHE) for losses incurred as a result of the act or omission of the IHE participating in the Federal student loan programs.

Also, the Department is modifying the section entitled ''PURPOSES(S) OF THE SYSTEM'' to update the purposes related to the Department's administration and oversight of title IV, HEA programs as follows:

(i) Purpose (9) is updated to add the spouse of a married applicant as an individual who can be informed of information about themself in an application for title IV, HEA funds;

(ii) Purpose (10) is updated to clarify that applicant records are disclosed to the parent(s) of a dependent applicant applying for a PLUS loan (to be used on behalf of a student), to identify the student as the correct beneficiary of the PLUS loan funds, and to allow the processing of the PLUS loan application and promissory note;

(ii) Purpose (11) is updated to broaden ''student application process'' to ''application process'' so that it also applies to other applicants such as parent applicants;

(iii) Purpose (12) is updated to clarify that an applicant will be enabled, at the applicant's written request, to obtain income information about the applicant from the IRS using the Data Retrieval Tool until CPS is decommissioned after September 30, 2024; and

(iv) Purpose (17) is updated to include the implementation and evaluation of education policies in relation to title IV, HEA programs to better clarify the purpose.

The Department is modifying the section entitled ''CATEGORIES OF

INDIVIDUALS COVERED BY THE SYSTEM'' as follows:

(i) To clarify in the first paragraph that requests for borrower defense to repayment may be submitted to the Department by certain State agencies and legal assistance organizations (''third-party requestors'') who may request that the Secretary of Education form groups of borrowers under the Department's borrower defense to repayment regulations effective July 1, 2023. (Note: 34 CFR 685.401(a) defines the term ''legal assistance organization'' as ''a legal assistance organization that: (i) employs attorneys who: (A) [a]re full-time employees; (B) provide civil legal assistance on a full-time basis; and (C) [a]re continually licensed to practice law; and (ii) [i]s a nonprofit organization that provides legal assistance with respect to civil matters to low-income individuals without a fee.'' The regulation defines the term ''third-party requestor'' to mean ''a State requestor or legal assistance organization as defined in § 685.401(a).'');

(ii) To remove from the second paragraph coverage of students who are in attendance at a secondary school and about whom State grant agencies currently submit information (*e.g.,* name, date of birth (DOB), and zip code) to the Department in order for the State grant agencies and other eligible requesting entities, such as secondary schools, local educational agencies (LEAs), or Tribal agencies, that have an established relationship with the student pursuant to the terms and conditions of the Student Aid Internet Gateway (SAIG) Participation Agreement for State Grant Agencies, to obtain the student's FAFSA filing status information to promote and encourage the student to apply for title IV, HEA program assistance, as currently permitted by section 483(a)(3)(E) of the HEA (20 U.S.C. 1090(a)(3)(E)), as of June 30, 2024, because the Department will cease providing the student's FAFSA filing status information for this purpose due to the amendment of the HEA;

(iii) To update the third paragraph to cover the spouse of a married applicant for student financial assistance under one of the programs authorized under title IV of the HEA and the parent(s) of a dependent applicant for student financial assistance under one of the programs authorized under title IV of the HEA; and, for purposes of clarity, to replace ''authorized third parties'' with ''third-party preparers;'' and

(iv) To add a new fourth paragraph to explain that until CPS is decommissioned after September 30, 2024, this system of records notice will cover individuals who apply for an FSA ID, as CPS is used as a pass-through to send records from the Department's Person Authentication Service (PAS) system to the Social Security Administration (SSA) for computer matching in order to assist the Department in verifying their identities.

The Department is modifying the section entitled ''CATEGORIES OF RECORDS IN THE SYSTEM'' as follows:

(i) Category (1) is updated to note that driver's license number will not be collected on the FAFSA for award year 2024–2025 and onward, and will not be collected by FPS; to remove ''Federal tax information'' and to include asset and income information as an example of financial information provided by the applicant for title IV, HEA program assistance on an incomplete or completed FAFSA; and, to add a parenthetical that explains that the FTI that the Department will directly obtain from the IRS under the FUTURE Act will not be maintained in the AAAP system, but in a separate system of records entitled the ''FUTURE Act System (FAS)'' (18–11–23), for which the Department will publish a system of records notice in the **Federal Register**;

(ii) Category (2) is updated to inform the public that starting with award year 2024–2025, ''the parent's highest level of schooling completed'' will be replaced on the FAFSA with ''the parent's college attendance status'' to reflect changes to section 483 the HEA made by the FAFSA Simplification Act;

(iii) Category (3) is updated to, more broadly, cover ''information about the spouse of a married applicant,'' rather than only ''information on spousal income and assets,'' and to provide examples of the data elements that will be maintained in this system on the spouse of a married applicant;

(iv) Category (5) is updated to inform the public that EFC information will be calculated by CPS through the 2023–24 award year and to relocate, with some modifications, as described below, the discussion of other information previously described in Category (5), such as the information on the applicant's Institutional Student Information Record (ISIR) and Student Aid Report (SAR), to newly renumbered Category (6);

(v) Newly renumbered Category (6) is added to reflect the discussion of information on the applicant's ISIR and SAR, along with related processes, previously set forth in Category (5), with updates: to explain that the ISIR and SAR will be used to report, among other things, the SAI results that are calculated during FPS processing; to explain that SAI information will be available to, and used by, IHEs to determine eligibility for Federal and institutional program assistance and the amount of assistance, and State grant agencies to determine eligibility for State grants and the amount of grant assistance; and to add an Incarcerated Student Indicator Flag (an indicator that will be used to identify an aid applicant as an incarcerated student) as an example of information maintained in the system;

(vi) Newly renumbered Category (7) is updated to add the name, address, and phone number of ''third-party requestor(s), as this term is defined in 34 CFR 685.401(a),'' as information that, if applicable, identifies aid applicant or aid recipient complaints, positive feedback, reports of suspicious activity, requests for assistance, requests for borrower defense relief, requests for PSLF reconsideration, or other inquiries;

(vii) Newly added Category (13) is added to cover information provided on third-party preparers, including, but not limited to, first name, last name, Social Security number (SSN) or employer identification number, affiliation, address or employer's address, signature, and signature date, due to section 483(d)(2) of the HEA, as amended by section 702(m) of the FAFSA Simplification Act; and

(viii) The ''Note'' section is updated to replace ''Federal tax information'' with ''asset and income information'' in the description of information about individuals who apply for or receive a Federal grant or loan under one of the programs authorized under title IV of the HEA that is collected in the AAAP system and stored in the ''Common Origination and Disbursement (COD) System'' (18–11–02) system of records. The ''Note'' section is also updated to add ''some'' before ''information'' and to remove ''relevant Federal loan servicer information'' in the description of the information that is accessible from Federal Loan Servicers' systems (covered by the ''Common Services for Borrowers (CSB)'' (18–11–16) system of records notice) on *StudentAid.gov.* The 'Note' section is also updated to explain that until CPS is decommissioned after September 30, 2024, the AAAP system is also used as a pass-through to send information, including, but not limited to, SSN, name, and DOB, that is stored in the ''Person Authentication Service (PAS)'' (18–11–12) system of records to SSA for computer matching on individuals who apply for an FSA ID in PAS in order to assist the Department in verifying their identities. The ''Note'' section is further updated to explain that beginning with the 2024–25 award year application cycle, the IRS will

disclose directly to the Department FTI for FAFSA application processing and aid eligibility determination; that FTI will not be stored in this system. Beginning July 30, 2023, the IRS will also disclose directly to the Department FTI to determine eligibility and monthly payment amounts under IDR plans; that FTI also will not be stored in this system. All FTI that the IRS discloses directly to the Department under the FUTURE Act will be maintained within the IRS Publication 1075-compliant FTI Module (FTIM) system covered under the Department's system of records notice entitled ''FUTURE Act System (FAS)'' (18–11–23). The AAAP system will continue to maintain both historical income information (obtained from the IRS until CPS is decommissioned) and applicant-provided income information (either through a manual FAFSA entry or submission of alternative documentation of income (ADOI) through the IDR process). Any reference to income throughout this system of records notice refers explicitly to income information that the Department did not obtain directly from the IRS but obtained from the applicant or from another source.

The Department is modifying the section entitled ''RECORD SOURCE CATEGORIES'' to add that the AAAP system will maintain information that will be added during FPS processing, including the results of matching programs with Federal agencies or State or local governments, or agencies thereof, so that the public is informed of the areas where CPS and FPS conduct identical processing of FAFSA data. Also, the Department is modifying this section to include third-party preparers as a source of records for this system. In addition, the Department is modifying this section to indicate that the Department's matching program with the SSA involves verifying the SSNs of spouses of married applicants and of individuals who apply for an FSA ID; and to inform the public that the matching program with the U.S. Department of Defense (DoD) will only be active through the 2023–2024 award year following the implementation of the FAFSA Simplification Act on July 1, 2024. Further, the Department is updating this section to explain that during FPS processing, the AAAP system will receive SAI information from the Department's FAS. The Department is also updating this section to clarify that the AAAP system may receive information to process requests for borrower defense to repayment that are submitted by ''State requestors'' and ''legal assistance organizations'' (''third-party requestors''), as these terms are defined in 34 CFR 685.401(a), who may request that the Secretary of Education form groups of borrowers for borrower defense relief. The Department is also modifying the 'Note' portion of this section to correct the name of the ''TEACH Initial'' counseling type to ''TEACH Grant Initial and Subsequent,'' the name of the ''TEACH Exit'' counseling type to ''TEACH Grant Exit,'' the name of the ''TEACH Conversion'' counseling type to ''TEACH Grant Conversion,'' and the name of the agreement from ''TEACH Agreement to Serve (ATS)'' to ''TEACH Grant Agreement to Serve or Repay (Agreement).''

The Department is modifying the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES'' as follows:

(i) Because of amendments to the HEA made by the FAFSA Simplification Act and the FAFSA Simplification Technical Corrections Act (Pub. L. 117–103), which are effective July 1, 2024, the Department changed the date in the preamble from ''June 30 2023'' to ''June 30, 2024'' addressing when the use restriction in section 483(a)(3)(E) of the HEA (20 U.S.C. 1090(a)(3)(E)) will no longer be applicable.

(ii) Because CPS serves as a pass-through to send records from the PAS to SSA, routine use (1)(a) is updated to include, until CPS is decommissioned after September 30, 2024, the disclosure of records from CPS on individuals who apply for an FSA ID for the purpose of verification of their identities;

(iii) Routine use (1)(j) is updated to replace ''repayment of the amount'' with ''the recovery of liabilities'' to reflect the language used in the Department's borrower defense to repayment regulations effective July 1, 2023, pursuant to which the Department will pursue the recovery of liabilities of discharges against the IHE;

(iv) Routine use (1)(m) is updated to add ''third-party requestors'' to the entities to which the Department can disclose records from this system to investigate and resolve complaints, inquiries, requests for assistance, requests for Federal student loan repayment relief, and other relief under the borrower defense to repayment regulations, and to update borrower account records and to correct errors;

(v) Routine use (1)(n) is updated to allow the Department to make disclosures to the spouse of a married applicant to inform the spouse of information about them in an application for title IV, HEA funds;

(vi) Routine use (1)(p) is updated to explain that prior to the amendments of the HEA made by the FAFSA Simplification Act and the FAFSA Simplification Technical Corrections Act, which are effective July 1, 2024, the Department may disclose a student's FAFSA filing status to a local educational agency, a secondary school where the student is or was enrolled, a State, local, or Tribal agency, or an entity that awards aid to students and that the Secretary of Education has designated under section 483(a)(3)(E) of the HEA (20 U.S.C. 1090(a)(3)(E)) to encourage a student to complete a FAFSA that they started but did not submit or to assist an applicant with the completion of a FAFSA;

(vii) Routine use (1)(q) is deleted because the Department is not making disclosures to other Federal agencies to assist applicants in completing the FAFSA or income-driven repayment forms online; and

(viii) Former routine use (1)(r) is renumbered as routine use (1)(q) and is updated to explain that, through June 30, 2024, the Department may disclose records from this system to State higher education agencies, eligible IHEs, and other entities that the Secretary of Education has designated under section 483(a)(3)(E) of the HEA (20 U.S.C. 1090(a)(3)(E)) that award and administer aid to students, to determine an applicant's eligibility for the award of aid by State higher education agencies, eligible IHEs, or by other entities the Secretary of Education has designated. However, effective July 1, 2024, under amendments to the HEA made by the FAFSA Simplification Act and the FAFSA Simplification Technical Corrections Act, the Department will no longer rely on this authority to disclose records from this system to State higher education agencies, eligible IHEs, and other entities that the Secretary of Education has designated under section 483(a)(3)(E) of the HEA (20 U.S.C. 1090(a)(3)(E)).

The Department is modifying the section entitled ''POLICIES AND PRACTICES FOR STORAGE OF RECORDS'' to explain that fully processed paper applications and supporting paper documentation that are received on or before June 30, 2024, are stored for applicable periods in standard Federal Records Center boxes in locked storage rooms at the contractor facilities in London, Kentucky; and fully processed paper applications and supporting paper documentation requiring retention and received on or after July 1, 2024, will be stored in a private records storage facility, as applicable.

The Department is modifying the section entitled ''POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS'' to clarify that records in this system pertaining to a title IV, HEA loan applicant, borrower, or grant recipient are indexed and retrieved by, among other things, the award year, not the academic year, in which the applicant applied for title IV, HEA program assistance; to clarify that a combination of SSN, DOB, and name data elements is used to retrieve some, but not all, records from Federal Loan Servicers' systems; and to delete the reference to allowing customers to access ''their relevant Federal Loan Servicer information.''

The Department is modifying the section entitled ''CONTESTING RECORD PROCEDURES'' to remove information about the length of the application processing cycle.

Finally, the Department is modifying the sections entitled ''RECORD ACCESS PROCEDURES,'' ''CONTESTING RECORD PROCEDURES,'' and ''NOTIFICATION PROCEDURES'' to refer the public to the corresponding sections in the system of records notice entitled ''Person Authentication Service (PAS)'' (18–11–12) because until the CPS system is decommissioned after September 30, 2024, CPS also maintains records on individuals who apply for a FSA ID in the PAS system.

Accessible Format: On request to any of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the Chief Operating Officer, Federal Student Aid (FSA) of the U.S. Department of Education (Department) publishes a modified system of records notice to read as follows:

SYSTEM NAME AND NUMBER:

Aid Awareness and Application Processing (18–11–21).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Education, 830 First Street NE, Washington, DC 20202.

The following locations are for the Central Processing System (CPS):

Lee's Summit Federal Records Center, National Archives and Records Administration (NARA), 200 Space Center Drive, Lee's Summit, MO 64064–1182 (*Note:* This is where paper applications are stored);

General Dynamics Information Technology (GDIT) Image and Data Capture (IDC) Center, 1084 South Laurel Road, Building 1, London, KY 40744 (*Note:* The IDC scans paper financial aid documents and correspondence, key-enters the data and electronically transmits the data and related images to the CPS for processing);

Next Generation Data Center (NGDC), 250 Burlington Drive, Clarksville, VA 23927 (*Note:* NGDC hosts the infrastructure that supports CPS applications including backend application processing); and

CPS Print Facility, 327 Columbia Pike, Rensselaer, NY 12144 (*Note:* This facility handles print operations).

The following locations are for the Free Application for Federal Student Aid (FAFSA®) Processing System (FPS):

Perspecta/Peraton, 15052 Conference Center Drive, Chantilly, VA 20151 (*Note:* Perspecta supports the FSA-provided development, security, and operations (DevSecOps) toolchain configuration; coordinates environment building; and supports technical operations activities and application modernization);

Information Capture Solutions (ICS), 25 Air Park Drive, London, KY 40744 (*Note:* ICS provides image and data capture, print/mailing operational services, and builds and operates the IDC);

iWorks, 1889 Preston White Drive, Suite 100, Reston, VA 20191 (*Note:* iWorks provides quality control managers (key personnel); develops and updates the quality control plan; oversees/validates service level measures; supports internal Capability Maturity Model Integration (CMMI) audits; supports Project Management Office (PMO) activities; and provides application development support using Agile methodologies);

Red Cedar Consultancy, LLC, 161 Fort Evans Road NE, Suite 200, Leesburg, VA 20176 (*Note:* Red Cedar provides application development support using Agile methodologies);

Windsor Group, LLC, 6820 Wisconsin Avenue, Unit 4004, Chevy Chase, MD 20815 (*Note:* Windsor Group provides quality resources in system security, database administration, and technical writing); and

Jazz Solutions, LLC, 20745 Williamsport Place, Suite 320, Ashburn, VA 20147 (*Note:* Jazz Solutions provides application development support using Agile methodologies and supports application programming interface (API) management solutions, including designing, building, and operating services).

The following locations are for the Digital and Customer Care (DCC) Information Technology (IT) System:

Salesforce Government Cloud, 415 Mission Street, 3rd Floor, San Francisco, CA 94105 (*Note:* The system is accessible via the internet to different categories of users, including Department personnel, customers, and designated agents of the Department at any location where they have internet access. This site is the location where customer interactions with contact center support via all inbound and outbound channels (phone, email, chat, webform, email, customer satisfaction survey, fax, physical mail, and controlled correspondence) and customer-provided feedback (complaints, suspicious activities, positive feedback, and dispute cases) are tracked and worked by contractors and the Department. This site also contains workflow management for processing tasks including, but not limited to: credit appeals, borrower defense to repayment, commingled Social Security numbers (SSNs), and archived document retrieval in the Common Origination and Disbursement (COD) System, and the FAFSA special correction application process. This site stores customer-provided documentation to support the interactions and processing tasks, as needed. This site will also be used by the Department for determining employer eligibility to support Public Service Loan Forgiveness (PSLF), and

Office of Inspector General (OIG) fraud referrals);

Amazon Web Services (AWS) GovCloud (East/West), 410 Terry Avenue, North Seattle, WA 98109–5210 (*Note:* The DCC IT system is hosted at this location. This site is the location where the Shado (Dynamo) application collects, processes, stores, and makes available user activity events from across the DCC IT system to provide a complete view of the customer to the Department and its contractors. This site is also the location where the Adobe Marketing Campaign application delivers strategic and real-time personalized email and short message service (SMS) communications); and

Contact Center Fulfillment Center (Senture facility), 4255 W Highway 90, Monticello, KY 42633 (*Note:* This facility handles mail fulfillment and imaging operations).

The following 10 listings are the locations of the Aid Awareness and Application Processing Customer Contact Centers: Jacksonville Contact Center, One Imeson Park Boulevard, Jacksonville, FL 32118; Knoxville, TN Servicing Center, 120 N Seven Oaks Drive, Knoxville, TN 37922; 1600 Osgood Street, Suite 2–120, North Andover, MA 01845; 11499 Chester Road, Suite 101, Sharonville, OH 45246; 100 Domain Drive, Suite 200, Exeter, NH 03833; 221 N Kansas Street, Suite 700, El Paso, TX 79901; 4255 W Highway 90, Monticello, KY 42633; 555 Vandiver Drive, Columbia, MO 65202; 633 Spirit Drive, Chesterfield, MO 63005; and 820 First Street NE, Washington, DC 20002.

SYSTEM MANAGER(S):

CPS—System Manager, Student Experience and Aid Delivery, FSA, U.S. Department of Education, Union Center Plaza (UCP), 830 First Street NE, Washington, DC 20202–5454.

FPS—Information System Owner, Technology Directorate, Federal Student Aid, U.S. Department of Education, Union Center Plaza, 830 First Street NE, Washington, DC 20202–5454.

Ombudsman, FSA, U.S. Department of Education, UCP, 830 First Street NE, Washington, DC 20202–5454.

DCC—Information System Owner, Technology Directorate, Federal Student Aid, U.S. Department of Education, Union Center Plaza, 830 First Street NE, Washington, DC 20202–5454.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority is title IV of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070 *et seq.*); 20 U.S.C. 1018(f) and 1087e(h); and the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the Federal student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency). The collection of SSNs of individuals, and parents of dependent students, who apply for or receive Federal student financial assistance under programs authorized by title IV of the HEA is also authorized by 31 U.S.C. 7701 and Executive Order 9397, as amended by Executive Order 13478 (November 18, 2008).

PURPOSE(S) OF THE SYSTEM:

The information contained in this system is maintained for the following purposes related to applying for Federal student financial assistance and administering title IV, HEA programs: (*Note:* Different parts of the HEA use the terms ''discharge,'' ''cancellation,'' or ''forgiveness'' to describe when a borrower's loan amount is reduced in whole or in part by the Department. To reduce complexity, this system of records notice uses the term ''discharge'' to include all three terms (''discharge,'' ''cancellation,'' and ''forgiveness''), including but not limited to discharges of student loans made pursuant to specific benefit programs. At times, the system of records notice may refer by name to a specific benefit program, such as the ''Public Service Loan Forgiveness'' program; such specific references are not intended to exclude any such program benefits from more general references to loan discharges.)

(1) Assisting with the determination, correction, processing, tracking, and reporting of program eligibility and benefits for the Federal student financial assistance programs authorized by title IV of the HEA, including, but not limited to, discharge of eligible loans under title IV, HEA programs;

(2) Making a loan or grant;

(3) Verifying the identity of the applicant for Federal financial assistance under title IV of the HEA, the spouse of a married applicant, the parent(s) of a dependent applicant, and, until CPS is decommissioned after September 30, 2024, an individual who applies for an FSA ID; and verifying the accuracy of the information in this system;

(4) Reporting the results of the need analysis and Federal Pell Grant eligibility determination to applicants, institutions of higher education (IHEs), third-party servicers, State agencies designated by the applicant, and Departmental and investigative components;

(5) Reporting the results of duly authorized matching programs between the Department and other Federal agencies and between the Department and State or local governments, or agencies thereof, to applicants, IHEs, third-party servicers, State agencies designated by the applicant, and Departmental and investigative components where the Department is required by law to do so or where it would be essential to the conduct of the matching program to report, such as for the imposition of criminal, civil, or administrative sanctions;

(6) Enforcing the terms and conditions of a title IV, HEA loan or grant;

(7) Servicing and collecting a delinquent title IV, HEA loan or grant;

(8) Initiating enforcement action against individuals, IHEs, or other entities involved in program fraud, abuse, or noncompliance;

(9) Locating a debtor or recipient of a grant overpayment;

(10) Maintaining a record of the data supplied by those requesting title IV, HEA program assistance;

(11) Ensuring compliance with and enforcing title IV, HEA programmatic requirements and various consumer protection laws;

(12) Acting as a repository and source for information necessary to fulfill the requirements of title IV of the HEA;

(13) Evaluating title IV, HEA program effectiveness;

(14) Enabling IHEs and State grant agencies designated by the applicant to review and analyze the financial aid data of their applicant population;

(15) Enabling IHEs and State grant agencies to assist applicants with the completion of the application for the Federal student financial assistance programs authorized by title IV of the HEA;

(16) Assisting State agencies, eligible IHEs, and other entities that award aid to students and that are designated by the Secretary of Education with making eligibility determinations for the award of aid and with administering these awards; and

(17) Promoting and encouraging applications for title IV, HEA program assistance, State assistance, and aid awarded by eligible IHEs or by other entities designated by the Secretary of Education.

The information contained in this system is also maintained for the following purposes related to managing customer engagement:

(1) Carrying out the duties and responsibilities of the FSA Ombudsman,

including investigating and resolving complaints, inquiries, and requests for assistance, updating borrower account records, correcting errors, analyzing complaint trends, and making appropriate recommendations pursuant to 20 U.S.C. 1018(f);

(2) Carrying out the duties and responsibilities of the Department to provide Federal student loan repayment relief under Federal law;

(3) Verifying the identity of FSA customers;

(4) Recording complaints, suspicious activities, positive feedback, and comments as provided by customer interactions with contact center support via inbound and outbound channels (phone, chat, webform, email, customer satisfaction survey, fax, physical mail, social media platforms, digital engagement platforms, and controlled correspondence);

(5) Tracking individual cases, including complaints, borrower defense submissions, general inquiries, and chat sessions, through final resolution, reporting trends, and analyzing the data to recommend improvements in Federal student financial assistance programs;

(6) Assisting in the informal resolution of disputes submitted by aid applicants or aid recipients about issues related to title IV, HEA program assistance;

(7) Carrying out the duties and responsibilities of the Department under the borrower defense to repayment regulations at 34 CFR 685.206 and 685.222 and 34 CFR part 685, subpart D, including receiving, reviewing, evaluating, and processing requests for relief under the borrower defense to repayment regulations; and

(8) Initiating proceedings, where appropriate, to recover liabilities from an IHE for losses incurred as a result of the act or omission of the IHE participating in the Federal student loan programs.

The information contained in this system is also maintained for the following purposes related to assisting aid applicants and recipients with Federal student financial assistance programs authorized by title IV of the HEA, and managing customer relationships for marketing and improving customer service:

(1) Determining employer qualification for borrowers to receive discharge under the PSLF Program;

(2) Collecting, processing, storing, and making available user activity events and user-submitted documentation from across the DCC IT system to provide a complete view of the customer to the Department and its contractors;

(3) Sending aid applicants and aid recipients strategic and real-time, personalized communications via email, and SMS ''text messages'' via mobile phone communications to inform them of title IV, HEA aid marketing campaigns (such as encouraging completion of their FAFSA), and sending transactional communication to customers (such as confirmation emails when a user completes an action);

(4) Measuring customer satisfaction and analyzing results; and

(5) Promoting and encouraging the repayment of title IV, HEA program loans in a timely manner.

The information in this system is also maintained for the following purposes relating to the Department's administration and oversight of title IV, HEA programs:

(1) To support the investigation of possible fraud and abuse and to detect and prevent fraud and abuse in the title IV, HEA Federal grant and loan programs;

(2) To support compliance with title IV, HEA statutory and regulatory requirements;

(3) To provide an aid recipient's financial aid history, including information about the recipient's title IV, HEA loan defaults, title IV, HEA aid receipt, and title IV, HEA grant program overpayments;

(4) To facilitate receiving and correcting application data, processing Federal Pell Grants and Direct Loans, and reporting Federal Perkins Loan Program expenditures to the Department's processing and reporting systems;

(5) To support pre-claims/supplemental pre-claims assistance;

(6) To assist in locating holders of title IV, HEA loan(s);

(7) To assist in assessing the administration of title IV, HEA program funds by guaranty agencies, lenders and loan holders, IHEs, and third-party servicers;

(8) To initiate or support a limitation, suspension, or termination action, an emergency action, or a debarment or suspension action;

(9) To inform the parent(s) of a dependent applicant of information about the parent(s), or the spouse of a married applicant of information about the spouse, in an application for title IV, HEA funds;

(10) To disclose applicant records to the parent(s) of a dependent applicant applying for a PLUS loan (to be used on behalf of a student), to identify the student as the correct beneficiary of the PLUS loan funds, and to allow the processing of the PLUS loan application and promissory note;

(11) To expedite the application process;

(12) To enable an applicant, at the applicant's written request, to obtain income information about the applicant from the Internal Revenue Service (IRS) using the Data Retrieval Tool, until CPS is decommissioned after September 30, 2024;

(13) To identify, prevent, reduce, and recoup improper payments, prevent fraud, and conduct at-risk campaigns, including protecting customers from Third-Party Debt Relief firms;

(14) To help Federal, State, Tribal, and local government entities exercise their supervisory and administrative powers (including, but not limited to licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, lenders and loan holders, and third-party servicers) or to respond to individual aid applicant or recipient complaints submitted regarding the practices or processes of the Department and/or the Department's contractors, or to update information or correct errors contained in Department records regarding the aid applicant's or recipient's title IV, HEA program funds;

(15) To provide eligible applicants for title IV, HEA aid, and when necessary, the spouse or parents of an applicant, with information about certain Federal means-tested benefits and services for which they may qualify;

(16) To collect, track, and process Office of Inspector General (OIG) fraud referrals;

(17) To support research, analysis, and development, and the implementation and evaluation of educational policies in relation to title IV, HEA programs; and

(18) To conduct testing, analysis, or take other administrative actions needed to prepare for or execute programs under title IV of the HEA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains records on individuals who are, were, or may be participants in any of the Federal student financial assistance programs under title IV of the HEA who request assistance from the Department, directly or through State requestors and legal assistance organizations (''third-party requestors'') who may request that the Secretary of Education form a group of Federal student loan borrowers for borrower defense relief. In addition, this system maintains records on individuals who are students in attendance at a secondary school, as defined under 20 U.S.C. 7801(45), for which State grant agencies and other eligible requesting

entities such as secondary schools, local educational agencies (LEAs), and Tribal agencies or other designated entities that have an established relationship with the student pursuant to the terms and conditions of the Student Aid Internet Gateway (SAIG) Participation Agreement for State Grant Agencies, submit information (*e.g.,* name, date of birth (DOB), and zip code) to the Department in order for the Department to provide such entities with the student's FAFSA filing status information to promote and encourage the student to apply for title IV, HEA program assistance, State assistance, and aid awarded by IHEs or by other entities designated by the Secretary of Education, as currently permitted by section 483(a)(3)(E) of the HEA (20 U.S.C. 1090(a)(3)(E)) through June 30, 2024.

This system also maintains records on student and parent applicants (and their third-party preparers), as well as the spouse of a married applicant and the parent(s) of a dependent applicant, who apply for Federal student financial assistance under one of the programs authorized under title IV of the HEA, including, but not limited to the: (1) Federal Pell Grant Program; (2) Federal Perkins Loans Program; (3) Academic Competitiveness Grant (ACG) Program; (4) National Science and Mathematics Access to Retain Talent (National SMART) Grant Program; (5) Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; (6) Iraq and Afghanistan Service Grant (IASG) Program; (7) Direct Loan Program, which includes Federal Direct Stafford/Ford Loans, Federal Direct Unsubsidized Stafford/Ford Loans, Federal Direct PLUS Loans, and Federal Direct Consolidation Loans; (8) Federal Family Education Loan (FFEL) Program; and (9) Federal Insured Student Loan (FISL) Program.

This system also maintains records on individuals who apply for an FSA ID in the Department's Person Authentication Service (PAS) system because the Department uses CPS, which maintains records that are part of this system, as a pass-through to send these individuals' records from the PAS system to the Social Security Administration (SSA) for computer matching in order to assist the Department in verifying their identities. This pass-through will be terminated when CPS is decommissioned after September 30, 2024.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains records that contain the following information:

(1) Information provided by applicants for title IV, HEA program assistance on an incomplete or completed FAFSA, including, but not limited to, the applicant's name, address, SSN, DOB, telephone number, driver's license number (which will not be collected on the FAFSA for award year 2024–2025 and onward, and will not be collected by FPS), email address, citizenship status, marital status, legal residence, status as a veteran, educational status, and financial information (including asset and income information). (*Note:* The Federal Tax Information (FTI) that the Department will obtain directly from the IRS under the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act, Public Law 116–91, will be maintained in a separate system of records entitled ''FUTURE Act System (FAS)'' (18–11–23) for which the Department will publish a system of records notice in the **Federal Register**);

(2) Information provided about the parent(s) of a dependent applicant, including, but not limited to, the parent's highest level of schooling completed (which will not be collected on the FAFSA starting with award year 2024–2025 and will not be collected by FPS, after which point the Department will instead collect on the FAFSA the parent's college attendance status), marital status, SSN, last name and first initial, DOB, email address, number of people in the household supported by the parent, and asset and income information.

(3) Information about the spouse of a married applicant including, but not limited to: the spouse's name, address, SSN, DOB, telephone number, email address, citizenship status, marital status, legal residence, status as a veteran, and financial information (including asset and income information that is needed for CPS processing until September 30, 2024);

(4) Information provided by IHEs on behalf of student and parent applicants, including, but not limited to, verification results, dependency overrides, and resolution of comment codes or reject codes;

(5) Information calculated by CPS through the 2023–24 award year on the applicant's expected family contribution (EFC);

(6) Information on the applicant's Institutional Student Information Record (ISIR), and Student Aid Report (SAR). The Department uses the ISIR and SAR to report, among other things, the EFC, or the SAI results that are calculated during FPS processing, to IHEs, State grant agencies, and applicants. The EFC or SAI is available to, and used by, IHEs to determine the applicant's eligibility for Federal and institutional program assistance and the amount of assistance, and State grant agencies to determine the applicant's eligibility for State grants and the amount of grant assistance. The Department notifies the applicant of the results of their application via the SAR. The Department provides the IHEs identified on the applicant's FAFSA with the ISIR, which indicates whether there are discrepant or insufficient information, school adjustments, or CPS assumptions that affect processing of the FAFSA. Other information in the system includes, but is not limited to: Secondary EFC (an EFC that is calculated from the full EFC formula and is printed in the financial aid administrator's (FAA) Information section of the ISIR), dependency status, Federal Pell Grant eligibility, duplicate SSN (an indicator that is set to alert ISIR recipients that two applications were processed with the same SSN, Incarcerated Student Indicator Flag (an indicator that will be used to identify an aid applicant as an incarcerated student), selection for verification, Simplified Needs Test (SNT) or Automatic Zero EFC (used for extremely low family income), CPS and FPS processing comments, reject codes (explanation for applicant's FAFSA not computing EFC), assumptions made with regard to the student's information due to incomplete or inconsistent FAFSA information, FAA adjustments including dependency status overrides, and CPS and FPS record processing information (application receipt date, transaction number, transaction process date, SAR Serial Number, Compute Number, Data Release Number (DRN), a four-digit number assigned to each application), National Student Loan Database System (NSLDS) match results, a bar code, and transaction source);

(7) Information that identifies aid applicant or aid recipient complaints, positive feedback, reports of suspicious activity, requests for assistance, requests for borrower defense relief, requests for PSLF reconsideration, or other inquiries. Such information includes, but is not limited to: written documentation of an aid applicant or aid recipient's complaint, request for assistance, request for relief under the borrower defense to repayment regulations, case tracking number, case appeal identifier, or other comment or inquiry; and information pertaining to the aid recipient's or the aid recipient's parent's student financial assistance program account(s) under title IV of the HEA, such as the aid recipient's and the

aid recipient's parent's names and Federal Student Aid IDs (FSA IDs). Information may include the name, address, and phone numbers of the aid recipient's counsel or representative, IHE(s), lender(s), secondary holder(s) or lender(s), guaranty agency(ies), servicer(s), private collection agency(ies), and third-party requestor(s), as this term is defined in 34 CFR 685.401(a), if applicable, and may contain other loan-level information;

(8) Information provided and generated through customer interactions with contact center support via inbound and outbound channels (phone, chat, webform, email, customer satisfaction survey, fax, physical mail, social media platforms, digital engagement platforms, and controlled correspondence). Information includes, but is not limited to: chat transcripts, email communications, audio recordings of customer calls, and screen recordings of contact center support desktop during customer interactions;

(9) Loan discharge eligibility and verification information for use in determining whether a title IV, HEA debt/loan qualifies for discharge;

(10) Aid recipient's employer information to determine employer qualification for borrowers to receive discharge under PSLF; OIG fraud referral information; and customer support interactions including phone, chat, webform, email, fax, physical mail, and controlled correspondence;

(11) Information for collecting, processing, and storing user activity events from across the DCC IT system: campaign details, delivery details, email/SMS sent timestamp, transaction ID, Federal Account Number (FAN) ID, activity details, activity date, pages/URL accessed, user IP address, user-submitted materials, and user request details;

(12) Information needed to aid in the delivery of strategic and real-time communication to customers, including, but not limited to, first name, last name, DOB, state of residence, email, phone number, mobile device ID, device data, FAFSA transaction data, uniform resource locator (URL), computer-related data, and customer communication preferences and user activity (open or clicks) for email and SMS communications;

(13) Information provided on third-party preparers, including, but not limited to, first name, last name, SSN or employer identification number, affiliation, address or employer's address, signature, and signature date.

Note: This system of records also maintains information that is collected in this system and stored in other systems of records. The following information about individuals who apply for or receive a Federal grant or loan under one of the programs authorized under title IV of the HEA is collected in this system and stored in the ''Common Origination and Disbursement (COD) System'' (18–11–02) system of records: applicant identifiers including applicant's name, SSN, and DOB; demographic information, including asset and income information (tax return status, adjusted gross income, Internal Revenue Service exemptions, and tax year), and enrollment information; borrower's loan(s) information, including information about recipients of Direct Loans, FFEL Program loans, Perkins Loans, and FISL Program loans, such as the period from the origination of the loan through final payment, and milestones, including, but not limited to, consolidation, discharge, or other final disposition including details such as loan amount, disbursements, balances, loan status, repayment plan and related information, collections, claims, deferments, forbearances, and refunds; information about students receiving Federal grants, including recipients of Pell Grants, ACG, National SMART Grants, TEACH Grants, Iraq and Afghanistan Service Grants, and including grant amounts, grant awards, verification status, lifetime eligibility used (LEU), IASG eligible veteran's dependent indicator, Children of Fallen Heroes Scholarship eligibility indicator, and the Pell Grant additional eligibility indicator; Pell Grant collection status indicator and overpayment collection information; promissory notes, Direct Loan Entrance Counseling forms, Federal Student Loan Exit Counseling forms, PLUS Loan Counseling forms, the Annual School Loan Acknowledgement (ASLA), Direct PLUS Loan Requests, endorser addendums, and counseling in the Direct Loan and TEACH Grant programs, such as the date that applicant completed counseling; PLUS Loan credit report information; applicant identifier information for an electronic request to repay a Direct Loan under an income-driven repayment plan and endorser/spouse information, such as the SSN, date that applicant completed the income-driven repayment plan application, and current loan balances; Electronic Direct Consolidation Loan borrower identifier information, such as the borrower's SSN, the date that borrower completed the Federal Direct Consolidation Loan application and promissory note, and current loan balances; and credit check decisions, credit appeals, credit appeal identifiers, and credit history information to support the credit appeal process. Further, information from the ''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22) system of records is accessible in the DCC IT system to: allow real-time updates to a customer's identifiers, demographic attributes, address, phone, and email contact details; update customer preference for receiving marketing information via text message; allow the Department and its contractors to identify customers who have completed a customer satisfaction survey; and enable the Department to contact borrowers who have been identified by the Department as potentially having fraudulent activity from a Third-Party Debt Relief (TPDR) company and are at risk of loan default. The following information is modifiable by the customer through *StudentAid.gov*: name, DOB, address, phone number, and email address. The DCC IT system also sends the following information to the EDMAPS system for analytics and reporting: case information including complaints, and OIG fraud referral data. Information includes, but is not limited to: SSN, DOB, address, phone, and email. Additionally, some information from Federal Loan Servicers' systems (covered by the ''Common Services for Borrowers (CSB)'' (18–11–16) system of records) is accessible on *StudentAid.gov* to allow customers to view their payment information, loan information, and to make payments on *StudentAid.gov* as they would on the various Federal Loan Servicer websites. Further, customers can use *StudentAid.gov* to update their contact information and access financial aid history that is stored in the ''National Student Loan Data System (NSLDS)'' (18–11–06) system of records. Additionally, until CPS is decommissioned after September 30, 2024, CPS is also used as a pass-through to send information that is stored in the ''Person Authentication Service (PAS)'' (18–11–12) system of records to SSA for computer matching on individuals who apply for an FSA ID in PAS in order to assist the Department in verifying their identities. The information includes, but is not limited to: SSN, name, and DOB. Finally, beginning with the 2024–25 award year application cycle, the IRS will disclose directly to the Department FTI for FAFSA application processing and aid eligibility determination; that FTI will not be maintained in this system. Beginning July 30, 2023, the IRS will also disclose directly to the Department FTI to determine eligibility

and monthly payment amounts under Income-Driven Repayment (IDR) plans; that FTI also will not be maintained in this system. All FTI that the Department will obtain directly from the IRS under the FUTURE Act will be maintained within the FTI Module (FTIM) system that will be compliant with the IRS Publication 1075, ''Tax Information Security Guidelines for Federal, State and Local Agencies, Safeguards for Protecting Federal Tax Returns and Return Information,'' and that will be covered under the Department's system of records notice entitled ''FUTURE Act System (FAS)'' (18–11–23). This system will continue to maintain both historical income information (obtained from the IRS until CPS is decommissioned) and applicant-provided income information (either through a manual FAFSA entry or submission of alternative documentation of income (ADOI) through the IDR process). Any reference to income throughout this system of records notice refers explicitly to income information that the Department did not obtain directly from the IRS but obtained from the applicant or from another source.

RECORD SOURCE CATEGORIES:

Information maintained in this system of records is obtained from applicants, the parents of dependent applicants, third-party preparers, and the spouse of married applicants for title IV, HEA program assistance, on the paper FAFSA, Portable Document Format (PDF) FAFSA, the online FAFSA form, and FAFSA by phone; the authorized employees or representatives of authorized entities (namely, IHEs, institutional third-party servicers, FFEL Program lenders, FFEL Program guaranty agencies, Federal loan servicers, State grant agencies, other Federal agencies, and research agencies); and from other persons or entities from which information is obtained following a disclosure under the routine uses set forth below.

The Financial Aid Administrators at IHEs designated by the applicant and IHEs' third-party servicers may correct the records in this system as a result of documentation provided by the applicant or by a dependent applicant's parents, such as Federal income return(s) (IRS Form 1040), Social Security card(s), and Department of Homeland Security I–551 Permanent Resident Card.

This system maintains information added during CPS processing and that will be added during FPS processing and information received from other Department systems, including the NSLDS, the COD System, and the SAIG Participation Management System. The results of matching programs with Federal agencies or State or local governments, or agencies thereof, are added to the student's record during CPS processing and will be added to the student's record during FPS processing. The Department's matching programs at the time of the publication of this system of records notice are with the SSA to verify the SSNs of applicants, dependent applicants' parent(s), and spouses of married applicants, as well as of individuals who apply for an FSA ID, and to confirm the U.S. citizenship status of applicants as recorded in SSA records and date of death (if applicable) of applicants, and dependent applicants' parents, pursuant to title IV of the HEA, including sections 428B(f)(2), 483(a)(12) (which under the FAFSA Simplification Act will be section 483(a)(2)(B)), and 484(g) and (p) (which the FAFSA Simplification Act redesignates as section 484(o)) of the HEA (20 U.S.C. 1078–2(f)(2), 1090(a)(12) (which the FAFSA Simplification Act amends to be 1090(a)(2)(B)), and 1091(g) and (p) (which the FAFSA Simplification Act redesignates as 1091(o)); with the Department of Veterans Affairs (VA) to verify the status of applicants who claim to be veterans, pursuant to section 480(c) and (d)(1)(D) of the HEA (20 U.S.C. 1087vv(c) and (d)(1)(D)); with the U.S. Department of Homeland Security (DHS) to confirm the immigration status of applicants for assistance as authorized by section 484(g) of the HEA (20 U.S.C. 1091(g)); with the U.S. Department of Justice (DOJ) to enforce any requirement imposed at the discretion of a court, pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, Public Law 100–690, as amended by section 1002(d) of the Crime Control Act of 1990, Public Law 101–647 (21 U.S.C. 862), denying Federal benefits under the programs established by title IV of the HEA to any individual convicted of a State or Federal offense for the distribution or possession of a controlled substance; and, through award year 2023–2024 following the implementation of the FAFSA Simplification Act on July 1, 2024, with the U.S. Department of Defense (DoD) to identify dependents of U.S. military personnel who died in service in Iraq and Afghanistan after September 11, 2001, to determine if they are eligible for increased amounts of title IV, HEA program assistance, pursuant to sections 420R and 473(b) of the HEA (20 U.S.C. 1070h and 1087mm(b)), which will be replaced by section 401(c) under the FAFSA Simplification Act.

During CPS and FPS processing, the Department's COD System sends information to these systems for students who have received a Federal Pell Grant. CPS and FPS use this information for verification analysis and for end-of-year reporting. These data elements include, but are not limited to: Verification Selection and Status, Potential Over-award Project (POP) indicator, Institutional Cost of Attendance, Reporting and Attended Campus Pell ID and Enrollment Date, and Federal Pell Grant Program information (Scheduled Federal Pell Grant Award, Origination Award Amount, Total Accepted Disbursement Amount, Number of Disbursements Accepted, Percentage of Eligibility Used At This Attended Campus Institution, and Date of Last Activity from the Origination or Disbursement table).

CPS and FPS also receive applicant information from the Department's NSLDS system each time an application is processed or corrected. This process assesses student aid eligibility, updates financial aid history, and ensures compliance with title IV, HEA regulations. Some of this information appears on the applicant's SAR and ISIR. Title IV, HEA award information is provided to NSLDS from several different sources. Federal Perkins Loan information and Federal Supplemental Educational Opportunity Grant (FSEOG) overpayment information is sent from IHEs or their third-party servicers; the Department's COD System provides Federal Pell Grant and Direct Loan data; and State and guaranty agencies provide information on FFEL loans received from lending institutions participating in the FFEL programs. Financial aid transcript information reported by NSLDS provides aid recipients, IHEs, and third-party servicers with information about the type(s), amount(s), dates, and overpayment status of prior and current title IV, HEA funds the aid recipient has received. FFEL and William D. Ford Federal Direct Student Loan data information reported by NSLDS includes, but is not limited to: (1) Aggregate Loan Data, such as Subsidized, Unsubsidized; Combined Outstanding Principal Balances; Unallocated Consolidated Outstanding Principal Balances, Subsidized, Unsubsidized; Combined Pending Disbursements, Subsidized, Unsubsidized; Combined Totals; and Unallocated Consolidated Totals; (2) Detailed Loan Data, such as Loan Sequence Number; Loan Type Code; Loan Change Flag; Loan Program Code; Current Status Code and Date; Outstanding Principal Balance and Date;

Net Loan Amount; Loan Begin and End Dates; Amount and Date of Last Disbursement; Guaranty Agency Code; School Code; Contact Code; and Institution Type and Grade Level; and (3) system flags for Additional Unsubsidized Loan; Capitalized Interest; Defaulted Loan Change; Discharged Loan Change; Loan Satisfactory Repayment Change; Active Bankruptcy Change; Overpayments Change; Aggregate Loan Change; Defaulted Loan; Discharged Loan; Loan Satisfactory Repayment; Active Bankruptcy; Additional Loans; Direct Loan Master Promissory Note; Direct PLUS Loan Master Promissory Note; Subsidized Loan Limit; and the Combined Loan Limit. Federal Perkins Loan information reported by NSLDS includes, but is not limited to: Cumulative and Current Year Disbursement Amounts; flags for Perkins Loan Change; Defaulted Loan; Discharged Loan; Loan Satisfactory Repayment; Active Bankruptcy; Additional Loans; and Perkins Overpayment Flag and Contact (School or Region). Federal Pell Grant payment information reported includes, but is not limited to: Pell Sequence Number; Pell Attended School Code; Pell Transaction Number; Last Update Date; Scheduled Amount; Award Amount; Amount Paid to Date; Percent Scheduled Award Used; Pell Payment EFC; Flags for Pell Verification; and Pell Payment Change. TEACH Grant Program information includes, but is not limited to: TEACH Grant Overpayment Contact; TEACH Grant Overpayment Flag; TEACH Grant Loan Principal Balance; TEACH Grant Total; and TEACH Grant Change Flag. Iraq and Afghanistan Service Grants information includes, but is not limited to, Total Award Amount. The Department obtains from and exchanges information that is included in this system of records with IHEs, third-party servicers, and State agencies. These eligible entities register with the SAIG system to participate in the information exchanges specified for their business processes.

During FPS processing, this system will receive the SAI information from the Department's FAS. The SAI is calculated using FTI that the IRS will provide directly to the Department under the FUTURE Act that will not be maintained in this system, but instead the system of records entitled ''FUTURE Act System (FAS)'' (18–11–23).

Additionally, for individuals who request assistance from the Department, directly or through State requestors and legal assistance organizations (''third-party requestors''), as these terms are defined in 34 CFR 685.401(a), who may request that the Secretary of Education form a group of Federal student loan borrowers for borrower defense relief, information is obtained from individuals (*e.g.,* borrowers), their counsel or representatives, or students or their parents (when the individual is a borrower and depending on whether the individual is a parent or student), Federal agencies, State agencies, IHEs, lenders, private collection agencies, guaranty agencies, accreditors, and from other persons or entities from whom or from which data is obtained following a disclosure under routine uses set forth below.

Note: Some customer information that is retrieved from Federal Loan Servicers' IT systems (covered by the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16)) is accessible through *StudentAid.gov* to provide customers with payment and loan information and to enable customers to make loan payments as they would on the various Federal Loan Servicer websites. Information that is collected in this system is stored in and retrieved from the COD System (covered by the system of records notice entitled ''Common Origination and Disbursement (COD) System'' (18–11–02)) to allow: applicants and borrowers to submit Counseling (Entrance, Exit, Financial Awareness Counseling, PLUS, TEACH Grant Initial and Subsequent, TEACH Grant Exit, TEACH Grant Conversion), Master Promissory Note (MPN), Endorser Addendum, TEACH Grant Agreement to Serve or Repay (Agreement), Loan Consolidation, Income-Driven Repayment, PLUS Loan Request, and Annual Student Loan Acknowledgement (ASLA) applications through *StudentAid.gov;* credit check decision, credit appeal, and credit history information to be viewable on *StudentAid.gov* to support credit appeal processing; users to view and search the PSLF employer database as retrieved from the COD System and provide updates to employers' information; and the PDF version of the PSLF/Temporary Expanded PSLF (TEPSLF) certification and application form that is generated from the PSLF Help Tool to be accessible. Information is also retrieved from the COD System to provide *StudentAid.gov* functionality for creating and updating customer records. The following information from the EDMAPS system is accessible in the DCC IT system: customer information that is retrieved to allow real-time updates to a customer's identifiers, demographic attributes, address, phone, and email contact details; SMS opt-in/out information for customer communication preferences to opt-in/out of receiving marketing information via text message; information for customers who have been identified by the Department and its contractors as having completed a customer satisfaction survey; information for borrowers who will be contacted by the Department because they have been identified by the Department as having potentially fraudulent activity from a TPDR company; and information on borrowers who have been identified by the Department and its contractors as being at risk for loan default.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information maintained in a record in this system of records under the routine uses listed in this system of records notice without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or pursuant to a computer matching agreement that meets the requirements of the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a). Until June 30, 2024, section 483(a)(3)(E) of the HEA (20 U.S.C. 1090(a)(3)(E)) restricts the use of the information gathered from the electronic version of the FAFSA to the application, award, and administration of aid awarded under title IV of the HEA, aid awarded by States, aid awarded by eligible institutions, or aid awarded by such entities as the Secretary of Education may designate.

(1) *Program Disclosures.* The Department may disclose records from the system of records for the following program purposes:

(a) To verify the identity of the applicant, the spouse of a married applicant, and the parent(s) of a dependent applicant, to verify, until CPS is decommissioned after September 30, 2024, the identities of individuals who apply for a FSA ID, to determine the accuracy of the information contained in the record, to support compliance with title IV, HEA statutory and regulatory requirements, and to assist with the determination, correction, processing, tracking, and reporting of program eligibility and benefits, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, local, or Tribal agencies;

(b) To provide an applicant's financial aid history to IHEs, guaranty agencies

and State agencies, lenders and loan holders participating in the FFEL Program, and third-party servicers, including information about the applicant's title IV, HEA loan defaults, and title IV, HEA grant program overpayments, the Department may disclose records to IHEs, guaranty agencies and State agencies, lenders and loan holders participating in the FFEL Program, and third-party servicers;

(c) To facilitate receiving and correcting application information, processing Federal Pell Grants and Direct Loans, and reporting Federal Perkins Loan Program expenditures to the Department's processing and reporting systems, the Department may disclose records to IHEs, State agencies, and third-party servicers;

(d) To assist loan holders with the collection and servicing of title IV, HEA loans, to support pre-claims/supplemental pre-claims assistance, to assist in locating borrowers, and to assist in locating students who owe grant overpayments, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, local, and Tribal agencies;

(e) To facilitate assessments of title IV, HEA program compliance, the Department may disclose records to guaranty agencies and IHEs, third-party servicers, and Federal, State, and local agencies;

(f) To assist in locating holders of loans, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, and local agencies;

(g) To assist in assessing the administration of title IV, HEA program funds by guaranty agencies, lenders and loan holders in the FFEL Program, IHEs, and third-party servicers, the Department may disclose records to Federal and State agencies;

(h) To enforce the terms of a loan or grant or to assist in the collection of loan or grant overpayments, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, and local agencies;

(i) To assist borrowers in repayment, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, and local agencies;

(j) To determine the relief that is appropriate if the Secretary of Education grants a borrower defense to repayment discharge application, as well as to pursue the recovery of liabilities of such discharges against the IHE, the Department may disclose records to Federal, State, and Tribal agencies, accreditors, IHEs, lenders and loan holders, guaranty agencies, third-party servicers, and private collection agencies;

(k) To initiate legal action against an individual or entity involved in an illegal or unauthorized title IV, HEA program expenditure or activity, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, local, and Tribal agencies;

(l) To initiate or support a limitation, suspension, or termination action, an emergency action, or a debarment or suspension action, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, local, and Tribal agencies;

(m) To investigate and resolve complaints, inquiries, requests for assistance, requests for Federal student loan repayment relief and other relief under the borrower defense to repayment regulations, and to update borrower account records and to correct errors, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, accreditors, IHEs, third-party requestors, third-party servicers, private collection agencies, and Federal, State, and local agencies;

(n) To inform the parent(s) of a dependent applicant of information about the parent(s), or the spouse of a married applicant of information about the spouse, in an application for title IV, HEA funds, the Department may disclose records to the parent(s), or spouse, respectively;

(o) To identify the student as the correct beneficiary of the PLUS loan funds, and to allow the processing of the PLUS loan application and promissory note, the Department may disclose records to the parent(s) applying for the parent PLUS loan;

(p) To encourage a student to complete a FAFSA that they started but did not submit or to assist a student with the completion of a FAFSA, the Department may disclose an student's FAFSA filing status to a local educational agency, a secondary school where the student is or was enrolled, a State, local, or Tribal agency, or an entity that awards aid to students and that the Secretary of Education has designated under section 483(a)(3)(E) of the HEA (20 U.S.C. 1090(a)(3)(E)), prior to the amendments of the HEA made by the FAFSA Simplification Act (Pub. L. 116–260) and the FAFSA Simplification Technical Corrections Act (Pub. L. 117–103), which are effective July 1, 2024;

(q) Through June 30, 2024, the Department may disclose records from this system to State higher education agencies, eligible IHEs, and other entities that the Secretary of Education has designated under section 483(a)(3)(E) of the HEA (20 U.S.C. 1090(a)(3)(E)) that award and administer aid to students, to determine an applicant's eligibility for the award of aid by State higher education agencies, eligible IHEs, or by other entities the Secretary of Education has designated. (Beginning July 1, 2024, under amendments to the HEA made by the FAFSA Simplification Act and the FAFSA Simplification Technical Corrections Act, the Department will no longer rely on this authority to disclose records from this system to State higher education agencies, eligible IHEs, and other entities that the Secretary of Education has designated under section 483(a)(3)(E) of the HEA (20 U.S.C. 1090(a)(3)(E))); and

(r) To help Federal, State, Tribal, and local government entities exercise their supervisory and administrative powers (including, but not limited to licensure, examination, discipline, regulation, or oversight of IHEs, Department contractors, guaranty agencies, lenders and loan holders, and third-party servicers) or to respond to aid applicant or recipient complaints submitted regarding the practices or processes of the Department and/or the Department's contractors, or to update information or correct errors contained in Department records regarding the aid applicant's or recipient's title IV, HEA program funds, the Department may disclose records to governmental entities at the Federal, State, Tribal, and local levels. These records may include all aspects of loans and grants made under title IV of the HEA to permit these governmental entities to verify compliance with applicable debt collection, consumer protection, financial, and other applicable statutory, regulatory, or local requirements. Before making a disclosure to these Federal, State, local, or Tribal governmental entities, the Department will require them to maintain safeguards consistent with the Privacy Act to protect the security and confidentiality of the disclosed records.

Note: Some information that is maintained in this system of records is also maintained in other Department systems of records and, therefore, may be disclosed pursuant to the routine

uses published in those other systems' system of records notices, including the ''Common Origination and Disbursement (COD) System'' (18–11–02), ''National Student Loan Data System (NSLDS)'' (18–11–06), and ''Common Services for Borrowers (CSB)'' (18–11–16).

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulations, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive Order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed in sub-paragraphs (i) through (v) of this routine use is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components;

(ii) Any Department employee in their official capacity;

(iii) Any Department employee in their individual capacity where the U.S. Department of Justice (DOJ) agrees to or has been requested to provide or arrange for representation of the employee;

(iv) Any Department employee in their individual capacity where the Department has agreed to represent the employee; and

(v) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that it is relevant and necessary to judicial or administrative litigation or ADR to disclose certain records to an adjudicative body before which the Department is authorized to appear or to a person or entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(4) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or to the Office of Management and Budget (OMB) if the Department determines that disclosure is desirable or necessary in determining whether records are required to be disclosed under the FOIA or the Privacy Act.

(5) *Contract Disclosure.* If the Department contracts with an entity to perform any function that requires disclosing records in this system of records to the contractor's employees, the Department may disclose the records to those employees. As part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(6) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff when necessary to respond to an inquiry from the member made at the written request of and on behalf of the individual whose records are being disclosed. The member's right to the information is no greater than the right of the individual who requested it.

(7) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency, or to another public agency or professional organization, maintaining civil, criminal, or other relevant enforcement or other pertinent records, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or other public agency or professional organization, or the Department's contractor in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(8) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to an employee grievance, complaint, or disciplinary action involving a present or former employee of the Department, the Department may disclose a record from this system of records in the course of investigation, fact-finding, or adjudication to any party to the grievance, complaint, or action; to the party's counsel or representative; to a witness; or to a designated fact-finder, mediator, or other person designated to resolve issues or decide the matter.

(9) *Labor Organization Disclosure.* The Department may disclose records from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(10) *Disclosure to the DOJ.* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(11) *Research Disclosure.* The Department may disclose records to a researcher if the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The Department may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher must agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(12) *Disclosure to the OMB and Congressional Budget Office (CBO) for Federal Credit Reform Act (FCRA) Support.* The Department may disclose records to OMB and CBO as necessary to fulfill FCRA requirements in accordance with 2 U.S.C. 661b.

(13) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records to appropriate agencies, entities, and persons when (a) the Department

suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(14) *Disclosure in Assisting another Agency in Responding to a Breach of Data.* The Department may disclose records from this system of records to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach, or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(15) *Disclosure of Information to State and Federal Agencies.* The Department may disclose records from this system of records to (a) a Federal or State agency, its employees, agents (including contractors of its agents), or contractors, or (b) a fiscal or financial agent designated by the U.S. Department of the Treasury, including employees, agents, or contractors of such agent, for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds.

(16) *Disclosure to the National Archives and Records Administration (NARA).* The Department may disclose records from this system of records to NARA for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose the following information to a consumer reporting agency regarding a valid, overdue claim of the Department: (1) the name, address, taxpayer identification number, and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 15 U.S.C. 1681a(f) and 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

System records are paper-based and stored in locked rooms or electronic and stored on secured computer systems and in the cloud.

Fully processed paper applications and supporting paper documentation that are received on or before June 30, 2024, are stored for applicable periods in standard Federal Records Center boxes in locked storage rooms at the contractor facilities in London, Kentucky. Fully processed paper applications and supporting paper documentation requiring retention and received on or after July 1, 2024, will be stored in a private records storage facility, as applicable. The records storage facilities currently utilized are listed in the ''System Location'' section above.

Digitized paper applicant records, which include optically imaged documents, are stored on DADS (disks) in a virtual disk library, which is also electronic, in the computer facilities controlled by the Next Generation Data Center (NGDC) in Clarksville, VA.

Records that are collected in this system for applicants of Federal grants or loans are stored in the COD System for individuals who apply under one of the programs authorized under title IV of the HEA, including, but not limited to the: (1) Federal Pell Grant Program; (2) Federal Perkins Loans Program; (3) ACG Program; (4) National SMART Grant Program; (5) TEACH Grant Program; (6) Iraq and Afghanistan Service Grant Program; (7) Direct Loan Program, which includes Federal Direct Stafford/Ford Loans, Federal Direct Unsubsidized Stafford/Ford Loans and Federal Direct PLUS Loans and Federal Direct Consolidation Loans; (8) FFEL Program; and (9) FISL Program.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system pertaining to a title IV, HEA loan applicant, borrower, or grant recipient are indexed and retrieved by a single data element, or a combination of the following data elements, to include SSN, name, DOB, the award year in which the applicant applied for title IV, HEA program assistance, and case tracking number. These data elements are also used to retrieve information of title IV, HEA program applicants for and recipients of Federal grants or loans from the COD System (applicant information is collected in this system of records and stored in the COD System).

This system also uses a credit appeal identifier to retrieve credit appeal information from the COD System to support the credit appeal process.

Additionally, this system uses a combination of SSN, DOB, and name data elements to retrieve some records from Federal Loan Servicers' systems (covered by the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16)) to allow customers to access their payment information, loan information and to make payments on *StudentAid.gov* as they would on the various Federal Loan Servicer websites.

This system also uses customer identifiers to retrieve customer information data from the EDMAPS system (covered by the system of records noticed entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS) System'' (18–11–22)) to allow real-time updates to customer information and communication preferences; and for the Department and its contractors to identify customers who have completed a customer satisfaction survey in the DCC system; who may have potential fraudulent activity from a TPDR company; and who may be at risk for loan default.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records maintained in this system are primarily retained and disposed of in accordance with the records schedules listed below. The Department has submitted amendments to these records schedules to NARA for its review and approval.

(a) Department Records Schedule 051: FSA National Student Loan Data System (NSLDS) (DAA–0441–2017–0004) (ED 051). (Records covered by ED 051 will not be destroyed until NARA-approved amendments to ED 051 are in effect, as applicable.)

(b) Department Records Schedule 052: Ombudsman Case Files (N1–441–09–21) (ED 052). (Records covered by ED 052 will not be destroyed until NARA-approved amendments to ED 052 are in effect, as applicable.)

(c) Department Records Schedule 072: FSA Application, Origination, and Disbursement Records (DAA–0441–2013–0002) (ED 072). (Records covered by ED 072 will not be destroyed until

NARA-approved amendments to ED 072 are in effect, as applicable.)

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All users of the system will have a unique user ID with a password. All physical access to the data housed at system locations is controlled and monitored by security personnel who check each individual entering the building for their employee or visitor badge. The IT systems employed by the Department offers a high degree of resistance to tampering and circumvention with firewalls, encryption, and password protection. This security system limits data access to Department and contract staff on a ''need-to-know'' basis and controls individual users' ability to access and alter records within the system. All interactions by users of the system are recorded.

In accordance with the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, every Department system must receive a signed Authorization to Operate (ATO) from a designated Department official. The ATO process includes a rigorous assessment of security and privacy controls, a plan of actions and milestones to remediate any identified deficiencies, and a continuous monitoring program.

FISMA controls implemented are comprised of a combination of management, operational, and technical controls, and include the following control families: access control, awareness and training, audit and accountability, security assessment and authorization, configuration management, contingency planning, identification and authentication, incident response, maintenance, media protection, physical and environmental protection, planning, personnel security, privacy, risk assessment, system and services acquisition, system and communications protection, system and information integrity, and program management.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, contact the respective system manager at the address listed above. You must provide necessary particulars such as your name, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name.

Alternatively, to gain access to a record in the system, you may make a Privacy Act request through the U.S. Department of Education, FOIA Service Center at *https://www2.ed.gov/policy/gen/leg/foia/request_privacy.html* by completing the applicable request forms. Requests by an individual for access to a record must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

Borrowers are able to access their financial aid history from NSLDS in this system. If you wish to gain access to other records in the NSLDS, please refer to the RECORD ACCESS PROCEDURES section in the system of records notice entitled ''National Student Loan Data System (NSLDS)'' (18–11–06).

For title IV, HEA program applicants and recipients of Federal grants or loans, if you wish to gain access to such information about you from the COD System, please refer to the RECORD ACCESS PROCEDURES section in the system of records notice entitled ''Common Origination and Disbursement (COD) System'' (18–11–02).

If you wish to gain access to the EDMAPS system information that is about you and accessible in this system, please refer to the RECORD ACCESS PROCEDURES section in the system of records notice entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS) System'' (18–11–22).

If you wish to gain access to the PAS system information about you that is maintained in this system until CPS is decommissioned after September 30, 2024, please refer to the RECORD ACCESS PROCEDURES section in the system of records notice entitled ''Person Authentication Service (PAS)'' (18–11–12).

If you wish to gain access to the information in the Federal Loan Servicers' IT systems that is about you and accessible in this system, please refer to the RECORD ACCESS PROCEDURES section in the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16).

CONTESTING RECORD PROCEDURES:

If you wish to contest or change the content of a record about you in the system of records, provide the respective system manager with your name, DOB, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Identify the specific items to be changed and provide a written justification for the change.

To contest information submitted or included on a FAFSA application for the current award year, send your request to the FOIA Service Center listed in the Notification Procedures section.

Financial aid history from NSLDS is accessible in this system. To contest name and address records about you, provide the respective system manager with your name, DOB, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. All other financial aid history records from NSLDS must be contested by following the CONTESTING RECORD PROCEDURES identified in the system of records notice entitled ''National Student Loan Data System (NSLDS)'' (18–11–06).

For title IV, HEA program applicants and recipients of Federal grants or loans, if you wish to contest such information about you, please refer to the CONTESTING RECORD PROCEDURES section in the system of records notice entitled ''Common Origination and Disbursement (COD) System'' (18–11–02).

To contest information about you in a Federal Loan Servicer IT system, such as the payment and loan information that is accessible in this system, please refer to the CONTESTING RECORD PROCEDURES section in the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16).

To contest the EDMAPS system information that is accessible in this system, please refer to the CONTESTING RECORD PROCEDURES section in the system of records notice entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS) System'' (18–11–22).

To contest the PAS system information about you that is maintained in this system until CPS is decommissioned after September 30, 2024, please refer to the CONTESTING RECORD PROCEDURES section in the system of records notice entitled ''Person Authentication Service (PAS)'' (18–11–12).

Requests to amend a record must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists about you in the system of records, contact the respective system manager at the address listed above. You must provide necessary particulars

such as your name, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name.

Alternatively, you may make a Privacy Act request through the U.S. Department of Education, FOIA Service Center at *https://www2.ed.gov/policy/gen/leg/foia/request_privacy.html* by completing the applicable request forms.

If you wish to submit a request for notification to determine whether a record exists about you in the COD System as a title IV, HEA program applicant or recipient of a Federal grant or loan, please refer to the NOTIFICATION PROCEDURES section in the system of records notice entitled ''Common Origination and Disbursement (COD) System'' (18–11–02).

Borrowers are able to access their financial aid history from NSLDS in this system. If you wish to submit a request for notification to determine whether a record exists about you in the NSLDS system of records, please refer to the NOTIFICATION PROCEDURES section in the system of records notice entitled ''National Student Loan Data System (NSLDS)'' (18–11–06).

If you wish to submit a request for notification to determine whether a record exists about you in a Federal Loan Servicer IT system, please refer to the NOTIFICATION PROCEDURES section in the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16).

If you wish to submit a request for notification to determine whether a record exists about you in EDMAPS system, please refer to the NOTIFICATION PROCEDURES section in the system of records notice entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS) System'' (18–11–22).

If you wish to submit a request for notification to determine whether a record exists about you in the PAS system, please refer to the NOTIFICATION PROCEDURES section in the system of records notice entitled ''Person Authentication Service (PAS)'' (18–11–12).

Requests for notification about whether the system of records contains information about an individual must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The system of records entitled ''Aid Awareness and Application Processing'' (18–11–21) was originally published in full in the **Federal Register** on September 13, 2022 (87 FR 56026–56037).

[FR Doc. 2023–12831 Filed 6–14–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15308–000]

Lock Hydro 10 Partners; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 28, 2023, Lock Hydro 10 Partners filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project located on the Kentucky River, in Clark and Madison Counties, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Boonesborough Hydroelectric Project would consist of the following: (1) an existing 250-foot-long, 35-foot-high concrete lock and dam; (2) an existing 26.4-mile-long, 596-acre reservoir having a total capacity of 5,960-acre-feet; (3) a proposed 28-foot-wide, 52-foot-long, 49-foot-high powerhouse built into the abandoned lock containing six Voith StreamDiver submersible turbine/generating units for a total installed capacity of 3.012 megawatts; (4) a proposed 20-foot-wide, 42-foot-long control building on the adjacent shore; and (5) a proposed 800-foot-long, 14.0 kilovolt transmission line. The project is estimated to generate an average of 14,000 megawatt-hours annually. The existing lock and dam are owned by the Kentucky River Authority.

Applicant Contact: David Brown Kinloch, Appalachian Hydro Associate, 414 S Wenzel Street, Louisville, KY 40204; Phone: (502) 589–0975, or by email at *kyhydropower@gmail.com.*

FERC Contact: Michael Spencer; phone: (202) 502–6093, or by email at *michael.spencer@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

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.*

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15308–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *https://elibrary.ferc.gov/eLibrary/search.* Enter the docket number (P–15308) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: June 9, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–12812 Filed 6–14–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–495–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Texas to Louisiana Energy Pathway Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Texas to Louisiana Energy Pathway Project (Project), proposed by Transcontinental Gas Pipe Line Company, LLC (Transco) in the above-referenced docket.

Transco requests authorization to construct and operate one new 15,900-horsepower compressor station in Fort Bend County, Texas (Compressor Station 33); modify six existing compressors at Compressor Station 40 in Hardin County, Texas; and perform programming updates at existing Compressor Station 23 in Victoria County, Texas. Transco's stated purpose for this Project is to provide 364,000 dekatherms per day (Dth/day) of firm transportation service from the Valley Crossing Interconnection to the Station 65 Pooling Point. Transco would provide this service through incremental capacity as a result of Project construction, the conversion of ''IT Feeder System'' capacity to firm capacity, the ''turnback'' of certain firm transportation capacity by customers of Transco, and unsubscribed capacity on Transco's system. According to Transco, its Project would provide year-round firm transportation capacity on Transco's mainline from the Valley Crossing Interconnection to the Station 65 Pooling Point.

The EA assesses the potential environmental effects of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The Commission mailed a copy of the *Notice of Availability* of the EA to Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP22–495–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC, on or before 5:00 p.m. Eastern Time on July 10, 2023.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing;'' or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–495–000) on your letter. 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.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the time frame for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/how-intervene.*

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov* using the eLibrary link. 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. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

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 9, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–12815 Filed 6–14–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–375–000]

Elba Liquefaction Company, LLC and Southern LNG Company, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Elba Liquefaction Optimization Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Elba Liquefaction Optimization Project (Project), involving new installations and modifications to existing liquefaction facilities, by Elba Liquefaction Company, L.L.C. and Southern LNG Company, L.L.C. (Companies), at Southern LNG Company, LLC's existing terminal in Chatham County, Georgia. The Companies seek permission under section 3 of the Natural Gas Act to amend existing authorizations under CP14–103–00, et al., originally approved by the Commission on June 1, 2016.[1] The Commission will use this environmental document in its decision-making process to determine whether the project is in the public interest.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of an authorization. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on July 10, 2023. Comments may be submitted in written form. Further details on how to submit comments are provided in the Public Participation section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on May 10, 2023, you will need to file those comments in Docket No. CP23–375–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. 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; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23–375–000) on your letter. 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.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

The Companies propose to amend its June 1, 2016 Order (2016 Order) to modify certain Movable Modular Liquefaction System (MMLS) Dehydration and Heavies Removal units that will reduce the fouling rate in the liquefaction units, reduce the resultant flaring events associated with cold box deriming, and therefore allow the MMLS to operate in an optimized condition for longer periods of time without fouling, all within the existing Terminal. Specifically, the Companies would make modifications to ten Movable Modular Liquefaction System (MMLS) Dehydration and Heavies Removal units; construct and operate a new condensate plant; install three new liquid nitrogen vaporizers; and increase the total liquefaction capacity of the MMLS units up approximately 0.4 million tonnes per annum (MTPA) from 2.5 to 2.9 MTPA.

The general location of the project facilities is shown in appendix 1.[2]

[1] Elba Liquefaction Company, L.L.C., 155 FERC ¶ 61,219, (2016).

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended

Land Requirements for Construction

Construction of the Elba Liquefaction Optimization Project facilities will occur within the existing footprint of the Terminal, and no easements or access permission will be needed from third party landowners. Construction would temporarily impact approximately 163 acres. Following construction, Companies would maintain about 1.3 acres for permanent operation of the Project's facilities; the remaining acreage would be restored and revert to former uses.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- environmental justice;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [3] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP23–375–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is 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. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

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

access to the Commission's Public Reference Room. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at title 40, Code of Federal Regulations, section 1501.8.

[5] The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: June 9, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–12814 Filed 6–14–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD23–9–000]

Emrgy Inc.; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On June 7, 2023, Emrgy Inc., filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA). The proposed Rec 1004 Hydrokinetic 1 Project would have an installed capacity of 35 kilowatts (kW), and would be located within the Reclamation District 1004 Concrete Ditch near Princeton, Glenn County, California.

Applicant Contact: Eric Fleckten, Emrgy Inc., 75 5th Street NW, Suite 3160, Atlanta, GA 30308, 855–459–1818, *eric@emrgy.com.*

FERC Contact: Christopher Chaney, 202–502–6778, *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The project would consist of:

(1) seven 5-kW hydrokinetic units spaced approximately 530 feet apart and

(2) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 30–62 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	*Description*	*Satisfies (Y/N)*
FPA 30(a)(3)(A)	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar man-made water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i)	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii)	The facility has an installed capacity that does not exceed 40 megawatts	Y
FPA 30(a)(3)(C)(iii)	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed Rec 1004 Hydrokinetic 1 Project will not alter the primary purpose of the conduit, which is for irrigation. Therefore, based upon the above criteria, Commission staff preliminarily determines that the operation of the project described above satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice. Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may send 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, MD 20852. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Locations of Notice of Intent: 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 website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (*i.e.,* CD23–9) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Copies of the notice of intent can be

[1] 18 CFR 385.2001–2005 (2022).

obtained directly from the applicant. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* 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 9, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–12813 Filed 6–14–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0312; FRL–7887–04–OAR]

Release of Volume 3 of the Integrated Review Plan in the Review of the Lead National Ambient Air Quality Standards; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; public comment period; extension.

SUMMARY: The Environmental Protection Agency (EPA) is extending the public comment period by 30 days for Volume 3 of the *Integrated Review Plan for the Lead National Ambient Air Quality Standards* (IRP). The original **Federal Register** document announcing the public comment period was published on May 15, 2023.

DATES: The public comment period for the notice published on May 15, 2023 (88 FR 30966), is being extended by 30 days. The EPA must receive comments on or before July 14, 2023.

ADDRESSES: You may send comments on Volume 3 of the IRP, identified by Docket ID No. EPA–HQ–OAR–2020–0312, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this notice. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments, see the **SUPPLEMENTARY INFORMATION** section of this document. Volume 3 of the IRP is available on the EPA's website at *https://www.epa.gov/naaqs/lead-pb-air-quality-standards.* The document is accessible under ''Planning Documents'' for the current review.

FOR FURTHER INFORMATION CONTACT: Dr. Deirdre L. Murphy, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code: C504–06, 109 T.W. Alexander Drive, P.O. Box 12055, NC 27711; telephone number: 919–541–0729; or email: *murphy.deirdre@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2020–0312, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

Erika Sasser,

Director, Health and Environmental Impacts Division.

[FR Doc. 2023–12846 Filed 6–14–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 19–329; FR ID 148769]

Federal Advisory Committee Act; Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC or Commission) Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States (Task Force) will hold its next meeting live and via live internet link.

DATES: July 11, 2023. The meeting will come to order at 10:00 a.m. EDT.

ADDRESSES: The meeting will be open to the public and held in the Commission Meeting Room at FCC Headquarters, located at 45 L Street NE, Washington, DC 20554, and will also be available via live feed from the FCC's web page at *www.fcc.gov/live.*

FOR FURTHER INFORMATION CONTACT: Lauren Garry, Designated Federal Officer, at (202) 418–0942, or *Lauren.Garry@fcc.gov;* Emily Caditz, Deputy Designated Federal Officer, at (202) 418–2268, or *Emily.Caditz@fcc.gov;* or Thomas Hastings, Deputy Designated Federal Officer, at (202) 418–1343, or *Thomas.Hastings@fcc.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be held on July 11, 2023 at 10 a.m. EDT in the Commission Meeting Room at FCC Headquarters, 45 L Street NE, Washington, DC, and will be open to the public, with admittance limited due to seating availability. The meeting will also be available via live feed from the FCC's web page at *www.fcc.gov/live.* Any questions that arise during the meeting should be sent to *PrecisionAgTF@fcc.gov* and will be answered at a later date. Members of the public may submit comments to the Task Force in the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the Task

Force should be filed in GN Docket No. 19–329. Comments to the Task Force should be filed in GN Docket No. 19–329. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted but may not be possible to fill.

Proposed Agenda: The Task Force will discuss executive summary details; provide updates on the progress of their respective reports, and continue to discuss strategies to advance broadband deployment on agricultural land and promote precision agriculture. This agenda may be modified at the discretion of the Task Force Chair and the Designated Federal Officer.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–12840 Filed 6–14–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, June 21, 2023, at 10:30 a.m. and its continuation at the conclusion of the open meeting on June 22, 2023.

PLACE: 1050 First Street NE, Washington, DC and Virtual (This meeting will be a hybrid meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2023–12980 Filed 6–13–23; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: June 27, 2023 at 10:00 a.m.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, *Code:* 127 249 097#; or via web: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_NzA5MWQ3NTktNzBmMC00ODQxLTg2N2EtYzRjZTJkMDI4ZDNj%40thread.v2/0?context=%7b%22Tid%22%3a%223f6323b7-e3fd-4f35-b43d-1a7afae5910d%22%2c%22Oid%22%3a%221a441fb8-5318-4ad0-995b-f28a737f4128%22%7d.*

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the May 23, 2023 Board Meeting Minutes
2. Recordkeeper Service Update (Accenture Federal Services)
3. Monthly Reports
   (a) Participant Activity Report
   (b) Legislative Report
   (c) Investment Report
4. Quarterly Reports
   (d) Vendor Risk Management
5. OTS Annual Presentation
6. DOL Presentation

Closed Session

7. Information Covered Under 5 U.S.C. 552b(c)(10)

Authority: 5 U.S.C. 552b(e)(1).

Dated: June 12, 2023.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2023–12821 Filed 6–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0182; Docket No. 2023–0053; Sequence No. 1]

Information Collection; Privacy Training

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning privacy training. DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the 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 the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through September 30, 2023. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by August 14, 2023.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0182, Privacy Training. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s) 9000–0182, Privacy Training

B. Need and Uses

This clearance covers the information that contractors must submit to comply with the following FAR requirements:

• 52.224–3(d). This clause requires contractors to:

(1) Maintain a record of initial and annual privacy training, for the contractor's employees that: (a) have access to a system of records; (b) create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information on behalf of an agency; or (c) design, develop, maintain, or operate a system of records; and

(2) Provide documentation of completion of such privacy training to the contracting officer if requested.

The contracting officer will use the information in contract administration and to establish that all applicable contractor and subcontractor employees comply with the privacy training requirements.

C. Annual Burden

Respondents/Recordkeepers: 1,227/49,097.

Total Annual Responses: 1,227.

Total Burden Hours: 147,598. (307 reporting hours + 147,291 recordkeeping hours).

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0182, Privacy Training.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2023–12835 Filed 6–14–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10809]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

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

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10809 Ambulatory Surgical Center Covered Procedures List (ASC CPL)

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Ambulatory Surgical Center Covered Procedures List (ASC CPL); *Use:* The ASC CPL (Ambulatory Surgical Center Covered Procedures List) was authorized in accordance with section 1833(i)(1) of the Social Security Act, which requires the Secretary to specify surgical procedures which are appropriately performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in an ASC, critical access hospital, or hospital outpatient department. The statute also requires the Secretary to regularly review and update the ASC CPL.

During rulemaking, CMS receives surgical procedure code nominations from a variety of external interested parties and evaluates them for inclusion to the CPL in the OPPS/ASC proposed rule. After reviewing the nominations and evaluating them against the criteria, CMS proposes the list of procedures that they will add to the CPL for the following calendar year. The public has 60 days to comment on the proposals, CMS takes these perspectives into account, and the final list of procedure

nominations are finalized in the OPPS/ASC final rule.

The information collected in this request will be used by CMS annually to determine what covered surgical procedures should be added to the ASC CPL. Specifically, the policy analysts and medical officers in the Division of Outpatient Care will individually review each procedure nomination, as well as any supporting evidence (clinical studies, literature, data or letters of support) submitted. The agency will use this information to propose a list of covered surgical procedures for the OPPS/ASC Proposed Rule starting with the CY 2025 Proposed Rule. *Form Number:* CMS–10809 (OMB control number: 0938–New); *Frequency:* Yearly; *Affected Public:* Private Sector, Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 15; *Total Annual Responses:* 100; *Total Annual Hours:* 50. (For policy questions regarding this collection contact Nate Vercauteren at *Nathan.Vercauteren@cms.hhs.gov*.)

Dated: June 9, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–12773 Filed 6–14–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–1027]

Questions and Answers About Dietary Guidance Statements in Food Labeling: Draft Guidance for Industry; Extension of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the draft guidance entitled ''Questions and Answers About Dietary Guidance Statements in Food Labeling: Draft Guidance for Industry,'' that appeared in the **Federal Register** of March 27, 2023. We are taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the draft guidance published March 27, 2023 (88 FR 18149). Submit either electronic or written comments on the draft guidance by September 25, 2023, to ensure that we consider your comment on the draft guidance before we begin work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–D–1027 for ''Questions and Answers About Dietary Guidance Statements in Food Labeling: Draft Guidance for Industry.'' 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.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Blakeley Fitzpatrick, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1450; or Philip Chao, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 27, 2023 (88 FR 18149), we published a notice of availability for a draft guidance entitled ''Questions and Answers About Dietary Guidance Statements in Food Labeling: Draft Guidance for Industry.'' This action opened a docket with a 90-day comment period.

We have received requests for a 90-day extension of the comment period for the draft guidance. We have concluded that it is reasonable to extend the comment period for 90 days, until September 25, 2023. (A 90-day extension would fall on September 24, 2023, which is a Sunday, so we have extended the comment period until the next business day, which is September 25, 2023.) We believe that the additional time allows adequate time for interested persons to submit comments.

Dated: June 9, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–12790 Filed 6–14–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0155]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Quantitative Research on Front of Package Labeling on Packaged Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

DATES: Submit written comments (including recommendations) on the collection of information by July 17, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this information collection is ''Quantitative Research on Front of Package Labeling on Packaged Foods.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Quantitative Research on Front of Package Labeling on Packaged Foods

OMB Control Number 0910–NEW

I. Background

The United States continues to face an epidemic of diet-related chronic diseases, many of which are experienced disproportionately by racial and ethnic minority groups, those with lower socioeconomic status, and those living in rural areas (Ref. 1). To help address this problem, FDA has continued to prioritize its nutrition activities (Ref. 2) to help empower consumers with nutrition information to make healthier choices more easily and encourage industry innovation by providing flexibility to facilitate the production of healthier foods. FDA is focused on: (1) creating a healthier food supply for all; (2) establishing a healthy start to set the foundation for a long, healthy life; and (3) empowering consumers through informative labeling and tailored education (Ref. 2; see also Ref. 3).

FDA is exploring the development of a front of package system to help consumers interpret the nutrient information on food products. Front of package (FOP) labeling is intended to complement the Nutrition Facts label by giving consumers a simple aid to provide additional context for making healthy food selections. As part of our food-labeling efforts, we are exploring the establishment of a standardized, science-based FOP scheme that helps consumers, particularly those with lower nutrition literacy, quickly and easily identify foods that are part of a healthy dietary pattern.

The increased attention in recent years to FOP and the experiences of countries that have adopted FOP labeling suggest that FOP labeling may aid nutrition comprehension and the ability to make healthier choices, especially for those with lower nutrition literacy. FOP schemes adopted in countries throughout the world include both mandatory and voluntary labeling schemes and noninterpretative, interpretative, nutrient specific, and summary schemes.

In 2022, FDA conducted a review of the literature on FOP nutrition-related labels and conducted a set of focus groups to test FOP concepts and draft FOP schemes (see Docket No. FDA–2023–N–0155 for the literature review). These focus group results provided insights into the varying ways that consumers interpret FOP nutrition information. As part of our efforts to promote public health, we intend to conduct an experimental study, informed by results of the focus group testing, to further explore consumer responses to various FOP schemes. In the experimental study, we will test a smaller subset of FOP schemes from the focus group testing, with additional variations informed by, among other things, focus group results (see *https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202008-0910-021&icID=253321* for information about FDA's front of package focus groups, including graphic FOP schemes tested). The study will be a controlled, randomized experiment that will use a 15-minute web-based questionnaire to collect information from 9,000 U.S. adult members of an online consumer panel maintained by a contractor. The sample will be balanced to reflect the U.S. Census on gender, education, age, and ethnicity/race. A measure of nutrition literacy will also be used to balance the sample to ensure a variety of literacy levels for each condition.

Conditions for the study will be: (1) a set of draft FOP schemes, including ''no-scheme'' controls; (2) three types of mock food products (*i.e.,* a breakfast cereal, a frozen meal, and a canned soup); and (3) a ''no-information'' condition where no explanation of the FOP scheme is provided. The experiment will have two main parts: (1) a within-scheme comparison and identification of healthfulness profile and (2) a single-product (and scheme) evaluation. In part 1, participants will see three levels of healthfulness (most healthful, middle, and least healthful) on a single scheme and be asked to identify the most and least healthful profile. Participants will be timed and will be provided with a link to a Nutrition Facts label in case they want more information to answer the question. Each participant in part 1 will evaluate three different sets of schemes. In part 2, each participant will be randomly assigned to a single condition (food product, scheme type, or level of healthfulness). In this section, participants will be asked to use the label image to respond to various measures of the label's effectiveness. Product perceptions (*e.g.,* healthfulness and contribution to a healthy diet) and label perceptions (*e.g.,* believability and trustworthiness) will constitute the

measures of response in the experiment. The instrument will also collect information from participants about their history of purchasing or consuming similar products, nutrition knowledge, dietary interests, motivation regarding label use, health status, and demographic characteristics.

The studies are part of our continuing effort to help enable consumers to make informed dietary choices and construct healthful diets. We intend to use the results to inform our continued exploration of an FOP labeling scheme. We will not use the results to develop population estimates.

Description of Respondents: Respondents to this collection of information include members of the general public.

In the **Federal Register** of January 26, 2023 (88 FR 5005), FDA published a 60-day notice requesting public comment on the proposed collection of information (60-day notice). We received 26 comments, 2 of which were duplicates. Of the other 24, 20 were related to the PRA. The remaining comments were nonresponsive to the four PRA topics, so we will not address them in this document. We have numbered each comment to help distinguish among different topics. The number assigned is for organizational purposes only and does not signify the comment's value, importance, or the order in which it was received.

A. Comments Regarding the Necessity and Practical Utility of the Information Being Collected and FDA Response

Several comments addressed the necessity and practical utility of collecting information on an FOP scheme that would provide information to consumers to help them make more informed food choices.

(Comment 1) Many comments supported FDA's proposed collection of information through an experimental study. Many supported our consumer research, including the study design, goals, and research on schemes. Several other comments suggested that the study has limitations because it only assesses purchase intention and how consumers say they will behave, and not actual purchase or consumption behaviors.

(Response 1) As is common with research in the scientific literature, our study design mimics, as much as possible, how consumers will respond to a FOP nutrition label scheme (Refs. 4 and 5). Assessing actual purchase or consumption behavior is not possible because the schemes to be tested are not currently available in the marketplace. Additionally, the overall focus of this research is to assess consumer understanding of FOP schemes that may help consumers interpret certain nutrient information on food products; it is not meant to assess actual purchase or consumption behaviors.

B. Comments Regarding the Accuracy of Our Burden Estimates, Including the Validity of the Methodology and Assumptions Used, and FDA Response

Some comments discussed the accuracy of FDA's estimate of the burden for this information collection, including the validity of FDA's methodology and the assumptions used.

(Comment 2) Multiple comments encouraged FDA to increase transparency in our FOP research, with some expressing concern that the public has not had sufficient opportunity for input on the burdens of the information collection or the utility of the research due to a lack of information. Many comments urged us to provide more information on factors such as the specific objectives of the research; research and study design; methodologies; survey questions; visual product label mockups; the FOP schemes to be tested; FDA's basis for choosing the FOP schemes we have decided to test and excluding those we have excluded; nutritional criteria being tested, including the criteria for any color coding or ''High in'' schemes; the outcomes from our focus groups and any other past surveys and consumer research; an analysis of foreign FOP schemes; and the variables and conditions to be tested. One comment asked how we developed the schemes used in the focus groups, particularly those that contained the terms ''low,'' ''medium,'' and ''high,'' given that FDA has not defined or applied these terms in the context used in the focus groups.

A couple of comments suggested that FDA should collaborate with stakeholders when conducting studies or developing an FOP scheme in the future.

(Response 2) Detailed information and all study materials are available at *https://www.reginfo.gov.* The literature review and FOP schemes are also available in the docket (Docket No. FDA–2023–N–0155). The schemes to be tested include variations on schemes that are currently available in the marketplace and others that attempt to interpret certain nutrition information. We developed schemes based on insights from our focus groups, analysis of the literature on FOP labeling, and review of schemes from other countries. We recognize that these schemes are a subset of the many possible schemes that could be tested, and we selected them for the reasons described above.

Regarding nutritional criteria and the ''low,'' ''medium,'' and ''high'' designations, for the purposes of the focus groups and experimental study, we have defined the nutritional criteria and the ''low,'' ''medium,'' and ''high'' designations to be based on the percent Daily Value (see, *e.g., https://www.fda.gov/food/new-nutrition-facts-label/lows-and-highs-percent-daily-value-new-nutrition-facts-label*). The study refers to these criteria.

FDA has collaborated with stakeholders on the exploration of the FOP schemes through our focus-group testing, 60-day notice, and this notice, and any regulatory action we take after our testing will be published in the **Federal Register** for public comment.

(Comment 3) One comment said FDA did not provide enough information in our 60-day notice on our testing, including the number of label conditions, the number of food choices respondents will have, whether there will be a separate control group, and a primary study outcome, to allow the public to evaluate the suitability of our proposed sample size.

(Response 3) The 60-day notice included information about the study to allow members of the public to provide comment. Detailed information and all study materials are available at *https://www.reginfo.gov.* The literature review and FOP schemes are also available in the docket (Docket No. FDA–2023–N–0155). There will be 10 total label conditions, 3 food types, and a control group that will see a label with no scheme. Primary study outcomes include the ability to correctly interpret the nutritional profile of the product, the speed at which participants make their decisions, and their search for more information to answer the question (*i.e.,* whether they want to view the Nutrition Facts label). The proposed sample size is 9,000 participants.

C. Comments Regarding Ways To Enhance the Quality, Utility, and Clarity of the Information To Be Collected, and FDA Response

Many comments suggested ways to enhance the quality, utility, and clarity of the information about the FOP schemes to be collected.

(Comment 4) One comment said we should avoid color coding or ''low,'' ''medium,'' or ''high'' markers in our scheme because it is unwise to base a food's healthfulness on one factor alone. Another comment said that color-coding nutrients to limit and nutrients to encourage in the same scheme would

confuse consumers and that we should include an option that does not color code nutrients to encourage. A few comments said that we should present some schemes in black and white and others with color to identify if color should be used. Several comments said that we should only test schemes that industry could implement without excess cost or burden.

(Response 4) Color-coding and interpretational aids such as ''high,'' ''medium,'' and ''low'' are being tested because prior research has found such interpretive components helpful to consumers when evaluating the nutritional profile of products (Refs. 6 and 7). We disagree that testing these interpretational aids bases a food's healthfulness on one factor alone; rather, the schemes we are testing are intended to complement the Nutrition Facts label by giving consumers a simple aid to provide additional context for making healthy food selections.

The study will test both color and black-and-white schemes (see Docket No. FDA–2023–N–0155). We are not currently planning to test schemes that include both nutrients to limit and nutrients to encourage, so there will be no options in the study that cover nutrients to encourage.

Regarding the cost of implementation, this quantitative study focuses on gathering information. Should we move forward with a regulatory action, we will consider potential economic impacts of any proposed scheme.

(Comment 5) One comment recommended that FDA conduct indepth interviews with diverse stakeholders because such interviews facilitate better understanding and add nuance to findings.

(Response 5) We have incorporated a variety of qualitative research methods, including the use of interviews, as part of our research. The study will employ cognitive interviews before we conduct the proposed experiment to test whether and how participants understand the study questions and whether the design will reach our research goals. The study instrument will include an open-ended question, providing participants an opportunity to express top-of-mind reactions to the study and schemes. FDA also conducted focus groups on FOP nutrition labels in 2022, which have informed the proposed experimental study. We note that the quantitative nature of experimental studies allows for statistical generalizability of effects while qualitative designs do not.

(Comment 6) Some comments advocated testing consumption in the home or testing in real-world or simulated shopping environments. One comment advocated that the FOP schemes appear alongside other commonly found symbols on food labels.

(Response 6) Online store settings and other naturalistic study environments have been successfully employed in some studies on food labeling effects. One advantage of employing such naturalistic study environments is that they more closely reflect participants' actual shopping experience. However, there are substantial additional costs associated with using such research settings, and results in these settings generally do not differ appreciably from results garnered through the simple random-assignment-to-condition design that we proposed. Therefore, we decline to change our study environment.

Participants will view the schemes on mock food labels that closely match those found in grocery stores. The study will not assess the schemes alongside other commonly found symbols on the food label. Our studies are designed to test general consumer responses to the schemes presented. Testing additional variables, such as the effect of other packaging elements on the schemes, is outside the scope of this research. We are not testing consumption in the home because, again, our studies are designed to test general consumer responses to the schemes presented. We are not studying consumption behavior.

(Comment 7) A couple of comments said that mockups of product labels should accurately represent products in the marketplace, and that the mockups we used in the focus-group testing included unrealistic elements, such as fewer competing claims, small type size for voluntary claims, and fonts not commonly used on product labels. Several comments asserted that we should ensure label mockups are realistic, and a few comments maintained that the mockups should not introduce bias.

(Response 7) FDA disagrees with the comment that its mock food packages contain unrealistic elements, and the comment provides no support for the claim that our chosen type size and fonts are not commonly used on product labels. While we recognize that our mockups contain fewer competing claims than might be on some real packages, the mock packages represent products that might be found in the actual marketplace and reflect a real-world food product scenario without the introduction of bias that may come with including competing symbols or claims.

(Comment 8) One comment urged us to develop research objectives that pair with our policy objectives. The comment recommended that we add the following goal of FOP labels: ''To help people quickly and easily identify foods that, when consumed, may lead people to exceed daily nutritional recommendations for nutrients of concern (sodium, added sugar, and saturated fat).'' The comment also recommended that FDA establish more specific research objectives relating to encouraging healthier food selections, enabling consumers to identify foods that are part of a healthy eating pattern, and identifying foods associated with nutrients of concern. A few comments said we need to clearly define the quantitative consumer research's primary outcome so that we can develop questions and research designs that will address the intended goal. One comment said that, before conducting the quantitative study, FDA should identify the metrics for consumer understanding to guide the study design and interpretation of results.

(Response 8) The goal of our research is to assess which FOP scheme best enables consumers to identify foods that can help them build a healthy eating pattern. We decline to add any other research objectives because we believe that our stated research goal most closely corresponds to our policy objectives.

Regarding the research's primary outcome, we noted earlier that our primary study outcomes include the ability to correctly interpret the nutritional profile of the product, the speed at which participants make their decisions, and their search for more information to answer the question (*i.e.,* want to view the Nutrition Facts label). We believe we have developed questions and research designs that will address our intended goal.

We agree that we should identify the metrics for consumer understanding to guide the study design and interpretation of results. An element of the study design process includes identifying appropriate metrics for measuring consumer understanding. These metrics will help FDA interpret the study results.

(Comment 9) Many comments urged FDA to research how FOP schemes would impact consumer behavior, including purchase or consumption decisions. One comment encouraged us to study consumers' selection of calories and nutrients, foods that meet our proposed definition of ''healthy,'' and foods high in added sugars, sodium, or saturated fat. A few comments said we should measure whether, and why, the schemes would affect intended purchase or consumption frequency. A couple of comments recommended

testing whether the presence of an FOP scheme makes consumers more likely to read and understand the Nutrition Facts label. Some comments suggested specific methods for studying and evaluating consumer behavior.

A few comments asserted that research on consumer behavior and how consumers use and understand FOP labeling is necessary to avoid consumer confusion, misleading consumers, and unintended consequences. Another comment recommended that FDA's research assess whether consumers interpret the label to have the same meaning that FDA intends.

(Response 9) We acknowledge that there are measurements we are not including in this research effort (*e.g.,* behavior changes). These studies are designed to explore consumer responses to the schemes, and inclusion of variables such as behavior changes would be outside of the scope of our research.

The study will measure whether participants can understand the scheme when trying to identify certain nutrient profiles. The study will also include an option for participants to view the Nutrition Facts label if they so choose, but the study will not evaluate reading and understanding of the Nutrition Facts label because this is not the goal of the study.

(Comment 10) One comment encouraged us to assess consumer understanding of product healthfulness using objective measures (*i.e.,* questions with factual answers). Some comments urged FDA to include open-ended questions in our survey.

(Response 10) One of the goals of the research is to assess consumers' ability to use the schemes to determine product healthfulness. In one part of the study, participants will see three versions of a scheme and will be asked to identify the scheme with the most healthful nutritional profile and the scheme with the least healthful nutritional profile. The profiles are based on FDA's characterization of levels of the percent Daily Value as either ''high'' or ''low'' (see *https://www.fda.gov/food/new-nutrition-facts-label/lows-and-highs-percent-daily-value-new-nutrition-facts-label*). The questionnaire will have at least one open-ended question seeking general feedback on the study and schemes.

(Comment 11) One comment encouraged us to assess the trustworthiness of the schemes. Conversely, another comment opposed factoring in participants' ratings of believability and trustworthiness because, according to the comment, those factors are not strong predictors of real-world responses. Another comment said we should evaluate the reliability of respondents' answers versus real-life consumer behavior by considering the statistical significance of the study.

(Response 11) The study will include measures of trustworthiness and believability of the schemes, and these will be considered along with the other outcome measures. With respect to factoring in participants' ratings of believability and trustworthiness, many factors contribute to how people respond in the real world; thus, it is important for the study to include a variety of outcome measures while also limiting the scope to just the pertinent factors. We plan to conduct tests of statistical significance to evaluate the probability that the study findings are true patterned responses.

(Comment 12) One comment argued that our research design should consider the limitations of FOP schemes. Another comment encouraged FDA to expand our research plans to include more settings and to consider approaches that mitigate hypothetical bias.

(Response 12) The research will take into account the many factors that may limit consumers' ability and motivation to use FOP nutrition labels, such as nutrition literacy, Nutrition Facts label usage, time limitations, and health considerations. FDA disagrees with the comment encouraging us to expand the research to include more settings. FDA is designing the study so that the questions or tasks mirror how consumers typically approach food label reading. Additionally, as we noted above, results in naturalistic settings generally do not differ appreciably from results garnered through the simple random-assignment-to-condition design that we proposed. Therefore, we decline to change our study environment. However, cognitive interviews and pretests will help to improve the ''real-world'' feel of the questionnaire.

FDA's study is designed to mitigate hypothetical bias because it focuses on perceptions and understanding of the FOP schemes rather than on trying to assess behaviors associated with them.

(Comment 13) Multiple comments recommended FDA use industry materials or schemes in our testing, such as Facts Up Front and Consumer Brands' FOP nutrition labeling principles. Several comments urged us to test variations of the Facts Up Front scheme, with some reasoning that Facts Up Front has widespread adoption and that consumers are already familiar with the program and understand how to use it.

(Response 13) FDA is planning to test a scheme that includes attributes of the U.S. industry-established FOP schemes.

(Comment 14) Some comments said we should consider flexibility and exemptions to address space limitations regarding font size, style, and placement in our quantitative research.

(Response 14) The research will test placement on the food label but will not test font size and style. Contemplating flexibility and exemptions relating to issues such as font size and style on packages with space limitations is not the purpose of this study, which is to gauge consumer responses to the schemes we are testing.

(Comment 15) One comment said FDA should test how digital disclosure could replace an FOP scheme on the package.

(Response 15) The goal of our current research focuses on exploring FOP schemes that help consumers quickly and easily identify foods that can help them build a healthy eating pattern. We are not currently testing digital disclosures because that approach does not align with our research goals relating to the speed and ease with which consumers can assess foods.

(Comment 16) A few comments cautioned against using schemes that overlook, or mislead consumers about, a food's whole contribution to the diet or subjectively characterize a food (for instance, as ''High in,'' ''medium,'' or ''low in'') based on just three nutrients.

(Response 16) FDA is interested in learning how the different schemes to be tested help consumers put a food, as a whole, into the context of their daily (or longer-term) diets. The schemes included in the experimental study do not subjectively characterize a food based on three nutrients. The ''high,'' ''medium,'' and ''low'' designations included in the study are based on established criteria for interpreting the percent Daily Value of a nutrient (see, *e.g., https://www.fda.gov/food/new-nutrition-facts-label/lows-and-highs-percent-daily-value-new-nutrition-facts-label*) and the study refers to these criteria.

(Comment 17) One comment said that our research should maximize opportunities to include nutritious foods that are widely available and within the purchase reach of most consumers.

(Response 17) The mock food product categories to be included in the experiment are those that are highly consumed by many consumers of all economic levels (breakfast cereal, frozen meals, and canned soup). There are a variety of foods in these categories,

which in turn can vary widely in terms of healthfulness.

(Comment 18) One comment recommended that FDA test a label that states: ''WARNING: HIGH IN [sodium/added sugars/saturated fat]'' accompanied by a warning icon.

(Response 18) Our research goal focuses on exploring ways that FOP labels can complement the Nutrition Facts label on packaged foods by giving consumers additional context to quickly and easily identify foods that can help them build a healthy dietary pattern. Our research will test schemes that include a ''high'' designation or a ''High in'' statement as part of that goal. However, we will not test the word ''warning'' or a warning icon because doing so would not align with our research goals of learning how to provide consumers with additional factual context for food choices.

(Comment 19) One comment urged FDA to include low- and no-calorie sweeteners in the tested schemes because, according to the comment, the public wants to know if products contain such sweeteners.

(Response 19) Information relating to low- and no-calorie sweeteners is available to consumers in the ingredient list of a product. The focus of our study is to explore how to help consumers quickly and easily identify foods that can help them build a healthy eating pattern, with a focus on the nutrients that the Dietary Guidelines for Americans (Dietary Guidelines) have identified as nutrients to limit (Ref. 8).

(Comment 20) One comment said we could improve our schemes by limiting numerical information, emphasizing interpretive components (*e.g.,* a prominently placed ''High in'' designation), and adding attention-grabbing features. The comment also recommended against testing labels that highlight nutrients to encourage, because, according to the comment, companies already promote the healthy aspects of their products, and labels that combine both nutrients to limit and nutrients to encourage would create a challenge for consumer education.

However, other comments supported testing schemes with nutrients to encourage, arguing that the schemes must accurately reflect the full nutrient profile of a food; that the public should have tools to construct a healthy diet; and that, for instance, a product with some added sugar may be viewed as negative by the consumer if ''High in'' or ''red'' is marked on the FOP even if the product provides positive nutrition overall. A couple of comments claimed that many of the proposed schemes tested in the original focus groups reduced a food to its negative nutrients rather than recognizing its overall contribution to the diet and its positive nutrient and food group content.

Other comments advocated testing at least one scheme with a ''positive'' approach that would, for instance, award food stars depending on the food's nutrient content. A couple of comments said that we should also do consumer research on summary-based systems.

A couple of comments suggested that tested FOP schemes should align with the Dietary Guidelines to focus on overall dietary patterns rather than on individual nutrients.

(Response 20) The study will test a variety of schemes reflecting those currently found in the marketplace; some of them will contain limited numerical information and some will contain interpretive components. The study will assess consumers' ability to use the schemes to make decisions to support a healthful overall dietary pattern. As we noted earlier, the schemes we are testing are intended to complement the Nutrition Facts label by giving consumers a simple aid to provide additional context for making healthy food selections.

With respect to comments that urged FDA to test a ''positive'' approach or a summary-based system, we are testing different schemes based on our literature review and the feedback we collected through our focus group research, which indicate that simpler schemes are easier for consumers to understand and that consumers often already have access to information about nutrients to encourage on the front of food packages. As such, our current study plans do not include testing nutrients to encourage.

(Comment 21) One comment said it is important to understand whether consumers viewing an FOP scheme view the foods as ones that should be avoided, particularly for products that are healthful food choices recommended by the Dietary Guidelines or MyPlate.

(Response 21) The research will evaluate whether the FOP scheme assists consumers in identifying the healthfulness of a product or whether the scheme encourages them to avoid the product.

(Comment 22) One comment recommended against testing Guideline Daily Amount (GDA) labels with numeric information (*e.g.,* amount per serving or percent Daily Value) without an additional interpretive component. Conversely, a couple of comments requested that we also include GDA schemes without interpretive elements to help us understand the benefits and limitations of the schemes, with one comment suggesting that fact-based FOP schemes used by industry could be our control.

(Response 22) FDA is testing the effects of different kinds of schemes, including GDA-type schemes. Some of the schemes being tested have interpretational aids and some do not. Statistical analysis will allow FDA to use each of the tested schemes as a control for other schemes.

(Comment 23) One comment said that FDA should consider testing the effects of different FOP label designs both with and without additional information to aid in label interpretation.

(Response 23) FDA is testing the effects of different kinds of schemes, some that have interpretational aids and some that do not.

(Comment 24) One comment encouraged us to use survey measures with strong psychometric properties. For example, the comment said FDA should consider using the UNC Perceived Message Effectiveness Scale to assess effects perceptions.

(Response 24) FDA acknowledges the value of using measures that are reliable, have been validated, and that have strong psychometric properties. However, we do not believe that the UNC Perceived Message Effectiveness Scale is appropriate for this study because this study deals with the provision of nutritional information via food labeling.

(Comment 25) One comment recommended that we pre-register a protocol for the proposed experiment, including the primary outcome and all secondary outcomes, any hypotheses or predictions, the analytic plan, and the power calculations used to arrive at the target sample size.

(Response 25) FDA declines to preregister the research protocol, as described in the comment. The comment did not explain what additional details might be available via preregistration that would not be available in our **Federal Register** notices, in the docket (Docket No. FDA–2023–N–0155), and on *https://www.reginfo.gov.*

(Comment 26) A few comments said the foods tested should reflect more product categories, varieties, package sizes, and nutrient profiles that would be subject to an FDA FOP scheme. For example, some of these comments recommended that we test single-ingredient products, individual foods, and foods that are known to be higher in sugar, sodium, or saturated fat. Some comments said that without doing so, the research setting would be

unrealistic, and we may not be able to apply the study findings to all types of packaged foods, including beverages, available to consumers. One comment said that we should compare consumer reactions to FOP schemes across multiple food categories so that we can assess whether reactions to standardized FOP schemes might shift perception, purchasing, or consumption of certain products.

(Response 26) FDA declines to add more product types to the studies. We are proposing to test schemes on a set of mock products that belong to large food categories, with many product types within each category. The mock food product categories to be included in the experiment (breakfast cereal, frozen meals, and canned soup) are those that are highly consumed by many consumers of all economic levels. There are a variety of foods in these categories, which can vary widely in terms of healthfulness and the nutrients included in the schemes.

For our research, we chose three packaged foods that are commonly consumed and that are clearly distinct food types. The selected products will give us sufficient information on general consumer responses to the schemes. We also note that adding any products would increase the scope and cost of the studies while providing limited new information, and the comments provided no evidence that additional test products from other food categories, varieties, package sizes, and nutrient profiles would impact our study outcome.

(Comment 27) One comment encouraged us to search for and consider the design of previously conducted research on FOP schemes when designing our own consumer research.

(Response 27) FDA has conducted a thorough review of the scientific literature on FOP schemes and continues to monitor the emerging science.

(Comment 28) One comment recommended we test additional variables, including health status, whether respondents have nutrition-related conditions, caregiver status, English language literacy, and method of administration of the test, to assess how consumers understand and use FOP schemes. The comment also said that respondents should be primary shoppers and should span socioeconomic status. A couple of comments said we should include demographic data, such as racial and ethnic minority groups, those with lower socioeconomic status, those living in rural areas, and parents of minors, to improve understanding of behavior changes across demographic groups.

(Response 28) The study is designed to assess how consumers understand and use FOP schemes. Most of the variables mentioned are included in the study, including a measure of whether the participant is the primary grocery shopper in the household. FDA agrees that a measure of caregiver status could be useful. Therefore, we have added this variable to the study instrument.

(Comment 29) A few comments said our research must include diverse populations, including race, ethnicity, education status, nutrition literacy, and income level. The comment continued that our research should address the needs of the most vulnerable populations. A few comments said we could consider over-indexing or oversampling on key consumer constituencies, such as the populations the FOP schemes are meant to target and caregivers. A couple of comments expressed concern that those in underserved communities and those most at risk for diet-related disease may not have computers and may have unreliable or no access to the internet, making participation in the study difficult.

(Response 29) Our study will ensure that members of underserved communities and those most at risk for diet-related disease are adequately represented. Participants recruited for the study will include diverse populations, considering race, ethnicity, education status, nutrition literacy, rural residency, and other sociodemographic factors. The study will also oversample consumers with lower nutrition literacy levels to ensure that we can evaluate the findings against levels of nutrition literacy. The Pew Research Center reports that 93 percent of American adults use the internet (Ref. 9). The Institute of Museum and Library Services reports that approximately 312 million Americans (out of the total U.S. population of approximately 330 million, according to the 2020 U.S. Census) live in a public library service area (Ref. 10). Virtually all public libraries provide free internet access (Ref. 11). There is no requirement that participants have a computer, laptop, or tablet at home to participate in this study. In the past, participants in FDA-funded studies who did not have a computer at home have completed studies using outside resources; for example, a computer at the public library.

(Comment 30) Several comments said that we may need a larger sample size than 3,000 given the information provided and that the results of the quantitative study will impact the entire U.S. population.

(Response 30) FDA agrees with the comment, and we plan to increase the sample size to 9,000.

(Comment 31) One comment said we may need to include additional schemes in the testing to understand category-specific, pack size-specific considerations, such as the ''calories-only'' scheme sometimes used on foods in small packages. Another comment urged us to include some very small package mockups to ensure fit and readability of the FOP scheme. Similarly, another comment urged FDA to test a beverage option with a small or very small label to determine what nutritional information to include and whether a beverage container with a small label can bear an FOP scheme of readable size. Another comment stated that FDA's research should include various beverages among the products tested to ensure that FDA identifies differences in consumers' views between FOP labels on food versus beverages.

(Response 31) We are testing different schemes based on our literature review and the feedback we collected through our focus group research. The comments provided no evidence that including additional schemes in our testing would help us understand category-specific, package size-specific considerations. As such, FDA declines to add additional schemes to our testing.

FDA disagrees with the recommendation to add more product sizes or types, including beverages, to the study. For our research, we chose three packaged foods that are commonly consumed and that are clearly distinct food types. The selected products will give us sufficient information on general consumer responses to the schemes to inform any future action we may take on the schemes. We also note that adding any products would increase the scope and cost of the studies while providing limited new information and that the comments provided no evidence that additional test products from other food categories, including beverages, would impact our study outcome.

(Comment 32) One comment stated that calories should be included on most of the tested schemes. The comment asserted that energy is the most important component in diet planning and said that FDA must explain why we were not including calories. Another comment recommended that FDA include a calories-only icon in our research, while another comment wondered if the public would consume more overall

calories if FOP does not contain information on calories.

(Response 32) We decline to add calories to the schemes we are testing or test a calories-only scheme. Our regulations, at 21 CFR 101.9(d)(1)(iii), require the Nutrition Facts label to display calorie information with increased prominence, relative to other information, in order to draw consumer attention (see 81 FR 33741 at 33939, May 27, 2016). At this point, for the purposes of the experimental study, we believe that consumers have adequate access to calorie information, while the purpose of our research on FOP is to determine the usefulness of providing consumers with additional factual context for making healthy food selections. Regarding whether the public would consume more calories if FOP does not contain information on calories, this comment falls outside of the scope of our current research, which explores which schemes will provide consumers with additional information rather than shape consumer behavior.

(Comment 33) A couple of comments said FDA must consider how a standardized FOP scheme would interact with the voluntary ''healthy'' symbol FDA is studying. One of these comments encouraged us to evaluate whether having multiple FOP information systems could confuse consumers.

(Response 33) The purpose of this study is to evaluate how consumers understand a FOP labeling scheme. We are not considering the intersection of hypothetical label claims at this time, as we seek to conduct our study in a manner that minimizes bias. It is also outside the scope of our current quantitative research to test the effect of multiple FOP labeling systems. Rather, we are assessing how consumers understand the schemes that we are testing.

(Comment 34) A few comments encouraged us to update our literature review because, for example, schemes presented to respondents should reflect the latest science.

(Response 34) FDA agrees with the comment and has updated the literature review and continues to monitor the emerging scientific literature.

(Comment 35) One comment said we should review the results of studies on the long-term impacts and utility of FOP schemes, and not rely only on very recent studies.

(Response 35) FDA has been monitoring the scientific literature on FOP since 2006 and continues to monitor the literature, including any studies on long-term impacts and utility of FOP schemes.

(Comment 36) A couple of comments said we need to identify key metrics for success on label effectiveness, including how product perception, label perceptions, and nutritional qualities questions will be presented to the respondents, before conducting the study.

(Response 36) FDA plans to use product, label, and nutrition perception measures and will test these in cognitive interviews prior to conducting the pretests and the experiment.

(Comment 37) One comment recommended that we include readable samples of category users for each of the categories being presented (*e.g.,* cereal, frozen meals) and evaluate results among each relevant category user base.

(Response 37) FDA will include questions to assess whether participants use the product and will take this into account when evaluating the results.

D. Comments Regarding Ways To Minimize the Burden of the Collection of Information on Respondents, Including Through the Use of Automated Collection Techniques, When Appropriate, and Other Forms of Information Technology, and FDA Response

No comments discussed minimizing the information collection burden on respondents to our proposed FOP scheme research.

E. Nonresponsive Comments to the PRA

Some comments addressed aspects of FOP schemes that are outside the scope of this information collection or addressed issues other than the FOP scheme research. These discussed, for example, whether the schemes should be voluntary or mandatory, specific ways to update the literature review, food allergies, requirements of any proposed FOP scheme, and constitutional and other legal issues with FOP requirements. These are outside the scope of this information collection, and we will not address them here. Interested parties will have an opportunity to comment on any FOP scheme we propose in response to its **Federal Register** notice.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pretest 1 Screener	800	1	800	0.05 (3 minutes)	40
Pretest 1	200	1	200	0.25 (15 minutes)	50
Pretest 2 Screener	800	1	800	0.05 (3 minutes)	40
Pretest 2	200	1	200	0.25 (15 minutes)	50
Experiment Screener	40,000	1	40,000	0.05 (3 minutes)	2,000
Experiment	9,000	1	9,000	0.25 (15 minutes)	2,250
Total					4,430

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of participants in the study was increased from the 3,000 respondents estimated in the 60-day **Federal Register** notice to 41,600 with this publication. Therefore, the total burden has been increased from 3,205 responses and 801 hours to 51,000 responses and 4,430 hours because of the increase in the sample size for the pretests and the full experiment and screener. The reason for the increase in burden hours is because of a decision to

target consumers with higher and lower nutrition literacy levels, rural residence, and to ensure that the sample mirrors the demographic distribution of the U.S. population.

II. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500 and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov*. References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

* 1. Centers for Disease Control and Prevention. Overweight & Obesity, Available at: *https://www.cdc.gov/obesity/index.html*. Accessed on April 20, 2023.
* 2. FDA, FDA's Nutrition Initiatives. Available at: *https://www.fda.gov/food/food-labeling-nutrition/fdas-nutrition-initiatives*. Accessed on April 20, 2023.
* 3. The White House, ''Biden-Harris Administration National Strategy on Hunger, Nutrition, and Health.'' Available at: *https://www.whitehouse.gov/wp-content/uploads/2022/09/White-House-National-Strategy-on-Hunger-Nutrition-and-Health-FINAL.pdf*. Accessed on April 20, 2023.
4. Talati, Z., M. Egnell, S. Hercberg, et al. ''Food Choice Under Five Front-of-Package Nutrition Label Conditions: An Experimental Study Across 12 Countries,'' *American Journal of Public Health,* 109(12), 1770–1775, 2019.
5. Vargas-Meza, J., A. Jáuregui, A. Contreras-Manzano, et al. ''Acceptability and Understanding of Front-of-Pack Nutritional Labels: An Experimental Study in Mexican Consumers,'' *BMC Public Health,* 19, 1751, 2019.
6. Pettigrew, S., L.M. Dana, Z. Talati, et al. ''The Role of Colour and Summary Indicators in Influencing Front-of-Pack Food Label Effectiveness Across Seven Countries,'' *Public Health Nutrition,* 24(11), 3566–3570, 2021.
7. Song, J., M.K. Brown, M. Tan, et al. ''Impact of Color-Coded and Warning Nutrition Labelling Schemes: A Systematic Review and Network Meta-Analysis,'' *PLoS Med,* 18(10), e1003765, 2021.
8. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2020–2025*. 9th Edition. December 2020. Available at *https://www.dietaryguidelines.gov/resources/2020-2025-dietary-guidelines-online-materials*. Accessed on May 9, 2023.
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* 10. Institute of Museum and Library Services. ''Public Libraries in the United States: Fiscal Year 2017,'' vol. 1, p. 2. June 2020. Available at *https://www.imls.gov/publications/public-libraries-united-states-survey-fiscal-year-2017-volume-1*. Accessed on April 27, 2023.
* 11. Samantha, B., M. Crandall, K. Fisher, et al. ''Opportunity for All: How the American Public Benefits From internet Access at U.S. Libraries,'' Institute of Museum and Library Services, March 2010, p. 32. Available at *https://www.imls.gov/sites/default/files/publications/documents/opportunityforall_0.pdf*. Accessed on April 27, 2023.

Dated: June 9, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–12820 Filed 6–14–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke, Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Discovery and Functional Evaluation of Human Pain-associated Genes and Cells (U19) and Data Coordination and Integration Center (U24) Review Meeting.

Date: July 11–12, 2023.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Eric S. Tucker, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Rm. 3208, MSC 9529, Rockville, MD 20852, 301–827–0799, *eric.tucker@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; ALS Expanded Access Program.

Date: July 17, 2023.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: W. Ernest Lyons, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Rm. 3208, MSC 9529, Rockville, MD 20852, 301–496–4056, *lyonse@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: June 9, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12792 Filed 6–14–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: July 14, 2023.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3172, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3172, Bethesda, MD 20892, (301) 402–8837, *barbara.thomas@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 12, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12823 Filed 6–14–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings.

Date: June 23, 2023.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5819, *gm145a@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: June 9, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12793 Filed 6–14–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; High Priority HIV and Substance Use Research (R01).

Date: July 19, 2023.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Trinh T. Tran, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892 (301), 827–5843, *trinh.tran@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: June 9, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12791 Filed 6–14–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Pediatric Critical Care and Trauma Scientist Development Program (K12 Clinical Trial Optional).

Date: July 17, 2023.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2137C, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kimberly L. Houston, M.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137C, Bethesda, MD 20892, (301) 827–4902, *kimberly.houston@nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Development of Novel Nonsteroidal Contraceptive Methods (R/61/R33–Clinical Trial Not Allowed).

Date: July 18, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2121C, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jagpreet Singh Nanda, Ph.D., Scientific Review Officer, Scientific

Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2121C, Bethesda, MD 20892, (301) 451–4454 *jagpreet.nanda@nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; CHHD–K Member Conflict Special Emphasis Panel.

Date: July 19, 2023.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2127B, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Chi-Tso Chiu, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2127B, Bethesda, MD 20817, (301) 435–7486, *chiuc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: June 9, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–12794 Filed 6–14–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The Board of Visitors for the National Fire Academy (Board) will meet in person at the National Emergency Training Center in Emmitsburg, MD, and virtually on Monday, August 7, 2023. The meeting will be open to the public.

DATES: The meeting will take place on Monday, August 7, 2023, 8 a.m. to 4 p.m. Eastern Time. Please note that the meeting may close early if the Board has completed its business.

ADDRESSES: Members of the public who wish to participate in the virtual conference should contact Deborah Gartrell-Kemp as listed in the **FOR FURTHER INFORMATION CONTACT** section by close of business on August 1, 2023, to obtain the call-in number and access code for the August 7th in-person and virtual meeting. For more information on services for individuals with disabilities or to request special assistance, contact Deborah Gartrell-Kemp as soon as possible. The Board is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Deborah Gartrell-Kemp as listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Board as listed in the **SUPPLEMENTARY INFORMATION** section. Participants seeking to have their comments considered during the meeting should submit them in advance or during the public comment segment. Comments submitted up to 30 days after the meeting will be included in the public record and may be considered at the next meeting. Comments submitted in advance must be identified by Docket ID FEMA–2008–0010 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Electronic Delivery:* Email Deborah Gartrell-Kemp at *Deborah.Gartrell-Kemp@fema.dhs.gov* no later than August 1, 2023, for consideration at the August 7, 2023 meeting.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the Docket ID for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may wish to view the Privacy and Security Notice via a link on the homepage of *https://www.regulations.gov.*

Docket: For access to the docket and to read background documents or comments received by the National Fire Academy Board of Visitors, go to *http://www.regulations.gov,* click on ''Advanced Search,'' then enter ''FEMA–2008–0010'' in the ''By Docket ID'' box, then select ''FEMA'' under ''By Agency,'' and then click ''Search.''

FOR FURTHER INFORMATION CONTACT: *Designated Federal Officer:* Eriks Gabliks, telephone (301) 447–1308, email *Eriks.Gabliks@fema.dhs.gov.*

Logistical Information: Deborah Gartrell-Kemp, telephone (301) 447–7230, email *Deborah.Gartrell-Kemp@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Board will meet in person and virtually on Monday, August 7, 2023. The meeting will be open to the public. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. chapter 10.

Purpose of the Board

The purpose of the Board is to review annually the programs of the National Fire Academy (Academy) and advise the Administrator of the Federal Emergency Management Agency (FEMA), through the United States Fire Administrator, on the operation of the Academy and any improvements therein that the Board deems appropriate. In carrying out its responsibilities, the Board examines Academy programs to determine whether these programs further the basic missions that are approved by the Administrator of FEMA, examines the physical plant of the Academy to determine the adequacy of the Academy's facilities, and examines the funding levels for Academy programs. The Board submits a written annual report through the United States Fire Administrator to the Administrator of FEMA. The report provides detailed comments and recommendations regarding the operation of the Academy.

Agenda

On Monday, August 7, 2023, there will be four sessions, with deliberations and voting at the end of each session as necessary:

1. The Board will discuss United States Fire Administration Data, EMS, Research, Prevention and Response.

2. The Board will discuss deferred maintenance and capital improvements on the National Emergency Training Center campus and fiscal year 2024 and beyond Budget Request/Budget Planning.

3. The Board will deliberate and vote on recommendations on Academy program activities to include developments, deliveries, staffing, admissions, and strategic plan.

4. There will also be an update on the Board of Visitors Subcommittee Groups for the Professional Development Initiative Update and the National Fire Incident Report System.

There will be a 10-minute public comment period after each agenda item and each speaker will be given no more than 2 minutes to speak. Please note that the public comment period may end before the time indicated following the last call for comments. Contact Deborah Gartrell-Kemp to register as a

speaker. Meeting materials will be posted by August 1, 2023, at *https://www.usfa.fema.gov/nfa/about/board-of-visitors.html.*

Eriks J. Gabliks,

Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2023–12810 Filed 6–14–23; 8:45 am]

BILLING CODE 9111–74–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7071–N–02]

60-Day Notice of Proposed Information Collection: Property Disposition Foreclosure Sale Bid Kit; OMB Control No.: 2502–NEW

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* August 14, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Property Disposition Foreclosure Sale Bid Kit.

OMB Approval Number: N/A.

OMB Expiration Date: N/A.

Type of Request: New Collection.

Form Number: Attachment B Acknowledgment By Bidder Unsub and Attachment G Certificate of Substantial Repair Requirements.

Description of the need for the information and proposed use: The foreclosure sale bid kit is necessary for the successful high bidder to submit in order to apply and be approved to become the new owner of the foreclosed property.

Respondents: High Bidder for each sale conducted, Business or other for-profit, Not-for-profit institutions and State, Local or Tribal Government.

Estimated Number of Respondents: 10 per year, 1 per sale.

Estimated Number of Responses: 10 per year, 1 per sale.

Frequency of Response: 1 per respondent.

Average Hours per Response: .15 hours.

Total Estimated Burden: For agency <10 hrs/for public 1 hour.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

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

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Jeffrey D. Little,

General Deputy Assistant Secretary, Office of Housing.

[FR Doc. 2023–12830 Filed 6–14–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–FAC–2023–N046; FXFR13350500000/234/FF05F24400; OMB Control Number 1018–0127]

Agency Information Collection Activities; Submission to the Office of Management and Budget; Horseshoe Crab and Cooperative Fish Tagging Programs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection without change.

DATES: Interested persons are invited to submit comments on or before July 17, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018–0127'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

On February 10, 2023, we published in the **Federal Register** (88 FR 8906) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on April 11, 2023. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on *Regulations.gov* (Docket FWS–R5–FAC–2023–0004) to provide the public with an additional method to submit comments (in addition to the typical *Info_Coll@fws.gov* email and U.S. mail submission methods). We received the following comments in response to that notice:

Comment 1: Electronic submission via *Regulations.gov* (FWS–R5–FAC–2023–0004–0002) received from Jean Publiee on February 10, 2023, which did not address the information collection requirements.

Agency Response to Comment 1: The commenter did not address the information collection requirements. No response required.

Comment 2: Electronic submission via *Regulations.gov* (FWS–R5–FAC–2023–0004–0003) received anonymously on April 11, 2023, which did not address the information collection requirements.

Agency Response to Comment 2: The commenter did not address the information collection requirements. No response required.

Comment 3: Electronic submission via *Regulations.gov* (FWS–R5–FAC–2023–0004–0004) received from Amanda Day on April 11, 2023:

A letter was submitted with comment 3, addressing a few key points of the horseshoe crab tagging program and suggesting potential protocol revisions. The commenter wrote that it was the wrong time to terminate the crab tagging program, in part because it is the only mark-recapture effort that can provide information on population and survival estimates for horseshoe crabs. The commenter suggested that we employ a standardized protocol for data comparability, select a minimum number of beaches per State, conduct tag recovery surveys, develop datasheets, use online data entry, and reconsider tagging by biomedical companies.

Agency Response to Comment 3: We appreciate the thoughtful response regarding horseshoe crab tagging. Many of the protocol suggestions are already in place. We currently provide datasheets to all interested tagging partners and require tagging agencies/groups to conduct resight surveys as part of their agreement to participate in the horseshoe crab tagging program. Additionally, since we have added the online method for tag reporting (at *fws.gov/crabtag*), about 95 percent of all tag returns are submitted this way. We understand the concern over biomedical companies tagging horseshoe crabs; however, the data acquired by biomedical companies tagging bled horseshoe crabs has proven to be very useful. It has helped us estimate survival rates of bled crabs vs. unbled crabs, a long-time management concern over biomedical bleeding of horseshoe crabs. As management continues to refine best management practices for biomedical bleeding, tagging data can provide insight into the effectiveness of those practices.

Comment 4: Electronic submission via *Regulations.gov* (FWS–R5–FAC–2023–0004–0005) received from the Delaware Riverkeeper Network on April 12, 2023:

The Delaware Riverkeeper Network (DRN) wrote a comment in support of continuation of horseshoe crab tagging. They assist with a current tagging partner and believe the program is useful in a number of ways, including exposing members of the public to the unique experience of working to help manage horseshoe crabs via tagging. The DRN suggested deploying additional tags and also asked the Service to consider the recent best management practices for biomedical bleeding, provided by the Horseshoe Crab Recovery Coalition.

Agency Response to Comment 4: We appreciate the kind words about the tagging program and the volunteer efforts by all those with DRN and associated tagging partners. At this time, it would be difficult to provide more tags to the American Littoral Society (ALS; the tagging partner working with DRN), because we have a limited budget and already provide tags. Additional tags result in higher costs, mainly stemming from the associated rewards associated with recaptures of those tags by the public. We will continue to work with the Atlantic States Marine Fisheries Commission (ASMFC) and all tagging partners to best determine the proper distribution of tags along the Atlantic Coast. Consideration of the best management practices is outside of the scope of response associated with this information collection.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

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

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

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

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Abstract: The Fish and Wildlife Act of 1956 (16 U.S.C. 742f) requires the Department of the Interior to take steps ''required for the development, advancement, management, conservation, and protection of fishery resources.'' In addition, the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), the Wildlife Coordination Act (16 U.S.C. 661–666c), and the Anadromous Fish Conservation Act (16 U.S.C. 757a–757g) each authorize the Department of the Interior to enter into cooperative agreements with stakeholders to protect and conserve fishery resources. The Service's Maryland Fish and Wildlife Conservation Office (MDFWCO) will collect information on horseshoe crabs and fishes captured by the public. Tag information provided by the public will be used to estimate recreational and commercial harvest rates, estimate natural mortality rates, and evaluate migratory patterns, length and age frequencies, and effectiveness of current regulations.

Horseshoe crabs play a vital role commercially, biomedically, and ecologically along the Atlantic coast. Horseshoe crabs are commercially harvested and used as bait in eel and conch fisheries. Biomedical companies along the coast also collect and bleed horseshoe crabs at their facilities. Limulus amebocyte lysate, derived from horseshoe crab blood, is used by pharmaceutical companies to test sterility of products. Finally, migratory shorebirds also depend on the eggs of horseshoe crabs to refuel on their migrations from South America to the Arctic. One bird in particular, the rufa red knot (*Calidris canutus rufa*), feeds primarily on horseshoe crab eggs during its stopover. Effective January 12, 2015, the rufa red knot was listed as threatened under the Endangered Species Act (79 FR 73706; December 11, 2014).

In 1998, the ASMFC, a management organization with representatives from each State on the Atlantic coast, developed a horseshoe crab management plan. The ASMFC plan and its subsequent addenda established mandatory State-by-State harvest quotas and created the 1,500-square-mile Carl N. Shuster, Jr., Horseshoe Crab Sanctuary off the mouth of Delaware Bay.

Restrictive measures have been taken in recent years; however, populations are increasing slowly. Because horseshoe crabs do not breed until they are 9 years or older, it may take some time before the population measurably increases. Federal and State agencies, universities, and biomedical companies participate in a Horseshoe Crab Cooperative Tagging Program. The Service's MDFWCO maintains the information collected under this program and uses it to evaluate migratory patterns, survival, and abundance of horseshoe crabs.

Members of the public who recover tagged crabs provide the following information using Form 3–2310 (Horseshoe Crab Recapture Report):

- Tag number;
- Whether or not tag was removed;
- Condition of crab;
- Date captured/found;
- Crab fate;
- Finder type;
- Capture method;
- Capture location;
- Reporter information; and
- Comments.

Agencies that tag and release the crabs complete Form 3–2311 (Horseshoe Crab Tagging) and provide the Service with:

- Organization name;
- Contact person name;
- Tag number;
- Sex of crab;
- Prosomal width; and
- Capture site, latitude, longitude, waterbody, State, and date.

At the request of the public participant reporting the tagged crab, we send data pertaining to the tagging program and tag and release information on the horseshoe crab tag that was found.

Fish will be tagged with an external tag containing a toll-free number for MDFWCO. Tagged species of fish include striped bass (*Morone saxatilis*), Atlantic sturgeon (*Acipenser oxyrinchus*) and shortnose sturgeon (*Acipenser brevirostrum*), northern snakehead (*Channa argus*), and American shad (*Alosa sapidissima*). Members of the public reporting a tag will be asked a series of questions pertaining to the fish that they are referencing. The Service uses the following four forms to collect information used by fisheries managers throughout the Atlantic Coast, depending on species:

- Form 3–2493, ''American Shad Recapture Report'';
- Form 3–2494, ''Snakehead Recapture Report'';
- Form 3–2495, ''Striped Bass Recapture Report''; and
- Form 3–2496, ''Sturgeon Recapture Report.''

American shad are tagged by the New York Department of Environmental Conservation (NYDEC), which retains all fish tagging information. The public reports tags to MDFWCO, who provides information on tag returns to NYDEC. Tag return data are used to monitor migration and abundance of shad along the Atlantic coast.

Northern snakehead is an invasive species found in many watersheds throughout the mid-Atlantic region. It has been firmly established in the Potomac River since at least 2004 and is now in nearly every major Chesapeake Bay tributary. Federal and State biologists within the Chesapeake Bay watershed have been tasked with managing the impacts of northern snakehead. Tagging of northern snakehead is used to learn more about the species so that control efforts can be better informed. Tagging is also used to estimate population sizes to monitor trends in abundance. Recreational and commercial fishers reporting tags provide information on harvest rates and migration patterns as well.

Striped bass are cooperatively managed by Federal and State agencies through the Atlantic States Marine Fisheries Commission (ASMFC). The ASMFC uses fish tag return data to conduct stock assessments for striped bass. The database and collection are housed within MDFWCO, while the tagging is conducted by State agencies participating in striped bass management. Without this data collection, striped bass management would likely suffer from a lack of quality data. As required by Congress under the Atlantic Striped Bass Conservation Act (16 U.S.C. 5151–5158), striped bass tagging data is used to manage the coast-wide stock.

Sturgeon are tagged by Federal, State, and university biologists and nongovernmental organizations along the U.S. east coast and into Canada, and throughout the United States and Canada. Local populations of Atlantic sturgeon have been listed as either threatened or endangered since 2012, and shortnose populations have been listed since 1973. The information collected provides data on tag retention and sturgeon movement along the east coast. The data are also used to address some of the management and research needs identified by amendment 1 to the ASMFC's Atlantic Sturgeon Fishery Management Plan.

Data collected across these tagging programs are similar in nature, including:

- Tag number;
- Date of capture;
- Waterbody of capture;
- Capture method;
- Fish length, weight, and fate (whether released or killed); and
- Fisher type (*i.e.,* commercial, recreational, etc.).

In addition, if the tag reporter desires more information on their tagged fish or wants the modest reward that comes with reporting a tag, we ask their address so that we can mail them the information.

The public may request a copy of Form 3–156 contained in this information collection by sending a request to the Service Information Collection Clearance Officer (see **ADDRESSES**).

Title of Collection: Horseshoe Crab and Cooperative Fish Tagging Programs.

OMB Control Number: 1018–0127.

Form Number: Forms 3–2310, 3–2311, and 3–2493 through 3–2496.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Respondents include Federal and State agencies, universities, and biomedical companies who conduct tagging, and members of the general public who provide recapture information.

Total Estimated Number of Annual Respondents: 2,026.

Total Estimated Number of Annual Responses: 3,648.

Estimated Completion Time per Response: Varies from 5 minutes to 95 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 2,241.

Respondent's Obligation: Voluntary.

Frequency of Collection: Respondents will provide information on occasion, upon tagging or upon encounter with a tagged crab or fish.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–12786 Filed 6–14–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2023–0078; FXES11140400000–234–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink; Lake 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 Park Square Commercial (Fruitland Park Apartments—Regent Street) (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a residential development in Lake 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 17, 2023.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2023–0078; 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–2023–0078;
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2023–0078; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Lindsay Needs, by U.S. mail (see **ADDRESSES**), by telephone at 772–469–4226, or via email at *lindsay_needs@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 Park Square Commercial (Fruitland Park Apartments—Regent Street) (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 sand skink (*Neoseps reynoldsi*) incidental to the construction and operation of a residential development in Lake 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. We invite comment from the public and local, State, Tribal, and Federal agencies.

Proposed Project

The applicant requests a 5-year ITP to take sand skinks via the conversion of approximately 6.82 acres (ac) of occupied nesting, foraging, and sheltering sand skink habitat incidental to the proposed construction and operation of a residential development on 38.09-ac on Parcel #s 16–19–24–0001–000–00100, 10–19–24–0003–0000–8300, 15–19–24–0002–0001–0200, 09–19–24–0400–045–00100, 09–19–24–0400–045–00104, 09–19–24–0400–045–00101, 09–19–24–0400–045–00102, and 09–19–24–0400–045–00103 in Sections 34 Township 3 South, Range 69 East, Lake County, Florida. The applicant proposes to mitigate for take of sand skinks by purchasing credits equivalent

to 13.64 ac of sand skink-occupied habitat within the Lake Livingston 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 housing products, associated infrastructure, stormwater facilities, and amenities—would individually and cumulatively have a minor effect on sand skinks and the environment 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 ITP. 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 PER1368039 to Park Square Commercial.

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 Office.

[FR Doc. 2023–12785 Filed 6–14–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23RB00TU7SE00]

Agency Information Collection Activities; Science Communication Strategies Related to Mining Activities

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before August 14, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference the Office of Management and Budget (OMB) Control Number 1028–NEW Mining Communications in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Rudy Schuster by email at *schusterr@usgs.gov,* or by telephone at 970–226–9165. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval from OMB. We may not conduct or sponsor, nor are you required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

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

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

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

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The USGS has a history of conducting research on uranium-bearing breccia pipe deposits to address data gaps related to the potential effects of uranium exploration and mining activities in the Grand Canyon watershed on people, wildlife, and water resources. The USGS also recognizes a need to use the latest and most effective methods for communicating science to partners and non-scientists. The project proposed herein seeks to identify a path toward efficiently and effectively providing data and results to decision makers, stakeholders, partners, and the public to maximize the utility of science products. This research will advance

USGS capability by documenting the efficacy of existing mining-related science communication efforts to partners and advance USGS knowledge and use of communication methods to deliver actionable science to non-science audiences in the future. Information will be collected via semi-structured interviews conducted in-person with USGS partners and members of the general public in the Grand Canyon watershed.

Title of Collection: Science communication strategies related to mining activities.

OMB Control Number: 1028–NEW Mining Communications.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: General Public.

Total Estimated Number of Annual Respondents: 20.

Total Estimated Number of Annual Responses: 20.

Estimated Completion Time per Response: 45 minutes.

Total Estimated Number of Annual Burden Hours: 15 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: One Time.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Rudolph Schuster,

Branch Chief, Social & Economic Analysis, USGS.

[FR Doc. 2023–12808 Filed 6–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L13100000.PP0000.LLHQ310000.234; OMB Control No. 1004–0196]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Oil and Gas Leasing: National Petroleum Reserve—Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 17, 2023.

ADDRESSES: Written comments and recommendations for this information collection request (ICR) should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jennifer Spencer by email at *j35spenc@blm.gov,* or by telephone at (307) 775–6261. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on new, proposed, revised and continuing collections of information. This helps the BLM assess impacts of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BLM information collection requirements and ensure requested data are provided in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on February 28, 2023 (88 FR 12697). No comments were received in response to this notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again inviting the public and other Federal agencies to comment on the proposed ICR described below. The BLM is especially interested in public comment addressing the following:

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

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

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

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

Comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This OMB Control Number covers paperwork requirements for operators and operating rights owners in the National Petroleum Reserve—Alaska (NPRA). In accordance with the National Petroleum Reserves Production Act (42 U.S.C. 6501–6508) and regulations at 43 CFR part 3130 (subparts 3130, 3133, 3135, 3137, and 3138), a respondent may apply to the Bureau of Land Management (BLM) for a competitive oil and gas lease and may propose a unit agreement that meets the requirements for unitized exploration and development of oil and gas resources of the NPRA. This OMB Control Number is currently scheduled to expire on August 31, 2023. The BLM request that OMB renew this OMB Control Number for an additional three years.

Title of Collection: Oil and Gas Leasing: National Petroleum Reserve—Alaska (43 CFR part 3130).

OMB Control Number: 1004–0196.

Form Numbers: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Participants in the oil and gas leasing program within National Petroleum Reserve—Alaska.

Total Estimated Number of Annual Respondents: 21.

Total Estimated Number of Annual Responses: 21.

Estimated Completion Time per Response: Varies from 15 minutes to 80 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 220.

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

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin King,

Information Collection Clearance Officer.

[FR Doc. 2023–12838 Filed 6–14–23; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–35989; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before June 3, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by June 30, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before June 3, 2023. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers.

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

ALABAMA

Calhoun County

Downtown Anniston Historic District (Boundary Increase II/Decrease), (Anniston MRA), 20, 101, 227 14th St. West, 130, 216, 230 15th St. West Anniston, BC100009122

Dallas County

Selma University Historic District, (Civil Rights Movement in Selma, Alabama MPS), 1501 Boynton St., Selma, MP100009126

Lowndes County

Campsite 3: Robert Gardner Farm, 2342 Frederick Douglass Rd., Lowndesboro vicinity, SG100009120

Madison County

Glenwood Cemetery, 2300 Hall Ave., Huntsville, SG100009123

Sumter County

Federation of Southern Cooperatives Rural Training and Research Center, 575 Federation Rd., Epes vicinity, SG100009125

Talladega County

Talladega County High School, 181 Magnolia St., Lincoln, SG100009127

COLORADO

Denver County

Hegner, Casper Forman and Nancy Lee, House, 2323 East Dakota Ave., Denver, SG100009119

NEW HAMPSHIRE

Coos County

Weeks State Park, 200 Weeks State Park Rd., Lancaster, SG100009128

Hillsborough County

Sullivan House, 1330 Union St., Manchester, SG100009112

NEW JERSEY

Gloucester County

Mount Pleasant School, 836 Lambs Rd., Harrison Township, SG100009116

Morris County

Boonton Ironworks Historic District, Plane St., Grace Lord Park, Boonton, SG100009115

OHIO

Fairfield County

Leist, John, House at Dutch Hollow, 10200 Cincinnati-Zanesville Rd. SW, Amanda vicinity, SG100009118

TEXAS

Comanche County

Comanche Downtown Historic District, Roughly bounded by West College and Oak Aves., North Pearl St., and the rear property line along North Mary St., Comanche, SG100009117

Gillespie County

Klein Frankreich Rural Historic District, 3723 to 5083 North US 87, 103 to 206 Old Mason Rd., Fredericksburg vicinity, SG100009111

Additional documentation has been received for the following resources:

ALABAMA

Calhoun County

Downtown Anniston Historic District (Additional Documentation) (Anniston MRA), Roughly bounded by Moore Ave., 14th St., Wilmer Ave., and 9th St., Anniston, AD91000663

NEW JERSEY

Monmouth County

Shrewsbury Historic District (Additional Documentation) Along both sides of Sycamore Ave. and Broad St., roughly between Samara Dr., Colonial Ave., and Silverbrook Rd., Shrewsbury, AD78001779

NEW MEXICO

Bernalillo County

Rosenwald Building (Additional Documentation), 320 Central Ave. SW, Albuquerque, AD78001806

Authority: Section 60.13 of 36 CFR part 60.

Dated: June 7, 2023.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2023–12819 Filed 6–14–23; 8:45 am]

BILLING CODE 4312–52–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m., Thursday, June 22, 2023.

PLACE: 1255 Union Street NE, Fifth Floor, Washington, DC 20002.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Regular Board of Directors meeting.

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b (c)(2) and (4) permit closure of the following portion(s) of this meeting:

- Executive Session

Agenda

I. Call to Order
II. Sunshine Act Approval of Executive (Closed) Session
III. Executive Session: Report from CEO
IV. Executive Session: Report from CFO
V. Executive Session: General Counsel Report
VI. Executive Session: NeighborWorks Compass Update
VII. Executive Session: Officer Compensation Review
VIII. Action Item Board Elections
(i) Election of Board Chair and Board Vice-Chair
IX. Action Item Board Appointments
(i) Appointment of Audit Committee
X. Action Item Management Elections
(i) Election of Officers & Chief Audit
XI. Action Item Approval of Minutes
XII. Action Item Approval of the FY2022 External Audit
XIII. Action Item Grants to the Capital Corporations
XIV. Action Item Increase of Contract Authority for IT&S Technical Contract
XV. Action Item Expanded Spending Authority for Large Events
XVI. Discussion Item May 23, 2023 Audit Committee Meeting Report
XVII. Discussion Item Annual Ethics Review
XVIII. Discussion Item Governance Operations Guide Annual Review
XIX. Discussion Item CIO Report
XX. Discussion Item Laptop Purchases
XXI. Management Program Background and Updates
XXII. Adjournment

PORTIONS OPEN TO THE PUBLIC: Everything except the Executive Session.

PORTIONS CLOSED TO THE PUBLIC: Executive Session.

CONTACT PERSON FOR MORE INFORMATION: Lakeyia Thompson, Special Assistant, (202) 524–9940; *Lthompson@nw.org.*

Lakeyia Thompson,

Special Assistant.

[FR Doc. 2023–12891 Filed 6–13–23; 4:15 pm]

BILLING CODE 7570–02–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: OPM Healthcare and Insurance Customer Experience Feedback

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on the following proposed generic information collection (ICR): 3206–NEW, Customer Experience Feedback. As required by the Paperwork Reduction Act of 1995, as amended by the Clinger-Cohen Act, OPM is soliciting comments for this collection

DATES: Comments are encouraged and will be accepted until July 17, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: OPM/Healthcare and Insurance, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, Attention: M. Fatima Moghis or email to *fatima.moghis@opm.gov* or by phone at 202–606–4694.

SUPPLEMENTARY INFORMATION: The 60-day notice for this information collection was published in the **Federal Register** on September 13, 2022, at 87 FR 56094. There were three comments received during the 60-day comment period, but none pertained to the ICR. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

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.

Analysis

Agency: U.S. Office of Personnel Management.

Authority: 5 U.S.C. chapter 89.

Title: OPM Healthcare and Insurance Customer Experience Feedback.

OMB Number: 3206–New.

Frequency: On occasion.

Affected Public: Government employees and individuals.

Number of Respondents: 1,503,900.

Estimated Time per Respondent: 3–60 minutes.

Total Burden Hours: 311,100 hours.

U.S. Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–12811 Filed 6–14–23; 8:45 am]

BILLING CODE 6325–64–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 10:00 a.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Thursday, June 15, 2023 at 10:00 a.m. has been changed to Thursday, June 15, 2023 at 9:15 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 13, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–12996 Filed 6–13–23; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the

Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold a public meeting on Thursday, June 22, 2023. The meeting will begin at 10:00 a.m. (ET) and will be open to the public.

PLACE: The meeting will be conducted by remote means. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov.*

STATUS: This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

MATTERS TO BE CONSIDERED: The agenda for the meeting includes: welcome and introductory remarks; opening remarks; approval of previous meeting minutes; a panel discussion regarding private funds/markets and outbound investments in countries of concern; a panel discussion regarding ensuring digital engagement practices responsibly expand investment opportunities; a panel discussion regarding audit committee workload and transparency; a discussion of a recommendation regarding single-stock exchange traded funds; a discussion of a recommendation regarding proposed amendments to regulation 13D–G and proposed rule 10B–1 under the Securities Exchange Act of 1934; a discussion of a recommendation regarding registered investment adviser oversight; subcommittee and working group reports; and a non-public administrative session.

Public Comment: The public is invited to submit written statements to the Committee. Written statements should be received on or before June 21, 2023.

Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rules-comments@sec.gov.* Please include File No. 265–28 on the subject line; or

Paper Electronic Statements

- Send paper statements to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1503, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b.)

Dated: June 12, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–12890 Filed 6–13–23; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97681; File No. SR–NYSEARCA–2023–39]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

June 9, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''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 NYSE Arca Equities Fees and Charges (''Fee Schedule'') to (i) modify Ratio Threshold Fees and (ii) eliminate the Step Up Tier 1 pricing tier under Step Up Tiers. The Exchange proposes to implement the fee changes effective June 1, 2023. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (i) modify Ratio Threshold Fees, which apply to orders ranked Priority 2—Display Orders and to shares of Auction-Only Orders that have a disproportionate ratio of orders that are not executed,[3] and (ii) eliminate the Step Up Tier 1 pricing tier under Step Up Tiers. The Exchange proposes to implement the fee changes effective June 1, 2023.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88930 (May 21, 2020), 85 FR 32068 (May 28, 2020) (SR–NYSEArca–2020–45) (''Ratio Threshold Fee Filing'').

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [5] Indeed, equity trading is currently dispersed across 16 exchanges,[6] numerous alternative trading systems,[7] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 17% market share.[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 10% market share of executed volume of equities trading.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, based on transaction fees and credits. Accordingly, the Exchange's fees, including the proposed modification to the Ratio Threshold Fee, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

Ratio Threshold Fee

The Ratio Threshold Fee applies to orders ranked Priority 2—Display Orders (''RT-Display Fee'') and to shares of Auction-Only Orders during the period when Auction Imbalance information is being disseminated for a Core Open Auction or Closing Auction (''RT-Auction Fee''). The purpose of this proposed rule change is to modify the RT-Auction Fee. The Exchange is not proposing any change to the RT-Display Fee.

Currently, for Auction-Only Orders,[10] ETP Holders with an average daily number of orders of 10,000 or more are charged an RT–Auction Fee on a monthly basis.[11] For purposes of determining the RT–Auction Fee:

- The number of ''Ratio Shares'' is the average daily number of shares of Auction-Only Orders that are cancelled by an ETP Holder at a disproportionate ratio to the average daily number of shares executed by that ETP Holder. Orders ranked Priority 2—Display Orders designated for the Core Trading Session only that are entered during the period when Auction Imbalance Information for the Core Open Auction is being disseminated are included in the Ratio Shares calculation.[12] All orders entered by an ETP Holder for securities in which it is registered as a Lead Market Maker are not included the calculation of Ratio Shares.
- The ''Ratio Shares Threshold'' is an ETP Holder's Ratio Shares divided by the average daily executed shares by the ETP Holder.

As noted above, the Exchange charges the RT–Auction Fee for Auction-Only Orders during the period when Auction Imbalance Information is being disseminated.[13]

The Exchange currently does not charge the RT–Auction Fee if Auction-Only Orders have a Ratio Shares Threshold of less than 50. The Exchange proposes that it would not charge the RT–Auction Fee if Auction-Only Orders have a Ratio Shares Threshold of less than 25.

Currently, if the Ratio Shares Threshold is greater than or equal to 50, the fee is as follows:

- No Charge for ETP Holders with an average of fewer than 20 million Ratio Shares per day.
- $1.00 per million Ratio Shares for ETP Holders with an average of 20 million to 200 million Ratio Shares per day.
- $10.00 per million Ratio Shares for ETP Holders with an average of more than 200 million Ratio Shares per day.

The Exchange proposes that if the Ratio Shares Threshold is greater than or equal to 25, the fee would be as follows:

- No Charge for ETP Holders with an average of fewer than 10 million Ratio Shares per day.
- $5.00 per million Ratio Shares for ETP Holders with an average of 10 million to 100 million Ratio Shares per day.
- $15.00 per million Ratio Shares for ETP Holders with an average of more than 100 million Ratio Shares per day.

ETP Holders are currently charged for the entirety of their Ratio Shares at a rate of $1.00 per million Ratio Shares if the ETP Holder has an average of 20 million to 200 million Ratio Shares; and $10.00 per million Ratio Shares if the ETP Holder has an average of more than 200 million Ratio Shares. The Exchange proposes that ETP Holders would be charged for the entirety of their Ratio Shares at a rate of $5.00 per million Ratio Shares if the ETP Holder has an average of 10 million to 100 million Ratio Shares; and $15.00 per million Ratio Shares if the ETP Holder has an average of more than 100 million Ratio Shares.

The following example illustrates the calculation of the RT–Auction Fee for Auction-Only Orders, as modified by this proposed rule change.

- In a month, ETP Holder B enters a daily average of 50,000 Auction-Only Orders for the Closing Auction, with an average size of 600 shares.
- Thus, ETP Holder B's daily average number of shares submitted in Auction-Only Orders for the Closing Auction is 30,000,000 shares (50,000 orders × 600 shares).
- During the period when Closing Auction Imbalance Information is being disseminated, ETP Holder B cancels a daily average of 29,000,000 shares and executes a daily average of 1,000,000 shares in the Closing Auction.
- ETP Holder B has an average daily Ratio Shares quantity of 28,000,000 (29,000,000 − 1,000,000), and a Ratio Shares Threshold of 28 (28,000,000/1,000,000).

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[5] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[6] See Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] See Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

[10] An Auction-Only Order is a Limit or Market Order that is to be traded only within an auction pursuant to Rule 7.35–E or routed pursuant to Rule 7.34–E. *See* Rule 7.31–E(c). Auction-Only Orders are orders submitted by an ETP Holder during the Early Open Auction, Core Open Auction, Closing Auction and Trading Halt Auction. *See* Rule 7.35–E.

[11] Similar to orders ranked Priority 2—Display Orders, the current fee focuses on Auction-Only Orders because a disproportionate ratio of such orders that are not executed uses more system resources, including updates to the Auction Imbalance Information as such orders are entered and cancelled, than other order entry and cancellation practices of ETP Holders. Accordingly, for Auction-Only Orders, Ratio Shares include shares of Auction-Only Orders executed in a disproportionate ratio to the quantity of shares entered during the period when Auction Imbalance Information is being disseminated for the Core Open Auction and Closing Auction.

[12] For purposes of the Ratio Threshold Fees, orders ranked Priority 2—Display Orders designated for the Core Trading Session only that are cancelled during the period when Auction Imbalance Information for the Core Open Auction is being disseminated are included in the calculation of the RT–Auction Fee. The Exchange includes such orders as Auction-Only Orders for purposes of such fee because prior to the Core Open Auction, such orders would not be eligible to trade and therefore would not be included in the RT-Display Fee calculation, yet such orders would be included in the imbalance calculation for the Core Open Auction.

[13] *See* Rules 7.35–E(c)(1) (Core Open Auction Imbalance Information begins at 8:00 a.m. ET) and 7.35–E(d)(1) (Closing Auction Imbalance Information begins at 3:00 p.m. ET).

• Since the Ratio Shares Threshold is greater than 25 and the average daily Ratio Shares quantity is between 10 million and 100 million, ETP Holder B would be subject to the proposed fee of $5.00 per million Ratio Share, resulting in a fee of $2,940 assuming a 21-day month (28,000,000/1,000,000 × $5.00 × 21).

Finally, the combined RT–Display Fee and RT–Auction Fee for an ETP Holder is currently capped at $2,000,000 per month. The Exchange proposes to lower the cap to $1,000,000 per month.

The purpose of the proposed rule change is to recalibrate the application of the RT–Auction Fee. The Exchange believes the proposed modification to the calculation of the RT–Auction Fee will continue to strengthen the Exchange's goal of providing a more efficient marketplace and enhance the trading experience of all ETP Holders by encouraging them to more efficiently participate on the Exchange.

As noted in the Ratio Threshold Fee Filing, the purpose of the Ratio Threshold Fee is not to create revenue, but rather to provide an incentive for a small number of ETP Holders to change their order entry practices. Based on an analysis of order entry practices by ETP Holders between December 2022 and May 2023, only 2 ETP Holders incurred the RT–Auction Fee during that time period. Additionally, between December 2022 and May 2023, the median Order Entry Ratio across all ETP Holders for Auction-Only Orders ranged from −0.87 to −.09, which indicates that the median ETP Holder had more executed shares than Ratio Shares. The Exchange does not anticipate the proposed recalibration would subject any additional ETP Holders to the RT–Auction Fee.

The Ratio Threshold Fee is intended to encourage efficient usage of Exchange systems by ETP Holders. The Exchange believes that it is in the best interests of all ETP Holders and investors who access the Exchange to encourage efficient systems usage. Unproductive share entry and cancellation practices, such as when ETP Holders flood the market with orders that are frequently and/or rapidly cancelled, do little to support meaningful price discovery, may create investor confusion about the extent of trading interest in a security. The Exchange further believes that inefficient order entry practices of a small number of ETP Holders may place excessive burdens on Exchange systems and to the systems of other ETP Holders that are ingesting market data, while also negatively impacting the usefulness of market data feeds that transmit each order and subsequent cancellation.[14] ETP Holders with an excessive ratio of cancelled to executed orders do little to support meaningful price discovery.

As noted above, only a small number of ETP Holders are executing orders at a disproportionately low ratio to the number of orders that have been entered and, thus, the impact of the current fee has been narrow and limited to those ETP Holders. These ETP Holders could avoid the fee by changing their behavior.

Eliminate Underutilized Credit

In this competitive environment, the Exchange has already established Step Up Tiers 1–3, which are designed to encourage ETP Holders that provide displayed liquidity on the Exchange to increase that order flow, which would benefit all ETP Holders by providing greater execution opportunities on the Exchange. In order to provide an incentive for ETP Holders to direct providing displayed order flow to the Exchange, the credits increase in the various tiers based on increased levels of volume directed to the Exchange.

Currently, the following credits are available to ETP Holders that provide increased levels of displayed liquidity on the Exchange:

Tier	Credit for adding displayed liquidity
Step Up Tier 1	$0.0028 (Tape A and C). $0.0022 (Tape B).
Step Up Tier 2	$0.0033 (Tape A and C). $0.0034 (Tape B).
Step Up Tier 3	$0.0031 (Tape A, B and C).

The Exchange proposes to eliminate current Step Up Tier 1 and remove the pricing tier from the Fee Schedule. The current Step Up Tier 1 pricing tier has been underutilized by ETP Holders. The Exchange has observed that only once has an ETP Holder qualified for the tiered credit in the last 6 months. Since the current Step Up Tier 1 pricing tier has not been effective in accomplishing its intended purpose, which is to incent ETP Holders to increase their liquidity adding activity on the Exchange, the Exchange has determined to eliminate the pricing tier and remove it from the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[15] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[16] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee change would help 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, because it is designed to reduce the numbers of orders and shares being entered and then cancelled prior to an execution.

The Proposed Changes Are Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [18] Indeed, equity trading is currently dispersed across 13 exchanges,[19] numerous alternative

[14] *See generally* Recommendations Regarding Regulatory Reponses to the Market Events of May 6, 2010, Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues, at 11 (February 18, 2011) (''The SEC and CFTC should also consider addressing the disproportionate impact that [high frequency trading] has on Exchange message traffic and market surveillance costs. . . . The Committee recognizes that there are valid reasons for algorithmic strategies to drive high cancellation rates, but we believe that this is an area that deserves further study. At a minimum, we believe that the participants of those strategies should properly absorb the externalized costs of their activity.'').

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4) and (5).

[17] *See* Regulation NMS, *supra* note 5, 70 FR at 37499.

[18] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final Rule).

[19] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/*

Continued

trading systems,[20] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 17% market share (whether including or excluding auction volume).[21] The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, the Exchange's fees, including the proposed modification to the Ratio Threshold Fee, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Ratio Threshold Fee

The Exchange believes that the proposed change to the Ratio Threshold Fee is reasonable because it is designed to achieve improvements in the quality of displayed liquidity, particularly in advance of auctions, on the Exchange for the benefit of all market participants. In addition, the proposed change is reasonable because market participants may readily avoid the fee by adjusting their order entry and/or cancellation practices, which would result in more orders or shares being cancelled before execution.

Although only a small number of ETP Holders have been impacted since the Ratio Threshold Fee was implemented, the Exchange believes the proposed change to the manner in which the RT—Auction Fee is calculated is necessary to incent the small number of ETP Holders whose trading behavior imposes on others through order entry practices resulting in a disproportionate ratio of executed orders or shares to those that are not executed. Accordingly, the Exchange believes that it is fair to modify the manner in which the RT—Auction Fee is calculated and impose the fee on these market participants in order to incentivize them to modify their practices and thereby benefit the market.

The Exchange believes that the proposed combined fee cap of $1,000,000 is reasonable as it would reduce the impact of the fee on ETP Holders. As noted above, the purpose of the proposed fee is not to generate revenue for the Exchange, but rather to provide an incentive for a small number of ETP Holders to change their order entry and/or cancellation behavior. As a general principal, the Exchange believes that greater participation on the Exchange by ETP Holders improves market quality for all market participants. Thus, in modifying the current fee, and the cap, the Exchange balanced the desire to improve market quality against the need to discourage inefficient order entry and/or cancellation practices.

The Exchange notes that the notion of a fee that incentivizes efficient order entry and/or cancellation practices is not novel. The Exchange's current fee is comparable to a fee charged by the NASDAQ Stock Market LLC (''Nasdaq'') [22] and by Exchange's options market, NYSE Arca Options, to OTP Holders to disincentivize a disproportionate ratio of orders that are not executed.[23]

Eliminate Underutilized Credit

The Exchange believes that the proposed rule change to eliminate the Step Up Tier 1 pricing tier is reasonable because the pricing tier that is the subject of this proposed rule change has been underutilized and has not incentivized ETP Holders to bring liquidity and increase trading on the Exchange. Only once has an ETP Holder qualified for the *tiered* credit in the last 6 months. The Exchange also does not anticipate any ETP Holder in the near future will qualify for the pricing incentive proposed for deletion. The Exchange believes it is reasonable to eliminate requirements and credits, and even entire pricing tiers, when such incentives become underutilized. The Exchange believes eliminating underutilized incentive programs would also simplify the Fee Schedule. The Exchange further believes that removing reference to the pricing tier that the Exchange proposes to eliminate from the Fee Schedule would also add clarity to the Fee Schedule.

The Proposal Is an Equitable Allocation of Fees

Ratio Threshold Fee

The Exchange believes that the proposed change to the Ratio Threshold Fee is equitably allocated among its market participants. Although only a small number of ETP Holders may be subject to the RT—Auction Fee based on their current trading practices, any ETP Holder could determine to change its order entry practices at any time, and thus avoid the fee. The fee is therefore designed to encourage better order entry practices by all ETP Holders for the benefit of all market participants. Moreover, as noted above, the purpose of the Ratio Threshold Fee is not to generate revenue for the Exchange, but rather to provide an incentive for a small number of ETP Holders to change their order entry and/or cancellation behavior.

The Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated ETP Holders would be subject to the fees. As noted above, the Exchange believes that because having a disproportionate ratio of unexecuted orders is a problem associated with a relatively small number of ETP Holders, the impact of the proposal would be limited to those ETP Holders, and only if they do not alter their trading practices. The Exchange believes the proposal would encourage ETP Holders that could be impacted to modify their practices in order to avoid the fee, thereby improving the market for all participants.

Eliminate Underutilized Credit

The Exchange believes that eliminating requirements and credits, and even entire pricing tiers, from the Fee Schedule when such incentives become ineffective is equitable because the requirements, and credits, and even entire pricing tiers, would be eliminated in their entirety and would no longer be available to any ETP Holder. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of the underutilized pricing tier would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

equities/market_share. See generally *https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[20] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[21] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[22] *See* Securities Exchange Act Release No. 66951 (May 9, 2012), 77 FR 28647 (May 15, 2012) (SR–NASDAQ–2012–055) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Institute an Excess Order Fee).

[23] *See* Ratio Threshold Fee, at *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.* The Ratio Threshold Fee is charged to OTP Holders based on the number of orders entered compared to the number of executions received in a calendar month.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory.

Ratio Threshold Fee

The Exchange believes that the proposed change to the Ratio Threshold Fee is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value, and are free to transact on competitor markets to avoid being subject to the Exchange's fees that are the subject of this proposed rule change. The Exchange believes that the proposed fee change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal does not permit unfair discrimination because it would be applied to all similarly situated ETP Holders, who would all be subject to the fee on an equal basis.

Eliminate Underutilized Credit

The Exchange believes that eliminating requirements and credits associated with Step Up Tier 1 from the Fee Schedule when such incentives become ineffective is not unfairly discriminatory because the requirements and credits associated with the pricing tier would be eliminated in its entirety and would no longer be available to any ETP Holder. All ETP Holders would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and non-discriminatory terms. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of the underutilized pricing tier would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

Finally, the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[24] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed fee change would encourage ETP Holders to modify their order entry and/or cancellation practices so that fewer orders or shares are cancelled without resulting in an execution, thereby promoting price discovery and transparency and enhancing order execution opportunities on the Exchange.

Intramarket Competition. The Exchange believes the proposed change to the Ratio Threshold Fee would not place any undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fee change is designed to encourage ETP Holders to submit orders or shares into the market that are actionable. Further, the proposal would apply to all ETP Holders on an equal basis, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. To the extent that these purposes are achieved, the Exchange believes that the proposal would serve as an incentive for ETP Holders to modify their order entry practices, thus enhancing the quality of the market and increase the volume of orders or shares directed to, and executed on, the Exchange. In turn, all the Exchange's market participants would benefit from the improved market liquidity. The Exchange also does not believe the proposed rule change to eliminate underutilized pricing tiers will impose any burden on intramarket competition because the proposed change would impact all ETP Holders uniformly. To the extent the proposed rule change places a burden on competition, any such burden would be outweighed by the fact that the pricing incentive proposed for deletion has not served its intended purpose of incentivizing ETP Holders to more broadly participate on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) is currently less than 10%. In such an environment, the Exchange must continually review, and consider adjusting its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)[25] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–39. 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

[24] 15 U.S.C. 78f(b)(8).

[25] 15 U.S.C. 78s(b)(3)(A).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR–NYSEARCA–2023–39, and should be submitted on or before July 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12754 Filed 6–14–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97686; File No. SR–CBOE–2023–031]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Enhance Its Drill-Through Protection Processes for Simple Orders and Make Other Clarifying Changes

June 9, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 2023, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to enhance its drill-through protection processes for simple orders and make other clarifying changes. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to amend Rule 5.34(a), Order and Quote Price Protection Mechanisms and Risk Controls (Simple Orders), to enhance the drill-through protection process for simple orders and make other clarifying changes.

Drill-through price protection is currently described in Exchange Rule 5.34(a)(4)(A). Under Rule 5.34(a)(4)(A), if a buy (sell) order enters the Book[3] at the conclusion of the opening auction process or would execute or post to the Book at the time of order entry, the System[4] executes the order up to a buffer amount (the Exchange determines the buffer amount on a class and premium basis) above (below) the offer (bid) limit of the Opening Collar[5] or the National Best Offer (''NBO'') (National Best Bid (''NBB'')) that existed at the time of order entry, respectively (the ''drill-through price'').[6]

Rule 5.34(a)(4)(C) establishes an iterative drill-through process, whereby the Exchange permits orders to rest in the Book for multiple time periods and at more aggressive displayed prices during each time period.[7] Specifically, for a limit order (or unexecuted portion) with a Time-in-Force of Day, Good-til-Cancelled (''GTC''), or Good-til-Date (''GTD''), the System enters the order in the Book with a displayed price equal to the drill-through price. The order (or unexecuted portion) will rest in the Book at the drill-through price for the duration of consecutive time periods (the Exchange determines on a class-by-class basis the length of the time period in milliseconds, which may not exceed three seconds).[8] Following the end of each period, the System adds (if a buy order) or subtracts (if a sell order) one buffer amount (the Exchange determines the buffer amount on a class-by-class basis) to the drill-through price displayed during the immediately preceding period (each new price becomes the ''drill-through price'').[9] The order (or unexecuted portion) rests in the Book at that new drill-through price for the duration of the subsequent period. The System applies a timestamp to the order (or unexecuted portion) based on the time it enters or is re-priced in the Book for priority reasons. The order continues through this iterative process until the earliest of the following to occur: (a) the order fully executes; (b) the User[10] cancels the order; and (c) the buy (sell) order's limit price equals or is less (greater) than the drill-through price at any time during application of the drill-through mechanism, in which case the order rests in the Book at its limit price, subject to a User's instructions.

Currently, the above-described iterative drill-through process does not

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Book'' means the electronic book of simple orders and quotes maintained by the System, which single book is used during both the regular trading hours and global trading hours trading sessions. *See* Rule 1.1 (definition of, ''Book'').

[4] ''System'' means the Exchange's hybrid trading platform that integrates electronic and open outcry trading of option contracts on the Exchange and includes any connectivity to the foregoing trading platform that is administered by or on behalf of the Exchange, such as a communications hub. *See* Rule 1.1 (definition of, ''System'').

[5] *See* Rule 5.31(a) for the definition of Opening Collars.

[6] *See* Rule 5.34(a)(4)(A).

[7] The Exchange will announce to Trading Permit Holders the buffer amount and the length of the time periods in accordance with Rule 1.5. The Exchange notes that each time period will be the same length (as designated by the Exchange), and the buffer amount applied for each time period will be the same.

[8] *See* Rule 5.34(a)(4)(C). The proposed rule change defines this time period as an ''iteration.''

[9] *See* Rule 5.34(a)(4)(C).

[10] The term ''User'' shall mean any Trading Privilege Holder (TPH) or Sponsored User who is authorized to obtain access to the System pursuant to Rule 5.5.

apply to market orders.[11] Specifically, if a buy (sell) market order would execute at the time of order entry, the System executes the order up to the Exchange-determined buffer amount above (below) the NBO (NBB) at the time of order entry and then rejects any remaining amount.[12] For example, suppose a market order to buy two contracts enters the System; assume that the drill-through price buffer for a certain option series is $0.90 and that the following quotes are in the Book: Quote 1 (NBBO): 1 @5.00 x 1 @7.00; Quote 2: 2 @4.00 x 1 @8.00. One contract in the market order will execute against the 7.00 offer quote. The remaining one contract of the market order is cancelled, because the next best offer of 8.00 is 1.00 above the NBO, which is more than the 0.90 buffer amount.

The Exchange proposes for market orders with a Time-in-Force of Day to go through the iterative drill-through process described above.[13] In the above example, rather than cancel the remaining one contract, the System would rest the one contract in the Book at the drill-through price of 7.90 (*i.e.,* the NBO plus the buffer amount) for the Exchange-determined time period. At the end of that time period, assuming the market has not changed, the remaining one contract would execute against the 8.00 offer, which is within a buffer amount of the subsequent drill-through price of 8.80. As a result, like super-aggressive limit orders (except for those with Time-in-Force of Immediate-or-Cancel (''IOC'') or Fill-or-Kill (''FOK'')) do today, market orders (except for those with Time-in-Force of IOC) will have additional execution opportunities pursuant to the drill-through process. As the proposed rule change only applies to market orders with a Time-in-Force of Day, the Exchange also proposes to amend Rule 5.34(a)(4)(B) to specify that the System will reject any market order with a Time-in-Force of IOC (or unexecuted portion) not executed pursuant to Rule 5.34(a)(4)(A).[14] The Exchange believes it is appropriate to not have a market order with a Time-in-Force of IOC to go through the iteration process, because the iteration process would be inconsistent with the IOC instruction (and thus the user's intent). Further, the Exchange proposes to amend Rule 5.34(a)(4)(A) to more generally describe when applicable order types may become subject to drill-through protection. Specifically, the Exchange proposes to specify that the protections described in Rule 5.34(a)(4)(A) become applicable if a buy (sell) order, to which Rule 5.34(a)(4) would apply, (i) enters the Book at the conclusion of opening auction process, or (ii) would execute or post to the Book when it enters the Book.[15]

The Exchange also proposes to amend Rule 5.34(a)(1)(A)(ii) to exclude from the current protections for market orders in no-bid series certain orders that would be otherwise subject to the drill-through protection under the proposed rule changes. Currently, under Rule 5.34(a)(1)(A)(ii), if the System receives a sell market order in a series after it is open for trading with an NBB of zero, and the NBO in the series is greater than $0.50, the System cancels or rejects the market order, or routes the market order to PAR for manual handling, subject to a User's instruction. The Exchange proposes amending this protection in the event a drill-through process is in progress. Specifically, the Exchange proposes to amend Rule 5.34(a)(1)(A)(ii) to note that in the event the System receives a sell market order in a series after it is open for trading with an NBB of zero and the NBO in the series is greater than $0.50, if the drill-through process is in progress for sell orders and the sell market order would be subject to drill-through protection, then the order would join the on-going drill-through process in the then-current iteration and at the then-current drill-through price, regardless of NBBO. The Exchange believes it is not optimal for these orders to be immediately booked at the minimum tick increment, as under the proposed rule change, such orders would instead, be subject to the drill-through protection mechanism described under Rule 5.34(a)(4), which may allow opportunity for execution at a more beneficial price level than the minimum tick increment.

Further, the Exchange proposes to amend Rule 5.34(a)(2) to specifically exclude orders that would be subject to drill-through protection from the market order NBBO width protections described therein. Currently, under Rule 5.34(a)(2), if a User submits a market order to the System when the NBBO width is greater than x% of the midpoint of the NBBO, subject to a minimum and maximum dollar amount (as determined by the Exchange on a class-by-class basis), the System cancels or rejects the market order. The Exchange proposes amending Rule 5.34(a)(2) to exclude Stop (Stop-Loss) [16] and Market-on-Close orders from this protection. Such orders may intentionally be further away from the NBBO at the time the order is entered, and the protection may cause the orders to be inadvertently rejected pursuant to this check. The Exchange believes it is not optimal for these orders to be subject to the market order NBBO width protection, as the check may inadvertently cause rejections for orders that may otherwise not have an opportunity to execute if they are immediately cancelled due to market width. Under the proposed rule change, such orders would instead, upon entry into the Book (when elected in accordance with their definitions), be subject to the drill-through protection mechanism described under Rule 5.34(a)(4). The Exchange also proposes a clarification to Rule 5.34(a)(4)(E). Currently, under Rule 5.34(a)(4)(E), if multiple Stop (Stop-Loss) or Stop-Limit [17] orders to buy (sell) have the same stop price and are thus triggered by the same trade price or NBBO, and would execute or post to the Book, the System uses the contra-side NBBO that existed at the time the first order in sequence was entered into the Book as the drill-through price for all orders. The Exchange proposes to remove the conditional language noting that such Stop (Stop-Loss) or Stop-Limit orders to buy (sell) must have the same stop price, as it is possible that orders with different stop prices may be triggered by the same trade price or NBBO. Further, the Exchange proposes to add language stating that, where multiple orders are simultaneously re-priced, the orders will be prioritized under subparagraph (C)(v) of Rule 5.34(a)(4)(C)(v) and will

[11] Rule 5.34(a)(4)(A) and (B).

[12] *Id.*

[13] *See* proposed Rule 5.34(a)(4)(C). The proposed rule change also adds ''a'' prior to the term ''Time-in-Force'' in that provision, which was inadvertently omitted; this is a nonsubstantive grammatical change that conforms the language to that in subparagraph (B).

[14] There is no change to the handling of market orders with a Time-in-Force of GTC or GTD as a result of this rule change; such orders will continue to be rejected by the Exchange.

[15] This includes, for example, when a Stop (Stop-Loss) or Stop-Limit order is elected.

[16] A ''Stop (Stop-Loss)'' order is an order to buy (sell) that becomes a market order when the consolidated last sale price (excluding prices from complex order trades if outside of the NBBO) or NBB (NBO) for a particular option contract is equal to or above (below) the stop price specified by the User. Users may not designate a Stop Order as All Sessions. Users may not designate bulk messages as Stop Orders. A User may not designate a Stop order as Direct to PAR. *See* Rule 5.6(c) (definition of ''Stop (Stop-Loss)'' order).

[17] A ''Stop-Limit'' order is an order to buy (sell) that becomes a limit order when the consolidated last sale price (excluding prices from complex order trades if outside the NBBO) or NBB (NBO) for a particular option contract is equal to or above (below) the stop price specified by the User. A User may not designate a Stop-Limit Order as All Sessions. Users may not designate bulk messages as Stop-Limit Orders. A User may not designate a Stop-Limit order as Direct to PAR. *See* Rule 5.6(c) (definition of ''Stop-Limit'' order).

be sequenced based on the original time each order was entered into the Book.

For example, assume that the drill-through price buffer for a certain option series is $0.90, and that the following quotes are in the Book: Quote 1 (NBBO): 1 @5.00 x 1 @7.00; Quote 2: 2 @4.00 x 1 @8.00. Additionally, the following Stop orders are being held in the System when Quote 2 is updated to 2 @4.00 x 1 @6.50 (the System received these stop orders in the below sequence):

Order 1: Sell 1 @Market, Stop Price = $6.50
Order 2: Sell 1 @Market, Stop Price = $6.55
Order 3: Sell 1 @$3.95, Stop Price = $6.60

Each of orders 1, 2 and 3 have a stop price less than the NBO, and will therefore be triggered by the 6.50 quote and enter the Book for execution or posting. A drill-through price for all three orders is set at the contra-side NBB of 5.00. Per proposed Rule 5.34(a)(4)(C), the orders will go through the drill-through process as follows:

1. Order 1 will execute against Quote 1 @$5.00.

2. Orders 2 and 3 are posted to sell at $4.10 for the Exchange-determined time period.

3. Drill-through process continues for orders 2 and 3 until they are canceled or executed.

As amended, under Rule 5.34(a)(4)(E), all Stop (Stop-Loss) and Stop-Limit orders elected as a result of the same election trigger (NBBO update or last sale price) will continue to use the same reference price for drill-through (even though they may have different stop prices).

The Exchange proposes to amend Rule 5.34(a)(4)(c)(ii), to specify that if at any time during the drill-through process, the NBO (NBB) changes to be below (above) the current drill-through price, such NBO (NBB) will become the new drill-through price and a new drill-through will immediately begin. As a result, any improvements to the market that occur while the drill-through is in process will be incorporated, thereby providing Users with further opportunity to be priced within the market while still being protected. Under the proposed rule change, any limit order with a price that is less aggressive than the new drill-through price would be entered in the Book at its limit price.

The Exchange also proposes to add Rule 5.34(a)(4)(C)(iv) to provide that if the System receives a market or limit order that would be subject to the drill-through process while a drill-through is in progress in the same series, the order joins the ongoing drill-through process in the then-current iteration and at the then-current drill-through price. Under the proposed rule, orders that come in while a drill-through is in process receive the benefit of joining the drill-through at the NBBO at the time of entry, as opposed to immediately executing or being displayed at a more aggressive price than the drill-through price. By way of illustration, consider the following example:

Assume that the drill-through price buffer for a certain option series is $0.90, and that the following quotes are in the Book: Quote 1 (NBBO): 1 @5.00 x 1 @7.00; Quote 2: 2 @4.00 x 1 @8.00. The System receives the following orders in the below sequence:

Order 1: Sell 1 @Market, Stop Price = $6.50
Order 2: Sell 1 @Market, Stop Price = $6.55
Order 3: Sell 1 @$3.95, Stop Price $6.60
Order 4: Sell 2 @Market, Stop Price = $4.50

During this time, Quote 2 is updated to: 2 @4.00 x 1 @6.50. Orders 1, 2, and 3 are elected, and the drill-through reference price for all three orders is set to contra-side NBB of 5.00.

1. Order 1 executes Quote 1 @$5.00.

2. Orders 2 and 3 are posted to sell @ $4.10 (drill-through price) for the Exchange-determined time period.

3. Order 4 is elected due to updated best offer of $4.10, and joins Orders 2 and 3 at the iterative drill-through price of $4.10. The offer is updated to 4 @ $4.10.

4. Order 5 (Sell 10 @Market (Day)) and Order 6 (Sell 1 @$4.05 Limit (Day)) enter the Book. Per proposed Rule 5.34(a)(4)(C)(iv), Orders 5 and 6 join the drill-through iteration at the drill-through reference price of $4.10, and the best offer is updated to 15 @$4.10.

5. The drill-through process continues for orders 2, 3, 4, 5, and 6 until the contracts are canceled or executed.

Because the proposed rule change may result in multiple orders going through the drill-through process at the same price and at the same time, the proposed rule change also describes how these orders will be prioritized and allocated when executing against resting interest or incoming interest. Specifically, proposed Rule 5.34(a)(4)(C)(v) [18] states the System prioritizes orders that are part of the same drill-through iteration (A) based on the time the System enters or reprices them in the Book (*i.e.,* in time priority) when, after an iteration, the new drill-through price makes the order(s) marketable against resting orders and (B) in accordance with the applicable base allocation algorithm when executing against any incoming interest. The Exchange believes this is appropriate because incoming marketable orders would ultimately execute in time priority today. Additionally, having multiple orders execute in accordance with the applicable base allocation algorithm when executing against incoming interest is consistent with how resting orders execute against incoming interest.

Continuing from the above example, assume the drill-through process iterates to the next drill-through price, which would be $3.20. In doing so, Order 6 posts at its limit price of $4.05, and the rest of the orders are eligible to execute in time sequence against the resting $4.00 bid. Per proposed Rule 5.34(a)(4)(C)(v), the orders will go through the drill-through process as follows:

1. Order 2 (Sell 1 @Market) will execute against Quote 2 @$4.00
2. Order 3 (Sell 1 @$3.95) will execute against Quote 2 @$4.00
3. The Quote 2 is exhausted, and the next best bid is Quote 1 for 5 @$3.00
4. Remaining drill-through is Order 4 (Sell 2 @Market) and Order 5 (Sell 10 @Market). Market is now 5 @$3.00 x 12 @$3.20, and the drill-through process continues until these contracts are executed or cancelled.

If, prior to the next drill-through iteration, Order 7 (buy 5 @$3.25) is entered and executes against Orders 4 and 5 at $3.20, the allocation will depend on the allocation algorithm for the relevant class, under the amended Rule.

1. If pro-rata, Order 7 trades 1 contract against Order 4 and 4 contracts against Order 5.

2. If price-time, Order 7 trades 2 contracts against Order 4 and 3 contracts against Order 5.

3. Remaining size on Order 4 (if applicable) and Order 5 will continue to drill-through as described in previous examples.

The Exchange also proposes to amend Rule 5.34(a)(4)(C)(vi).[19] Currently, the rule states that an order will continue through the drill-through process until the earliest of the following to occur: (a) the order fully executes; (b) the User cancels the order; and (c) the buy (sell) order's limit price equals or is less (greater) than the drill-through price at

[18] As a result of the additional provisions described above, the proposed rule change renumbers current subparagraph (iv) to be proposed subparagraph (vi).

[19] *See* supra note 20.

any time during application of the drill-through mechanism, in which case the orders rests in the Book at its limit price, subject to a User's instruction. The Exchange proposes to amend part (c) to remove reference to when the order's limit price equals the drill-through price, since under the drill-through process, if a buy (sell) order's limit price equals the drill-through price during the application of the drill-through mechanism it will remain part of the drill-through process, until the order's limit price is less (greater) than the drill-through price, at which point it will rest in the Book at its limit price. The Exchange also proposes to remove reference to a User's instruction, as there is no additional instruction that would allow a User to choose a different order handling option once the buy (sell) order limit price is less (greater) than the drill-through price.

Finally, the Exchange proposes to add Rule 5.34(a)(4)(C)(vii) to specify that the drill-through protection mechanism applies during all trading sessions and to provide clarity as to what happens to orders that are undergoing the drill-through process at the end of a trading session. Under the proposed rule change, if an order(s) (or unexecuted portion(s)) is undergoing the drill-through process at the end of a Global Trading Hours (''GTH'') [20] session, then the drill-through process concludes and the order(s) (or unexecuted portions(s)) enters the Regular Trading Hours (''RTH'') [21] Queuing Book [22] as a market order or limit order (at its limits price) on that same trading day, subject to a User's instructions. If an order(s) (or unexecuted portion(s)) is undergoing the drill-through process at the end of an RTH trading session and is eligible for trading during the Curb trading session [23] (*i.e.,* All Sessions or RTH and Curb orders), the drill-through process will continue into the Curb trading session on that same trading day. Finally, if an order(s) (or unexecuted portion(s)) is undergoing the drill-through process at the end of its last eligible trading session for that trading day (*i.e.,* RTH or Curb), the drill-through process concludes. Any order (or unexecuted portion) with a Time-in-Force of (i) Day is canceled, and (ii) GTC or GTD enters the Queuing Book for the next eligible trading session (*i.e.,* GTH or RTH) as a market order or limit order (at its limit price).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[24] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [25] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [26] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change to enhance drill-through protections for simple orders and to make certain market orders eligible for drill-through protection will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors, because it will provide these orders with additional and consistent execution opportunities and protections. The primary purpose of the drill-through price protection is to prevent orders from executing at prices ''too far away'' from the market when they enter the Book for potential execution. The Exchange believes the proposed rule change is consistent with this purpose, because Users who submit market orders with a Time-in-Force of Day will receive the same level of drill-through price protection against execution at potentially erroneous prices that is currently afforded to supermarketable limit orders while receiving the same additional execution opportunities. Supermarketable limit orders currently go through the drill-through process, and market orders with a Time-in-Force of Day are functionally similar to supermarketable limit orders. Therefore, the Exchange believes it is appropriate to provide both types of orders with the same price protection.

Further, the proposed rule change to provide that any new market and limit orders that would be subject to drill-through protection will join any in-progress drill-through iterations and display at the then-current drill-through price (and the corresponding changes regarding allocation and prioritization) allows new orders to receive the same level of price protection as other orders undergoing the drill-through process. The proposed rule change will allow all orders additional execution opportunities while continuing to protect them against execution at potentially erroneous prices. Similarly, the Exchange believes the proposed change to consider changes to the NBO (NBB) during drill-through and to update the drill-through price to such NBO (NBB) should it be lower (higher) than the drill-through price will further provide opportunity for execution at reasonable prices by capturing any market moves that may result in more aggressive prices.

The Exchange believes the proposal will enhance risk protections, the individual firm benefits of which flow downstream to counterparties both at the Exchange and at other options exchanges, which increases systemic protections as well. The Exchange believes enhancing risk protections will allow Users to enter orders and quotes with further reduced fear of inadvertent exposure to excessive risk, which will benefit investors through increased exposure to liquidity for the execution of their orders.

Additionally, the Exchange believes changes to specifically exclude from market order NBBO width and market order in no-bid series protections certain orders that would be subject to drill-through protection will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors. Specifically, the Exchange believes the changes to exclude certain orders that would be subject to drill-through protection from market order NBBO width protections may reduce inadvertent rejection of such orders which may be purposely priced far away from the NBBO at the time of entry and may otherwise miss an

[20] The GTH session currently begins at 8:15 p.m. (previous day) and goes until 9:15 a.m. ET on Monday through Friday.

[21] RTH for transactions in equity options (including options on individual stocks, ETFs, ETNs, and other securities) are the normal business days and hours set forth in the rules of the primary market currently trading the securities underlying the options, except for options on ETFs, ETNs, Index Portfolio Shares, Index Portfolio Receipts, and Trust Issued Receipts the Exchange designates to remain open for trading beyond 4:00 p.m. Eastern Time (ET) but in no case later than 4:15 p.m. ET. RTH for transactions in index options are from 9:30 a.m. to 4:15 p.m. ET, subject to certain exceptions.

[22] *See* Rule 5.31 for the definition of Queuing Book.

[23] The Curb session begins at 4:15 p.m. and goes until 5:00 p.m. on Monday through Friday.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] *Id.*

opportunity for execution if immediately cancelled. The Exchange also believes the changes to exclude certain orders that would be subject to drill-through protection from market order in no-bid series protections may allow opportunity for execution at a more beneficial price level than if they were immediately booked at the minimum tick increment. This proposed rule change may increase execution opportunities for Users that submit such Stop (Stop-Loss) and Market-on-Close orders (in the case of market order NBBO width protections) and sell market orders with an NBB of zero when the NBO in the series is greater than $0.50 (in the case of market orders in no-bid series protections).

The Exchange believes the proposed change to Rule 5.34(a)(4)(E) will protect investors because it clarifies that if multiple Stop (Stop-Loss) and Stop-Limit orders are triggered by the same trade price or NBBO (even if the orders have different stop prices), and would execute or post to the Book, the System uses the contra-side NBBO that existed at the time the first order in sequence was entered into the Book as the drill-through price for all orders. The Exchange believes that the proposed rule change will bring greater transparency and clarity to the rulebook, thus benefitting investors.

Finally, the Exchange believes the proposed changes to clarify when an order ceases to remain a part of the drill-through process and to specify what happens to orders undergoing drill-through at the end of a trading session will protect investors by adding transparency to the rules regarding the drill-through functionality and provide greater certainty as to the application of the drill-through process.

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 does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the enhanced drill-through protection will apply to all marketable orders in the same manner. Additionally, it will provide the same price protection and execution opportunities to relevant market orders that are currently provided to supermarketable limit orders, which function in a similar manner.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed enhancement to the drill-through protection is consistent with the current protection and provides relevant market orders with improved protection against execution at potentially erroneous prices through drill-through price protection in accordance with User instructions. Additionally, the proposed rule change relates specifically to a price protection offered on the Exchange and how the System handles orders as part of this price protection mechanism.

The Exchange believes the proposed rule change would ultimately provide all market participants with additional execution opportunities when appropriate while providing protection from erroneous execution. The Exchange believes the proposal will enhance risk protections, the individual firm benefits of which flow downstream to counterparties both at the Exchange and at other options exchanges, which increases systemic protections as well. The Exchange believes enhancing risk protections will allow Users to enter orders and quotes with further reduced fear of inadvertent exposure to excessive risk, which will benefit investors through increased exposure to liquidity for the execution of their orders. Without adequate risk management tools, Trading Permit Holders could reduce the amount of order flow and liquidity they provide. Such actions may undermine the quality of the markets available to customers and other market participants. Accordingly, the proposed rule change is designed to encourage Trading Permit Holders to submit additional order flow and liquidity to the Exchange. Accordingly, the proposed rule change is designed to encourage Trading Permit Holders to submit additional order flow and liquidity to the Exchange. The proposed flexibility may similarly provide additional execution opportunities, which further benefits liquidity in potentially volatile markets. In addition, providing Trading Permit Holders with more tools for managing risk will facilitate transactions in securities because, as noted above, Trading Permit Holders will have more confidence protections are in place that reduce the risks from potential system errors and market events.

Finally, the proposed clarifying changes are not intended to have any impact on competition, but rather codify current functionality to add transparency to the Rules.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[27] and subparagraph (f)(6) of Rule 19b–4 thereunder.[28]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2023–031 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.

[27] 15 U.S.C. 78s(b)(3)(A)(iii).

[28] 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to file number SR–CBOE–2023–031. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2023–031 and should be submitted on or before July 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12756 Filed 6–14–23; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97678; File No. SR–CBOE–2023–019]

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 Pilot Program That Allows the Exchange To List P.M.-Settled Third Friday-of-the-Month Mini-SPX Index (''XSP'') Options and Mini-Russell 2000 Index (''MRUT'') Options Series

June 9, 2023.

On April 19, 2023, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent the operation of its pilot program that permits the Exchange to list P.M.- settled third Friday-of-the-month Mini-SPX and Mini-Russell 2000 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 27, 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–2023–019).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12752 Filed 6–14–23; 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. 97366 (April 24, 2023), 88 FR 26359.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97692; File No. SR–CboeBZX–2023–013]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Adopt Listing Rules To Require Companies Listed on the Exchange To Develop, Implement, and Disclose a Written Compensation Recovery Policy To Comply With Rule 10D–1 Under the Exchange Act and Make Other Related Changes

June 9, 2023.

I. Introduction

On February 24, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new BZX Rule 14.10(k) to require companies listed on the Exchange to develop, implement, and disclose a written compensation recovery policy to comply with Rule 10D–1 under the Act (''Rule 10D–1''). On March 3, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on March 15, 2023.[3] 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]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97099 (March 9, 2023), 88 FR 16051 (''Notice''). No comments were received in response to this Notice.

[4] *See* Securities Exchange Act Release No. 97364, 88 FR 26369 (April 28, 2023).

On June 7, 2023, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Background and Description of the Proposal, as Modified by Amendment No. 2

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 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 proposed to adopt BZX Rule 14.10(k) (the ''Rule'') and Interpretations and Policies .21 to BZX Rule 14.10, both entitled ''Compensation Recovery Policy,'' to amend BZX Rule 14.1(a) (Definitions), and to amend BZX 14.10(e) (Exemptions from Certain Corporate Governance Requirements). These proposed amendments to the Exchange's rules incorporate the requirements of Rule 10D–1. Specifically, proposed BZX Rule 14.10(k) would require companies[8] to adopt a compensation recovery policy, comply with that policy, and provide the compensation recovery policy disclosures required by the Rule and in the applicable Commission filings.[9]

Proposed BZX Rule 14.10(k)(1) would require that each company adopt and comply with a written recovery policy providing that the company will recover reasonably promptly the amount of erroneously awarded incentive-based compensation in the event that the company is required to prepare an accounting restatement due to the material noncompliance of the company 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, as required by section 10D–1 under the Act.

The company's recovery policy must apply to all incentive-based compensation received by a person: (i) after beginning service as an executive officer; (ii) who served as an executive officer at any time during the performance period for that incentive-based compensation; (iii) while the company has a class of securities listed on a national securities exchange or national securities association; and (iv) during the three completed fiscal years immediately preceding the date that the company is required to prepare an accounting restatement as described in paragraph (k)(1) of the Rule.[10] A company'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 a company is required to prepare an accounting restatement as described in paragraph (k)(1) of the Rule is the earlier to occur of: (i) the date the company's board of directors, a committee of the board of directors, or the officer or officers of the company authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the company is required to prepare an accounting restatement as described in paragraph (k)(1) of the Rule; or (ii) the date a court, regulator, or other legally authorized body directs the company to prepare an accounting restatement as described in paragraph (k)(1) of the Rule.[11]

The amount of incentive-based compensation that must be subject to the company'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: (i) 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 (ii) the company must maintain documentation of the determination of that reasonable estimate and provide such documentation to the Exchange.[12]

A company 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 company's committee of independent directors[13] 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.

[5] Amendment No. 2 is available on the Commission's website at *https://www.sec.gov/comments/sr-cboebzx-2023-013/srcboebzx2023013-201119-402402.pdf.* In Amendment No. 2, the Exchange proposes to amend proposed Rule 14.10(k) to (i) provide that the effective date of proposed Rule 14.10(k) would be October 2, 2023; (ii) clarify, consistent with the requirements of Rule 10D–1, that each company must adopt and comply with its recovery policy required by proposed Rule 14.10(k); and (iii) make other non-substantive, clarifying changes.

[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.

[8] For purposes of this order, ''companies'' or ''company'' refers to the issuer of a security listed or an issuer who is applying to list on the Exchange. *See, e.g.,* BZX Rule 14.1(a)(3).

[9] *See* proposed BZX Rule 14.10(k).

[10] *See* proposed BZX Rule 14.10(k)(1)(A). 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 company's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the company'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 BZX Rule 14.10(k)(1)(B).

[12] *See* proposed BZX Rule 14.10(k)(1)(C).

[13] The term ''independent director'' is defined in BZX Rule 14.10(c)(1)(B).

• 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 company 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 company 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.[14]

A company is prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation.[15]

Proposed BZX Rule 14.10(k)(2) would require that each company must file all disclosures with respect to the recovery policy in accordance with the requirements of the federal securities laws, including the disclosure required by the applicable Commission filings.

BZX proposes to amend BZX Rule 14.10(e)(1) (Exemptions to the Corporate Governance Requirements) to provide that the following are exempt from the compensation recovery policy requirements under the Rule: (i) any security issued by a unit investment trust, as defined in 15 U.S.C. 80a–4(2); [16] and (ii) 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-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.[17]

The Exchange proposes to adopt a definition of ''executive officer'' applicable only to the Rule.[18] Proposed Interpretations and Policies .21 to BZX Rule 14.10 would provide that, for the purposes of the Rule, an ''executive officer'' is a company's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the company 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 company. Executive officers of the company's parent(s) or subsidiaries are deemed executive officers of the company if they perform such policy making functions for the company. In addition, when the company 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 company 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 minimum executive officers identified pursuant to 17 CFR 229.401(b).

The Exchange also proposes to adopt a definition of ''received'' applicable only to the Rule. Proposed Interpretations and Policies .21 to BZX Rule 14.10 would provide that, for purposes of the Rule, incentive-based compensation is deemed ''received'' in the company'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.

The Exchange also proposes to adopt the following definitions in BZX Rule 14.1(a) that would be applicable to the entirety of Chapter 14 (CBOE BZX Exchange Listing Rules) of the BZX Rules and that would apply to the Rule: [19]

• ''Financial reporting measures'' means measures that are determined and presented in accordance with the accounting principles used in preparing the company'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.[20]

• ''Incentive-based compensation'' means any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure.[21]

Proposed BZX Rule 14.10(k) would provide that the effective date of the Rule (''effective date'') is October 2, 2023, and that, in accordance with Rule 10D–1, each company must: (i) adopt the compensation recovery policy required by the Rule no later than 60 days following the effective date; (ii) comply with that recovery policy for all incentive-based compensation received (as such term is defined in Interpretation and Policy .21 to Rule 14.10) by executive officers on or after the effective date; [22] and (iii) provide the disclosures required by the Rule and in the applicable Commission filings required on or after the effective date.[23]

The Exchange also proposes an additional clarifying change to BZX Rule 14.10(a) to make clear that companies applying to list and listed on the Exchange must comply with the

[14] *See* proposed BZX Rule 14.10(k)(1)(D).

[15] *See* proposed BZX Rule 14.10(k)(1)(E).

[16] *See* proposed BZX Rule 14.10(e)(1)(A)(iii).

[17] *See* proposed BZX Rule 14.10(e)(1)(E)(iv).

[18] According to the Exchange, the term ''executive officer'' is already defined under Rule 14.1(a); therefore, the Exchange proposes to adopt a separate definition under proposed Interpretation and Policy .21 of Rule 14.10. *See* Amendment No. 2, *supra* note 5, at 6.

[19] Proposed Interpretations and Policies .21 to BZX Rule 14.10 would provide that, for purposes of the Rule, the terms ''financial reporting measures'' and ''incentive-based compensation'' will have the definitions set forth in Rule 14.1(a). *See* Amendment No. 2, *supra* note 5.

[20] *See* proposed BZX Rule 14.1(a)(14).

[21] *See* proposed BZX Rule 14.1(a)(16). Based on these proposed amendments, the Exchange also proposes to renumber the existing definitions in BZX Rule 14.1(a).

[22] As described above, a BZX listed company 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.,* proposed BZX Rule 14.10(k)). 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 Rule 14.10(k), as required by Rule 10D–1. *See* Adopting Release, *supra* note 6, and also definitions of ''incentive-based compensation'' in proposed BZX Rule 14.1(a)(16) and ''received'' in proposed Interpretations and Policies .21 to BZX Rule 14.10.

[23] *See* Amendment No. 2, *supra* note 5, at 8. 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.*

compensation recovery policy requirements outlined in the Rule.[24]

BZX states that it believes the proposed rule change, which it is proposing in order to carry out the requirements of Rule 10D–1, is consistent with the Act, and particularly with respect to the protection of investors and the public interest and may provide incentives to executive officers to improve the quality and reliability of financial reporting, further benefiting investors.[25]

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. BZX proposes therefore to require that a company will be subject to delisting if it does not adopt a compensation recovery policy that complies with the applicable listing standard, disclose the policy in accordance with Commission rules or comply with its recovery policy. BZX states that the administrative process for a company that fails to comply with proposed BZX Rule 14.10(k) will follow the established pattern used for similar corporate governance deficiencies.[26] Specifically, the Exchange proposes to amend BZX Rule 14.12(f)(2)(A)(iii) to provide that a company that fails to comply with proposed BZX Rule 14.10(k) may submit to the Listing Qualifications Department [27] a plan to regain compliance and, consistent with its process for similar corporate governance deficiencies, BZX Staff [28] may provide the issuer up to 180 days to cure the deficiency.[29] BZX Rule 14.12(f)(2)(B) further provides that notifications of deficiencies that allow for submission of a compliance plan may also result, after review of the compliance plan, in issuance of a Staff Delisting Determination or a Public Reprimand Letter. However, BZX proposes to amend BZX Rules 14.12(f)(4), 14.12(h)(3)(A)(iii), 14.12(i)(4)(A) and 14.12(j)(4) to provide that a Public Reprimand Letter may not be issued for violations of a listing standard required by Rule 10D–1 or upon appeal of such violations.[30] If BZX Staff provides the issuer with a period to cure the deficiency, and if the company does not regain compliance within the time period provided, BZX Staff would be required to issue a Staff Delisting Determination,[31] which the issuer could appeal to the Hearings Panel, as provided in BZX Rule 14.12(h). The Hearings Panel could allow the issuer up to an additional 180 days to cure the deficiency.[32]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[33] In particular, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b) of the Act.[34] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[35] 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,[36] 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. 2, is also consistent with section 10D of the Act [37] and Rule 10D–1 thereunder, as further described below.[38]

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.[39] 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.[40]

In enacting section 10D of the Act,[41] 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.[42] In October

[24] *See* BZX Rule 14.10(a) as proposed to be amended.

[25] *See* Amendment No. 2, *supra* note 5, at 16–17.

[26] *See id.* at 14. *See also* BZX Rule 14.12(f)(2)(B).

[27] BZX Rule 14.12(b)(6) defines the term ''Listing Qualifications Department'' as the department of the Exchange responsible for evaluating company compliance with quantitative and qualitative listing standards and determining eligibility for initial and continued listing of a company's securities.

[28] BZX Rule 14.12(b)(10) defines ''Staff'' as ''employees of the Listing Qualifications Department.''

[29] *See* Amendment No. 2, *supra* note 5, at 14. *See also* BZX Rule 14.12(f)(2)(B).

[30] BZX also proposes to amend the definition of ''Public Reprimand Letter'' in BZX Rule 14.12(b)(9) to provide that a Public Reprimand Letter may not be issued for violations of a listing standard required by Rule 10D–1. Under the existing definition in Rule 14.12(b)(9), Public Reprimand Letters can be issued for violations of BZX corporate governance or notification listing standards except for violations of a listing standard required by Rule 10A–3 of the Act.

[31] *See* BZX Rule 14.12(f)(2)(E).

[32] *See* BZX Rule 14.12(h)(3)(A)(i).

[33] 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).

[34] 15 U.S.C. 78f(b).

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78(b)(7).

[37] 15 U.S.C. 78j–4.

[38] 17 CFR 240.10D–1.

[39] *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).

[40] *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.).

[41] Public Law 111–203, 954, 124 Stat. 1376, 1904 (2010) (codified at 15 U.S.C. 78j–4).

[42] 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

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 amendments to BZX Rules 14.1, 14.10, and 14.12 incorporate 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 [43] and Rule 10D–1 thereunder,[44] and will therefore further the protection of investors consistent with section 6(b)(5) of the Act.[45] 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.[46] 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 BZX Rule 14.10(k) require that a listed issuer recover the amount of erroneously awarded incentive-based compensation ''reasonably promptly.'' 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 . . .'' [47] Rule 10D–1 also does not compel the exchanges to adopt a more prescriptive approach to the timing and method of recovery. In its filing, BZX stated that ''the [c]ompany's obligation to recover erroneously awarded [i]ncentive-based [c]ompensation reasonably promptly will be assessed on a holistic basis with respect to each accounting restatement prepared by the [c]ompany'' and that ''[i]n evaluating whether a [c]ompany is recovering erroneously-awarded [i]ncentive-based [c]ompensation reasonably promptly, the Exchange will consider whether the [c]ompany is pursuing an appropriate balance of cost and speed in determining the appropriate means to seek recovery and whether the [c]ompany is securing recovery through means that are appropriate based on the particular facts and circumstances of each executive officer that owes a recoverable amount.'' [48] 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.[49]

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 Exchange, in Amendment No. 2, is proposing that the effective date of Rule 14.10(k) 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 prompt implementation of this proposed rule.

With respect to a listed issuer that fails to comply with proposed BZX Rule 14.10(k), the Exchange has proposed to apply its current procedures applicable to companies with similar corporate governance deficiencies in addition to prohibiting the use of a Public Reprimand Letter for violations of a listing standard required by Rule 10D–1.[52] The Commission believes that these procedures for listed issuers out of compliance with proposed BZX Rule 14.10(k), which are consistent with the procedures for similar corporate governance deficiencies, 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 the listed issuer will be delisted while helping to ensure that listed issuers that are non-compliant will not remain listed for an inappropriate amount of time. Additionally, the proposed delisting process, including the cure period and the right to appeal a delisting determination to the Exchange's Hearing Panel, 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.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, 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 legal expenses to recoup their losses' and that 'executives must return monies that should belong to the shareholders.' '').

[43] 15 U.S.C. 78j–4.

[44] 17 CFR 240.10D–1.

[45] 15 U.S.C. 78f(b)(5).

[46] *See* Adopting Release, *supra* note 7, 87 FR at 73077. *See also* Amendment No. 2, *supra* note 5, at 17, agreeing with the Commission's statement on the benefits of the recovery policy.

[47] *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.*

[48] *See* Amendment No. 2, *supra* note 5, at 15–16.

[49] *See* Adopting Release, *supra* note 7, 87 FR 73104.

[50] *See* Amendment No. 2, *supra* note 5, amending proposed BZX Rule 14.10.

[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 6, and also definitions of ''incentive-based compensation'' in proposed BZX Rule 14.1(a)(16) and ''received'' in proposed Interpretations and Policies .21 to BZX Rule 14.10. *See also supra* notes 22–23 and accompanying text.

[52] *See supra* notes 26–32 and accompanying text.

arguments concerning whether the proposed rule change, as modified by Amendment No. 2, 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–CboeBZX–2023–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2023–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 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–2023–013, and should be submitted on or before July 6, 2023.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. In Amendment No. 2, the Exchange amended the proposal to: (i) provide that the effective date of Rule 14.10(k) would be October 2, 2023; (ii) clarify, consistent with the requirements of Rule 10D–1, that each company must adopt and comply with its recovery policy required by proposed Rule 14.10(k); and (iii) make other non-substantive, clarifying changes.[53] The changes in Amendment No. 2 provide greater clarity to the proposal. The proposed clarifying changes will ensure that the proposal conforms to the requirements of Rule 10D–1. The change to the effective date of the listing standards is consistent with Rule 10D–1 and language in the Adopting Release. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Exchange Act,[54] to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[55] that the proposed rule change (SR–CboeBZX–2023–013), as modified by Amendment No. 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12762 Filed 6–14–23; 8:45 am]

BILLING CODE 8011–01–P

[53] *See* Amendment No. 2, *supra* note 5.

[54] 15 U.S.C. 78s(b)(2).

[55] 15 U.S.C. 78s(b)(2).

[56] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97693; File No. SR–LTSE–2023–01]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Establish Listing Standards Related to Recovery of Erroneously Awarded Incentive-Based Executive Compensation

June 9, 2023.

I. Introduction

On February 27, 2023, Long-Term Stock Exchange, Inc. (''LTSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend LTSE Rule 14.207(f) to establish listing standards for the recovery of erroneously awarded compensation, as required by Rule 10D–1 under the Act (''Rule 10D–1''). On March 10, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on March 17, 2023.[3] 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 8, 2023, the Exchange filed partial Amendment No. 2 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment Nos. 1 and 2, from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Background and Description of the Proposal, as Modified by Amendment Nos. 1 and 2

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97123 (March 13, 2023), 88 FR 16487 (''Notice''). No comments were received in response to this Notice.

[4] *See* Securities Exchange Act Release No. 97365, 88 FR 26349 (April 28, 2023).

[5] Amendment No. 2 is available on the Commission's website at *https://www.sec.gov/comments/sr-ltse-2023-01/srltse202301-202019-404742.pdf.* In Amendment No. 2, the Exchange amends proposed LTSE Rule 14.207(f)(10) to (i) provide that the effective date of LTSE Rule 14.207(f) would be October 2, 2023; (ii) clarify, consistent with the requirements of Rule 10D–1 and the rule language as originally proposed, that each listed issuer is required to comply with its recovery policy for all incentive-based compensation received (as such term is defined in proposed LTSE Rule14.207(f)(1)) by executive officers on or after October 2, 2023; and (iii) clarify, consistent with the language of Rule 10D–1, that notwithstanding the look-back requirements in LTSE Rule 14.207(f), a company is only required to apply the recovery policy to incentive-based executive compensation received on or after the effective date.

[6] 17 CFR 240.10D–1.

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 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 proposed to amend LTSE Rule 14.207, Obligations for Companies Listed on the Exchange, paragraph (f), to establish listing standards for the recovery of erroneously awarded compensation. Proposed LTSE Rule 14.207(f), entitled ''Recovery of Erroneously Awarded Compensation to Executive Officers'' (the ''Rule''), incorporates the requirements of Rule 10D–1. Specifically, the Rule would require companies [8] to adopt a compensation recovery policy, comply with that policy, and provide the compensation recovery policy disclosures required by the Rule and in the applicable Commission filings.[9]

Proposed LTSE Rule 14.207(f)(2) sets forth the requirements for companies to adopt, implement and disclose a recovery policy for incentive-based execution compensation. Specifically, Proposed LTSE Rule 14.207(f)(2)(A) would require that each company that lists its securities on the Exchange must adopt and comply with a written policy providing that the company will recover reasonably promptly the amount of erroneously awarded incentive-based compensation to any executive officer in the event that the company is required to prepare an accounting restatement due to material non-compliance of the company 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.

Proposed LTSE Rule 14.207(f)(2)(B) would require that each company listed on the Exchange disclose its written recovery policy related to the recovery of erroneously awarded compensation as part of its reporting obligations to the Commission, as an exhibit to its Annual Report, and to the Exchange. A company applying for initial listing must include its written recovery policy as part of its listing application.

Proposed LTSE Rule 14.207(f)(3) would provide that the company's recovery policy must apply to all incentive-based compensation received by a person: (A) after beginning service as an executive officer of the company; (B) who served as an executive officer at any time during the performance period for that incentive-based compensation; (C) while the company had 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 company is required to prepare an accounting restatement as described in paragraph (f) the Rule.[10] A company's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.

Proposed 14.207(f)(4) would provide that, for purposes of determining the relevant recovery period, the date that a company is required to prepare an accounting restatement as described in the Rule is the earlier to occur of: (A) the date the company's board of directors, a committee of the board of directors, or the officer or officers of the company authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the company is required to prepare an accounting restatement as described in the Rule; or (B) the date a court, regulator, or other legally authorized body directs the company to prepare an accounting restatement as described in the Rule.

Proposed LTSE Rule 14.207(f)(5) sets forth requirements for determining the amount of incentive-based compensation subject to the company's recover policy. Subparagraph (A) states that the amount of incentive-based compensation that must be subject to the company'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. Subparagraph (B) states that, 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: (i) 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 (ii) the company must maintain documentation of the determination of that reasonable estimate and provide such documentation to the Exchange.

Proposed LTSE Rule 14.207(f)(6) sets forth certain exceptions to the requirement to recover erroneously awarded compensation. Proposed LTSE Rule 14.207(f)(6) would provide that companies 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 company's Compensation Committee, 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 company 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

[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.

[8] For purposes of this order, ''companies'' or ''company'' refers to the issuer of a security listed or an issuer who is applying to list on the Exchange. *See, e.g.,* LTSE Rule 14.002(a)(5).

[9] The Exchange proposes to reposition the current text of paragraph (f) of LTSE Rule 14.207 (Obligation to Pay Fees) into new paragraph (g) of Rule 14.207.

[10] In addition to the last three completed fiscal years, the recovery policy must apply to any transition period (that results from a change in the company's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the company'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.

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 company 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.

Proposed LTSE Rule 14.207(f)(7) would provide that a company is prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation.

Proposed LTSE Rule 14.207(f)(8) would provide that companies are required to file all disclosures with respect to their recovery policy in accordance with the requirements of the federal securities laws, including the disclosure required by applicable Commission filings, and the rules of the Exchange.

Proposed LTSE Rule 14.207(f)(9) would provide that the requirements of the Rule do not apply to the listing of any security issued by a unit investment trust as defined in 15 U.S.C 80a–4(2) and any security issued by a management company as defined in 15 U.S.C. 80(a)–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-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 less than three fiscal years, since the listing of the company.

Proposed LTSE Rule 14.207(f)(1) would provide that, unless the context otherwise requires, the following definitions apply for purposes of the Rule (and only for purposes of LTSE Rule 14.207(f)):

• *Executive Officer:* An executive officer is the company's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the company 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 company. Executive officers of the company's parent(s) or subsidiaries are deemed executive officers of the company if they perform such policy making functions for the company. In addition, when the company 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 company 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 those that are determined and presented in accordance with the accounting principles used in preparing the company'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 company'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 LTSE Rule 14.207(f)(10) would provide that the effective date of the Rule (''effective date'') is October 2, 2023, and that each company is required to (i) adopt a policy governing the recovery of erroneously awarded compensation as required by the Rule no later than 60 days following October 2, 2023; (ii) comply with its recovery policy for all incentive-based compensation received (as such term is defined in Rule 14.207(f)(1)) by executive officers on or after October 2, 2023; and (iii) provide the disclosures required by the Rule and in the applicable Commission filings on or after October 2, 2023.[11] Proposed LTSE Rule 14.701(f)(10) also states that notwithstanding the look-back requirement in proposed Rule 14.207(f), a company is only required to apply the recovery policy to incentive-based compensation received on or after October 2, 2023.[12]

LTSE also proposes an additional clarifying change to LTSE Rule 14.203 (Prerequisites for Applying to List on the Exchange) to make clear that any company applying to list on LTSE must comply with the requirements of proposed LTSE Rule 14.207(f).[13]

LTSE states that the new requirements described above will help foster effective oversight of executive compensation and provide increased accountability and transparency to investors by not allowing executive officers to retain compensation that they were awarded erroneously.[14]

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. LTSE proposes therefore to require that a company will be subject to delisting if it does not adopt a compensation recovery policy that complies with the applicable listing standard, disclose the policy in accordance with Commission rules or comply with its recovery policy. LTSE states that the process for a company that fails to comply with proposed LTSE Rule 14.207(f) will follow the established pattern used for similar corporate governance deficiencies.[15] Specifically, LTSE proposes to amend LTSE Rule 14.501(d)(2)(A)(iii) to provide that a company that fails to comply with proposed LTSE Rule 14.207(f) may

[11] *See* Amendment No. 2, *supra* note 5. 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 issuers that the proposed rules would take effect a year after the adoption of SEC Rule 10D–1 based on the issuers' understanding of a statement made . . . in the Adopting Release.'' *See id.*

[12] *See* Amendment No. 2, *supra* note 5. As described above, a LTSE listed company 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.,* LTSE Rule 14.207(f)). 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 after the effective date of the Rule, as required by Rule 10D–1. *See* Adopting Release, *supra* note 6, and also definitions of ''incentive based compensation'' and ''received'' in proposed LTSE Rule 14.207(f)(1).

[13] *See* proposed LTSE Rule 14.203(j). *See also* Notice, *supra* note 3, 88 FR at 16487.

[14] *See* Notice, *supra* note 3, 88 FR at 16490.

[15] *See id.*

submit to LTSE Regulation [16] a plan to regain compliance and, consistent with its process for similar corporate governance deficiencies, LTSE Staff [17] may, after review of the compliance plan, provide the issuer up to 180 days to cure the deficiency.[18] LTSE Rule 14.501(d)(2)(B) further provides that notifications of deficiencies that allow for submission of a compliance plan may also result, after review of the compliance plan, in issuance of a Staff Delisting Determination or a Public Reprimand Letter. However, LTSE proposes to amend LTSE Rules 14.501(a)(4), 14.501(d)(4), and 14.502(b)(1)(C) to provide that a Public Reprimand Letter may not be issued for violations of proposed LTSE Rule 14.207(f) or of a listing standard required by Rule 10D–1 or upon appeal of such violations.[19] If LTSE Staff provides the issuer with a period to cure the deficiency, and if the issuer does not regain compliance within the time period provided, LTSE Staff would be required to issue a Staff Delisting Determination,[20] which the issuer could appeal to the Listings Review Committee, as provided in LTSE Rule 14.502. The Listings Review Committee could allow the issuer up to an additional 180 days to cure the deficiency.[21]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b) of the Act.[23] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[24] 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,[25] 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 Nos. 1 and 2, is also consistent with section 10D of the Act [26] and Rule 10D–1 thereunder, as further described below.[27]

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.[28] 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.[29]

In enacting section 10D of the Act,[30] 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.[31] In October 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 LTSE Rule 14.207(f) incorporates the requirements of Rule 10D–1. The Commission

[16] LTSE Rule 1.160(u) defines the term ''LTSE Regulation'' as ''the department of LTSE or designated employees of LTSE that supervise, administer, or perform the regulatory functions of LTSE, including the administration of any regulatory services agreements with another self-regulatory organization to which LTSE is a party.''

[17] LTSE Rule 14.500(b)(6) defines the term ''Staff'' as employees of LTSE Regulation.

[18] *See* LTSE Rule 14.501(d)(2)(B).

[19] LTSE also proposes to amend the definition of ''Public Reprimand Letter'' in Rule 14.500(b)(5) to provide that a Public Reprimand Letter may not be issued for violations of a listing standard required by Rule 10D–1. Under the existing definition in LTSE Rule 14.500(b)(5), Public Reprimand Letters can be issued for violations of LTSE corporate governance or notification listing standards except for violations of a listing standard required by Rule 10A–3 of the Act.

[20] *See* LTSE Rule 14.501(d)(2)(E).

[21] *See* LTSE Rule 14.502(b).

[22] 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).

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78(b)(7).

[26] 15 U.S.C. 78j–4.

[27] 17 CFR 240.10D–1.

[28] *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).

[29] *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.).

[30] Public Law 111–203, 954, 124 Stat. 1376, 1904 (2010) (codified at 15 U.S.C. 78j–4).

[31] 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 legal expenses to recoup their losses' and that 'executives must return monies that should belong to the shareholders.' '').

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 [32] and Rule 10D–1 thereunder,[33] and will therefore further the protection of investors consistent with section 6(b)(5) of the Act.[34] 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.[35] 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 LTSE Rule 14.207(f) require that a listed issuer recover the amount of erroneously awarded incentive-based compensation ''reasonably promptly.'' 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 . . . .'' [36] Rule 10D–1 also does not compel the exchanges to adopt a more prescriptive approach to the timing and method of recovery. In its Notice, LTSE stated that ''the [c]ompany'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 [c]ompany'' and that ''[i]n evaluating whether the [c]ompany is recovering erroneously-awarded executive compensation reasonably promptly, the Exchange will consider whether the [c]ompany is pursuing the appropriate balance of cost and speed in determining the appropriate means to seek recovery, and whether the [c]ompany is securing recovery through means that are appropriate based on the particular facts and circumstances of each executive officer that owes a recoverable amount.'' [37] 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.[38]

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 Exchange, in Amendment No. 2, is proposing that the effective date of Rule 14.207(f) be October 2, 2023.[39] 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.[40] This is consistent with language in Rule 10D–1 and the Adopting Release, while also ensuring prompt implementation of this proposed rule.

With respect to a listed issuer that fails to comply with proposed LTSE Rule 14.207(f), the Exchange has proposed to apply its current procedures applicable to companies with similar corporate governance deficiencies in addition to prohibiting the use of a Public Reprimand Letter for violations of a listing standard required by Rule 10D–1.[41] The Commission believes that these procedures for listed issuers out of compliance with proposed LTSE Rule 14.207(f), which are consistent with the procedures for similar corporate governance deficiencies, 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 the listed issuer will be delisted while helping to ensure that listed issuers that are non-compliant will not remain listed for an inappropriate amount of time. Additionally, the proposed delisting process, including the cure period and the right to appeal a delisting determination to the Exchange's Listings Review Committee, 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.

IV. Solicitation of Comments on Amendment No. 2 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 Nos. 1 and 2, 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–LTSE–2023–01 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–LTSE–2023–01. 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

[32] 15 U.S.C. 78j–4.

[33] 17 CFR 240.10D–1.

[34] 15 U.S.C. 78f(b)(5).

[35] *See* Adopting Release, *supra* note 7. *See also* Notice, *supra* note 3, 88 FR at 16490, agreeing with the Commission's statement on the benefits of the recovery policy.

[36] *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.*

[37] *See* Notice, *supra* note 3, 88 FR at 16489.

[38] *See* Adopting Release, *supra* note 7, 87 FR 73104.

[39] *See* proposed LTSE Rule 14.207(f)(10). *See also* Amendment No. 2, *supra* note 5.

[40] 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 6, and also definitions of ''incentive-based compensation'' and ''received'' in proposed Rule 14.201(f)(1). *See also supra* notes 11–12 and accompanying text.

[41] *See supra* notes 15–21 and accompanying text.

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–LTSE–2023–01, and should be submitted on or before July 6, 2023.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. In Amendment No. 2, the Exchange amended the proposal to (i) propose that the effective date of LTSE Rule 14.207(f) be October 2, 2023; (ii) clarify, consistent with the requirements of Rule 10D–1 and the rule language as originally proposed, that each listed issuer is required to comply with its recovery policy for all incentive-based compensation received (as such term is defined in proposed 14.207(f)(1)) by executive officers on or after October 2, 2023; and (iii) clarify, consistent with the language of Rule 10D–1, that notwithstanding the look-back requirements in LTSE Rule 14.207(f), a company is only required to apply the recovery policy to incentive-based executive compensation received on or after the effective date.[42] The changes in Amendment No. 2 provide greater clarity to the proposal. In addition, the change to the effective date of the listing standards is consistent with Rule 10D–1 and language in the Adopting Release. The additional clarifications to Rule 14.207(f)(10) will ensure that the requirements of that Rule conform to the requirements of Rule 10D–1. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Exchange Act,[43] to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[44] that the proposed rule change (SR–LTSE–2023–01), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12763 Filed 6–14–23; 8:45 am]

BILLING CODE 8011–01–P

[42] *See* Amendment No. 2, *supra* note 5.

[43] 15 U.S.C. 78s(b)(2).

[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97687; File No. SR–NASDAQ–2023–005]

Self-Regulatory Organizations; The Nasdaq Stock Market 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 Establish Listing Standards Related to Recovery of Erroneously Awarded Executive Compensation

June 9, 2023.

I. Introduction

On February 22, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Nasdaq Rule 5608 to establish listing standards related to recovery of erroneously awarded executive compensation 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 6, 2023, the Exchange filed partial Amendment No. 1 to the proposed rule change.[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 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, Nasdaq proposed to adopt Nasdaq Rule 5608

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97060 (March 7, 2023), 88 FR 15500 (''Notice''). Comments received on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nasdaq-2023-005/srnasdaq2023005.htm.*

[4] *See* Securities Exchange Act Release No. 97353, 88 FR 26369 (April 28, 2023).

[5] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-nasdaq-2023-005/srnasdaq2023005-200459-401302.pdf.* In Amendment No. 1, the Exchange proposes to amend Rule 5608(e) to (i) provide that the effective date of Rule 5608 would be October 2, 2023; and (ii) clarify, consistent with the requirements of Rule 10D–1 and the rule language as originally proposed, that each company is required to comply with its recovery policy for all incentive-based compensation received (as such term is defined in proposed Rule 5608(d)) by executive officers on or after October 2, 2023.

[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.

entitled ''Recovery of Erroneously Awarded Compensation.'' Proposed Nasdaq Rule 5608 (the ''Rule'') mirrors the text of Rule 10D–1. Specifically, proposed Nasdaq Rule 5608(a) would require companies [8] to adopt a compensation recovery policy, comply with that policy, and provide the compensation recovery policy disclosures required by the Rule and in the applicable Commission filings.

Proposed Nasdaq Rule 5608(b)(1) would require that each company adopt and comply with a written policy providing that the company will recover reasonably promptly the amount of erroneously awarded incentive-based compensation in the event that the company is required to prepare an accounting restatement due to the material noncompliance of the company 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 company'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 company 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 company is required to prepare an accounting restatement as described in paragraph (b)(1) of the Rule.[9] A company'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 a company is required to prepare an accounting restatement as described in paragraph (b)(1) of the Rule is the earlier to occur of: (A) the date the company's board of directors, a committee of the board of directors, or the officer or officers of the company authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the company is required to prepare an accounting restatement as described in paragraph (b)(1) of this Rule; or (B) the date a court, regulator, or other legally authorized body directs the company to prepare an accounting restatement as described in paragraph (b)(1) of the Rule.[10]

The amount of incentive-based compensation that must be subject to the company'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, 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 the company must maintain documentation of the determination of that reasonable estimate and provide such documentation to Nasdaq.[11]

The company 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 company's Compensation Committee, 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 company must make a reasonable attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover, and provide that documentation to Nasdaq.
- 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 company must obtain an opinion of home country counsel, acceptable to Nasdaq, that recovery would result in such a violation, and must provide such opinion to Nasdaq.
- 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.[12]

The company is prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation.[13]

Proposed Nasdaq Rule 5608(b)(2) would require that each company 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 Nasdaq Rule 5608(c) would provide that the requirements of the Rule do not apply to the listing of: (1) any security issued by a unit investment trust, as defined in 15 U.S.C. 80a–4(2); and (2) 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-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 Nasdaq Rule 5608(d) would provide that, unless the context otherwise requires, the following definitions apply for purposes of the Rule (and only for purposes of Rule 5608):

- *Executive Officer.* An executive officer is the company's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the company 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

[8] For purposes of this order, ''companies'' or ''company'' refers to the issuer of a security listed or an issuer who is applying to list on Nasdaq. *See, e.g.,* Nasdaq Rule 5005(a)(6).

[9] *See* proposed Rule 5608(b)(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 company's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the company'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.

[10] *See* proposed Rule 5608(b)(1)(ii).

[11] *See* proposed Rule 5608(b)(1)(iii).

[12] *See* proposed Rule 5608(b)(1)(iv).

[13] *See* proposed Rule 5608(b)(1)(v).

any other person who performs similar policy-making functions for the company. Executive officers of the company's parent(s) or subsidiaries are deemed executive officers of the company if they perform such policy making functions for the company. In addition, when the company 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 company 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 company'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 company'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 Nasdaq Rule 5608(e) would provide that the effective date of the Rule (''effective date'') is October 2, 2023, and that each company is required to (i) adopt a policy governing the recovery of erroneously awarded compensation as required by the Rule no later than 60 days following October 2, 2023; (ii) comply with its recovery policy for all incentive-based compensation received (as such term is defined in Rule 5608(d)) by executive officers on or after October 2, 2023; and (iii) provide the disclosures required by the Rule and in the applicable Commission filings on or after October 2, 2023.[14] Proposed Nasdaq Rule 5605(e) also states that notwithstanding the look-back requirement in proposed Rule 5608(b)(1)(i)(D), a company is only required to apply the recovery policy to incentive-based compensation received on or after October 2, 2023.[15]

Nasdaq also proposes additional clarifying changes to Nasdaq Rule 5210 (Prerequisites for Applying to List on the Nasdaq Stock Market), Nasdaq Rule 5701 (Preamble to the Listing Requirements to Other Securities) and Nasdaq Rule 5702 governing listing requirements for debt securities to make clear the application of proposed Nasdaq Rule 5608 under these provisions.[16]

Nasdaq states that the new requirements described above will help facilitate effective oversight of executive compensation and promote accountability to investors by not allowing executive officers to retain compensation that they were awarded erroneously.[17]

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. Nasdaq proposes therefore to require that a company will be subject to delisting if it does not adopt a compensation recovery policy that complies with the applicable listing standard, disclose the policy in accordance with Commission rules or comply with its recovery policy. Nasdaq states that the administrative process for a company that fails to comply with proposed Nasdaq Rule 5608 will follow the established pattern used for similar corporate governance deficiencies.[18] Specifically, Nasdaq proposes to amend Nasdaq Rule 5810(c)(2)(A)(iii) to provide that a company that fails to comply with proposed Nasdaq Rule 5608 may submit to Nasdaq Staff[19] a plan to regain compliance and, consistent with its process for similar corporate governance deficiencies, Nasdaq Staff may provide the issuer up to 180 days to cure the deficiency.[20] Nasdaq Rule 5810(c)(2)(B) further provides that notifications of deficiencies that allow for submission of a compliance plan may also result, after review of the compliance plan, in issuance of a Staff Delisting Determination or a Public Reprimand Letter. However, Nasdaq proposes to amend Nasdaq Rules 5810(c)(4), 5815(c)(1)(D), 5820(d)(1) and 5825(d) to provide that a Public Reprimand Letter may not be issued for violations of a listing standard required by Rule 10D–1 or upon appeal of such violations.[21] If Nasdaq Staff provides the issuer with a period to cure the deficiency, and if the company does not regain compliance within the time period provided, Nasdaq Staff would be required to issue a Staff Delisting Determination,[22] which the issuer could appeal to the Hearings Panel, as provided in Nasdaq Rule 5815. The Hearings Panel could allow the issuer up to an additional 180 days to cure the deficiency.[23]

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

[14] *See* Amendment No. 1, *supra* note 5. 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 SEC Rule 10D–1 based on the issuers' understanding of a statement made . . . in the Listing Standards Release.'' *See id.*

[15] As described above, a Nasdaq listed company 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.* Nasdaq Rule 5608). 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 Rule 5608, as required by Rule 10D–1. *See* Adopting Release, *supra* note 6, and also definitions of ''incentive based compensation'' and ''received'' in proposed Nasdaq Rule 5608(d).

[16] Nasdaq states that the change to Nasdaq Rule 5210 will clarify that any company newly listing on Nasdaq must comply with these requirements. The proposed amendments to Nasdaq Rules 5701 and 5702 make clear that proposed Nasdaq Rule 5608 would apply, except to the extent exempted as set forth above. *See supra* discussion of proposed Rule 5608(c).

[17] *See* Notice, *supra* note 3, 88 FR at 15502.

[18] *See id. See also* Nasdaq Rule 5805(c)(2)(B).

[19] Nasdaq Rule 5805(g) defines the term ''Staff'' as employees of the Listing Qualifications Department (the department of Nasdaq responsible for evaluating company compliance with quantitative and qualitative listing standards and determining eligibility for initial and continued listing of a company's securities). *See also* Nasdaq Rule 5805(h).

[20] *See* Notice, *supra* note 3, 88 FR at 15502. *See also* Nasdaq Rule 5805(c)(2)(B).

[21] Nasdaq also proposes to amend the definition of ''Public Reprimand Letter'' in Rule 5805(j) to provide that a Public Reprimand Letter may not be issued for violations of a listing standard required by Rule 10D–1. Under the existing definition in Rule 5805(j), Public Reprimand Letters can be issued for violations of Nasdaq corporate governance or notification listing standards except for violations of a listing standard required by Rule 10A–3 of the Act.

[22] *See* Nasdaq Rule 5805(c)(2)(E).

[23] *See* Nasdaq Rule 5815(c).

securities exchange.[24] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act.[25] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[26] 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,[27] 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[28] and Rule 10D–1 thereunder, as further described below.[29]

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.[30] 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.[31]

In enacting Section 10D of the Act,[32] 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.[33] In October 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 Rule 5608 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[34] and Rule 10D–1 thereunder,[35] and will therefore further the protection of investors consistent with Section 6(b)(5) of the Act.[36] 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.[37] 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 Rule 5608 require that a listed issuer recover the amount of erroneously awarded incentive-based compensation ''reasonably promptly.'' One commenter requested Nasdaq 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.[38] As discussed above, Nasdaq'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

[24] 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).

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78(b)(7).

[28] 15 U.S.C. 78j–4.

[29] 17 CFR 240.10D–1.

[30] *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).

[31] *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).

[32] Public Law 111–203, sec. 954, 124 Stat. 1376, 1904 (2010) (codified at 15 U.S.C. 78j–4).

[33] 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 legal expenses to recoup their losses' and that 'executives must return monies that should belong to the shareholders.'").

[34] 15 U.S.C. 78j–4.

[35] 17 CFR 240.10D–1.

[36] 15 U.S.C. 78f(b)(5).

[37] *See* Adopting Release, *supra* note 7, 87 FR at 73077. *See also* Notice, *supra* note 3, 88 FR at 15502, agreeing with the Commission's statement on the benefits of the recovery policy.

[38] *See* Letter to Vanessa Countryman, Secretary, Commission, from Wilson Sonsini Goodrich & Rosati, dated April 4, 2024 [sic] (''Wilson Sonsini Letter''), at 4.

and method of recovery under their rules in compliance with Section 19(b) of the Exchange Act . . .'' [39] Rule 10D–1 also does not compel the exchanges to adopt a more prescriptive approach to the timing and method of recovery. In its Notice, Nasdaq 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.'' [40] 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.[41]

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.[42] 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**.[43] 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.'' [44] The Commission also received comment letters from individual investors that requested the Commission quickly implement the proposal.[45] The Exchange, in Amendment No. 1, is proposing that the effective date of Rule 5608 be October 2, 2023.[46] 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.[47] This is consistent with language in Rule 10D–1 and the Adopting Release, while also ensuring prompt implementation of this proposed rule.

With respect to a listed issuer that fails to comply with proposed Rule 5608, the Exchange has proposed to apply its current procedures applicable to companies with similar corporate governance deficiencies in addition to prohibiting the use of a Public Reprimand Letter for violations of a listing standard required by Rule 10D–1.[48] The Commission believes that these procedures for listed issuers out of compliance with proposed Nasdaq Rule 5608, which are consistent with the procedures for similar corporate governance deficiencies, 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 the listed issuer will be delisted while helping to ensure that listed issuers that are non-compliant will not remain listed for an inappropriate amount of time.[49] Additionally, the proposed delisting process, including the cure period and the right to appeal a delisting determination to the Exchange's Hearing Panel, 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.

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–NASDAQ–2023–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NASDAQ–2023–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/*

[39] *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.*

[40] *See* Notice, *supra* note 3, 88 FR at 15502.

[41] *See* Adopting Release, *supra* note 7, 87 FR 73104.

[42] *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'').

[43] *See, e.g.,* Society Letter at 1; ASA Letter at 2.

[44] *See* Davis Polk Letter at 1 n.1 (citing to Adopting Release, *supra* note 7, 87 FR at 73111).

[45] *See, e.g.,* Letters from Clarissa McLaughlin, dated May 15, 2023; Deborah Temple, dated May 15, 2023; John Leonard, dated May 13, 2023.

[46] *See* Amendment No. 1, *supra* note 5, amending proposed Nasdaq Rule 5608(e).

[47] 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 6, and also definitions of ''incentive based compensation'' and ''received'' in proposed Nasdaq Rule 5608(d). *See also supra* note 15 and accompanying text.

[48] *See supra* notes 18–23 and accompanying text.

[49] One commenter states its agreement that issuers should be given an opportunity to submit a plan of compliance and to cure noncompliance in good faith and states that Nasdaq's proposal ''strikes the right balance'' in deterring issuers from violating the proposed listing standards without unnecessarily harming shareholders. *See* Wilson Sonsini Letter, at 3. Another commenter that was generally supportive of Nasdaq's proposal states that Nasdaq's proposed delisting process involves the use of Listing Qualifications Panels and a Listing and Hearing Review Council with investor representatives. *See* Letter to Vanessa Countryman, Secretary, Commission, from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, dated April 3, 2023, at 4 n.13.

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2023–005, and should be submitted on or before July 6, 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 proposed Rule 5608(e) to (i) provide that the effective date of Rule 5608 would be October 2, 2023; and (ii) clarify, consistent with the requirements of Rule 10D–1 and the rule language as originally proposed, that each company is required to comply with its recovery policy for all incentive-based compensation received (as such term is defined in proposed Rule 5608(d)) by executive officers on or after October 2, 2023.[50] The changes in Amendment No. 1 provide greater clarity to the proposal. 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 additional clarification to Rule 5608(e) will ensure that the requirements of that Rule conform to the requirements of Rule 10D–1. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[51] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[52] that the proposed rule change (SR–NASDAQ–2023–005), 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.[53]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12757 Filed 6–14–23; 8:45 am]

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[50] *See* Amendment No. 1, *supra* note 5.

[51] 15 U.S.C. 78s(b)(2).

[52] 15 U.S.C. 78s(b)(2).

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97689; File No. SR–NYSEAMER–2023–14]

Self-Regulatory Organizations; NYSE American 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 811 of the NYSE American Company Guide To Establish Listing Standards Related to Recovery of Erroneously Awarded Incentive-Based Executive Compensation

June 9, 2023.

I. Introduction

On February 22, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Section 811 of the NYSE American Company Guide (''Company Guide'') 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 7, 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] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97054 (March 7, 2023), 88 FR 15466 (''Notice''). No comments were received in response to this Notice.

[4] *See* Securities Exchange Act Release No. 97361, 88 FR 26370 (April 28, 2023).

[5] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-nyseamer-2023-14/srnyseamer202314-201279-402762.pdf*. In Amendment No. 1, the Exchange (i) proposes to amend Section 801 of the Company Guide to make it clear, consistent with the language of proposed Section 811 of the Company Guide (''Section 811''), that every listed issuer is subject to Section 811 unless such issuer is eligible for an exemption set forth in that rule; (ii) amends proposed Section 811(b) to provide that the effective date of Section 811 would be October 2, 2023; and (iii) amends proposed Section 811(h) (Noncompliance with Section 811 (Erroneously Awarded Compensation)) (''Section 811(h)'') to provide that in the event of any failure by a listed issuer to comply with any requirement of Section 811, 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

1, listed companies must recover from current and former executive officers incentive-based compensation received 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 811 entitled ''Erroneously Awarded Compensation.'' Proposed Section 811 (the ''Rule'') mirrors the text of Rule 10D–1. Specifically, proposed Section 811 would require Exchange 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 1003(h) 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 811(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 811(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 811(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

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.

[8] *See* proposed Section 811(b) and (c).

[9] *See* proposed Section 1003(h).

[10] *See* proposed Section 811(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 811(c)(1)(ii).

[12] *See* proposed Section 811(c)(1)(iii).

[13] *See* proposed Section 811(c)(1)(iv).

[14] *See* proposed Section 811(c)(1)(v).

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-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 811(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 811(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 811(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 801 of the Company Guide (''Section 801'') to make clear, consistent with the language of proposed Section 811, that every listed issuer would be subject to proposed Section 811 unless such issuer is eligible for an exemption set forth in that rule.[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 801 to the requirements of proposed Section 811.[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 811, 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 811 is closely modeled on the provisions with respect to late filings set forth in Section 1007 of the Company Guide.[19] Specifically, the Exchange proposes to adopt proposed Section 1003(h) of the Company Guide (Noncompliance with Section 811 (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 Exchange would immediately commence delisting procedures with

[15] As described above, a 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 811). 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 811, as required by Rule 10D–1. *See* Adopting Release, *supra* note 7, and also definitions of ''incentive based compensation'' and ''received'' in proposed Section 811(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 10. The Exchange'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 811. Amendment No. 1 revised these cure period provisions so that they are now applicable to all incidents of noncompliance with Section 811 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 1003(h)(ii) 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 1003(h)(ii).

respect to all such listed securities.[21] Proposed Section 1003(h)(ii) 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 1010 of the Company Guide.[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 Company Guide, 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 1003(h)(ii) and (iii). Such listed issuer would not be eligible to follow the procedures outlined in Section 1009 of the Company Guide with respect to such a delisting determination, and any such listed issuer would be subject to delisting procedures as set forth in Section 1010 of the Company Guide. Section 1010 of the Company Guide (Procedures for Delisting and Removal) generally provides that whenever the Exchange determines that a class of securities should be removed from listing, it will follow the procedures contained in Part 12 of the Company Guide. Part 12 of the Company Guide (Procedures for Review of Exchange Listing Determinations) sets forth procedures for an issuer to request an independent review of determinations that prohibit or limit the continued listing of the issuer's securities on the Exchange by the Exchange's Listing Qualifications Panel, Committee for Review, or Board of Directors (as such terms are defined in Section 12 of the Company Guide).

[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 1003(h)(iii).

[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 1003(h)(iv).

[24] An issuer would not be eligible to follow the procedures outlined in Section 1009 of the Company Guide.

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See* proposed Section 1003(h)(iv).

[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, 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

Continued

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 811 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 811 require that a listed issuer recover the amount of erroneously awarded incentive-based compensation ''reasonably promptly.'' 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 . . .'' [43] 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, the Exchange 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.'' [44] 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.[45]

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 Exchange, in Amendment No. 1, is proposing that the effective date of Section 811 be October 2, 2023.[46] 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.[47] This is consistent with language in Rule 10D–1 and the Adopting Release, while also ensuring prompt implementation of this proposed rule.

With respect to a listed issuer that fails to comply with proposed Section 811, 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 1007 of the Company Guide.[48] The Commission believes that these procedures, as modified by Amendment No. 1, for listed issuers out of compliance with proposed Section 811, 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.[49] 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.

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fault of the executive officer for the accounting errors. The Senate Report also indicates that shareholders should not 'have to embark on costly 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, agreeing with the Commission's statement on the benefits of the recovery policy.

[43] *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.*

[44] *See* Amendment No. 1, *supra* note 5, at 5.

[45] *See* Adopting Release, *supra* note 7, 87 FR 73104.

[46] *See* Amendment No. 1, *supra* note 5, amending proposed Section 811(b).

[47] 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 811(e). *See also supra* notes 15–16 and accompanying text.

[48] *See supra* notes 19–26 and accompanying text.

[49] 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 15468–69. 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 811, 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.

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–NYSEAMER–2023–14 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–NYSEAMER–2023–14. 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–NYSEAMER–2023–14, and should be submitted on or before July 6, 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 801 to make it clear that, consistent with the language of proposed Section 811, every listed issuer is subject to Section 811 unless such issuer is eligible for an exemption set forth in that rule; (ii) propose that the effective date of Section 811 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 811 an initial six-month cure period and an additional six-month cure period.[50] The changes in Amendment No. 1 provide greater clarity to the proposal. The changes to Section 801 will ensure that the requirements of that section of the Company Guide conform to the requirements of proposed Section 811. The change to the effective date of the listing standards is consistent with Rule 10D–1 and language in the Adopting Release. The change to the delisting procedures and the cure periods for non-compliance being proposed by the Exchange are similar to those that exist under the Exchange's rules for the late filing of annual and quarterly reports that the Commission has previously approved as consistent with the Act.[51] The amended proposal also provides for a cure period for any violations of Section 811 similar to the approach taken by Nasdaq in its proposal to adopt rules to comply with Rule 10D–1.[52] Nasdaq's proposal has also been approved by the Commission as consistent the Act.[53] Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[54] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

[50] *See* Amendment No. 1, *supra* note 5.

[51] *See* Section 1007 of the Company Guide.

[52] *See* Securities Exchange Act Release No. 97060 (March 7, 2023), 88 FR 15500 (March 13, 2023) (SR–Nasdaq–2023–005).

[53] *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).

[54] 15 U.S.C. 78s(b)(2).

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[55] that the proposed rule change (SR–NYSEAMER–2023–14), 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.[56]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12759 Filed 6–14–23; 8:45 am]

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[55] 15 U.S.C. 78s(b)(2).

[56] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97690; File No. SR–NYSEARCA–2023–20]

Self-Regulatory Organizations; NYSE Arca, Inc.; 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 NYSE Arca Rule 5.3–E(p) To Establish Listing Standards Related to Recovery of Erroneously Awarded Incentive-Based Executive Compensation

June 9, 2023.

I. Introduction

On February 24, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NYSE Arca Rule 5.3–E(p) 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]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97053 (March 7, 2023), 88 FR 15495 (''Notice''). No comments were received in response to this Notice.

[4] *See* Securities Exchange Act Release No. 97362, 88 FR 26370 (April 28, 2023).

On June 7, 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 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 NYSE Arca Rule 5.3–E(p) entitled ''Erroneously Awarded Compensation.'' Proposed NYSE Arca Rule 5.3–E(p) (''Rule 5.3–E(p)'' or the ''Rule'') mirrors the text of Rule 10D–1. Specifically, the Rule would require Exchange 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 Rule 5.3–E(p)(F) 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 Rule 5.3–E(p)(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.

[5] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2023-20/srnysearca202320-201299-402782.pdf*. In Amendment No. 1, the Exchange (i) amends proposed NYSE Arca Rule 5.3–E(p)(B) to provide that the effective date of proposed NYSE Arca Rule 5.3–E(p) would be October 2, 2023; (ii) amends proposed NYSE Arca Rule 5.3–E(p)(F) (Noncompliance with Rule 5.3–E(p) (Erroneously Awarded Compensation)) to provide that in the event of any failure by a listed issuer to comply with any requirement of proposed NYSE Arca Rule 5.3–E(p), the Exchange may at its sole discretion provide such issuer with an initial six-month cure period and an additional six-month cure period; and (iii) makes additional conforming changes to the description of the proposal.

[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.

[8] *See* proposed Rule 5.3–E(p)(B) and (C).

[9] *See* proposed Rule 5.3–E(p)(F).

[10] *See* proposed Rule 5.3–E(p)(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 Rule 5.3–E(p)(C)(1)(ii).

[12] *See* proposed Rule 5.3–E(p)(C)(1)(iii).

• 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 Rule 5.3–E(p)(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 Rule 5.3–E(p)(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-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 Rule 5.3–E(p)(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 Rule 5.3–E(p)(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 Rule 5.3–E(p)(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 Rule 5.3–E to make clear, consistent with the language of proposed Rule 5.3–E(p), that every listed issuer would be subject to proposed Rule 5.3–E(p) unless such issuer is eligible for an exemption set forth in that rule.[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 Rule 5.3–E to the requirements of proposed Rule 5.3–E(p).[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

[13] *See* proposed Rule 5.3–E(p)(C)(1)(iv).

[14] *See* proposed Rule 5.3–E(p)(C)(1)(v).

[15] As described above, a 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.* Rule 5.3–E(p)). 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 Rule 5.3–E(p), as required by Rule 10D–1. *See* Adopting Release, *supra* note 7, and also definitions of ''incentive based compensation'' and ''received'' in proposed Rule 5.3–E(p)(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.

in the event of any failure by such listed issuer to comply with any requirement of Rule 5.3–E(p), 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 Rule 5.3–E(p) is closely modeled on the compliance process for listed issuers delayed in submitting periodic reports to the Commission as set forth in section 802.01E of the NYSE Listed Company Manual and Section 1007 of the NYSE American Company Guide.[19] Specifically, the Exchange proposes to adopt proposed Rule 5.3–E(p)(F)(ii) 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 Exchange would immediately commence delisting procedures with respect to all such listed securities.[21]

Proposed Section Rule 5.3–E(p)(F)(ii) 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 Rule 5.5–E(a). 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 Exchange rules, 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.[24] 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.[25] 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.[26] 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.[27]

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.[28] In particular, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b) of the Act.[29] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[30] 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,[31] 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 [32] and Rule 10D–1 thereunder, as further described below.[33]

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.[34] The corporate governance standards embodied in the listing rules of national securities

[19] *See id.* at 10. The Exchange'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 Rule 5.3–E(p). Amendment No. 1 revised these cure period provisions so that they are now applicable to all incidents of noncompliance with Rule 5.3–E(p) 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 Rule 5.3–E(p)(F)(ii) 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 Rule 5.3–E(p)(F)(ii).

[21] *See* proposed Rule 5.3–E(p)(F)(i) and (iv). A listed issuer will be subject to the procedures outlined in NYSE Arca Rule 5.5–E(a) (Maintenance Requirements and Delisting Procedures) with respect to such a delisting determination. In addition, NYSE Arca Rule 5.5–E(m) provides that an issuer subject to a delisting determination generally has a right to an appeal hearing, subject to certain procedures.

[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 Rule 5.3–E(p)(F)(iii).

[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 Rule 5.3–E(p)(F)(iv).

[24] *See* proposed Rule 5.3–E(p)(F)(iii).

[25] *See* proposed Rule 5.3–E(p)(F)(ii) and (iii).

[26] *See* proposed Rule 5.3–E(p)(F)(iii).

[27] *See* proposed Rule 5.3–E(p)(F)(iv).

[28] 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).

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78(b)(7).

[32] 15 U.S.C. 78j–4.

[33] 17 CFR 240.10D–1.

[34] *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).

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.[35]

In enacting section 10D of the Act,[36] 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.[37] In October 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 Rule 5.3–E(p) 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[38] and Rule 10D–1 thereunder,[39] and will therefore further the protection of investors consistent with section 6(b)(5) of the Act.[40] 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.[41] 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 the proposed Rule require that a listed issuer recover the amount of erroneously awarded incentive-based compensation ''reasonably promptly.'' 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 . . .''[42] 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, the Exchange 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.''[43] 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.[44]

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 Exchange, in Amendment No. 1, is proposing that the effective date of the Rule be October 2, 2023.[45] 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.[46] This is consistent with language in Rule 10D–1 and the Adopting Release, while also ensuring prompt implementation of this proposed rule.

With respect to a listed issuer that fails to comply with proposed Rule 5.3–E(p), the Exchange has proposed delisting procedures that are closely modeled on the compliance process for listed issuers delayed in submitting periodic reports to the Commission as set forth in Section 802.01E of the NYSE

[35] *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.).

[36] Publish Law 111–203, 954, 124 Stat. 1376, 1904 (2010) (codified at 15 U.S.C. 78j–4).

[37] 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 legal expenses to recoup their losses' and that 'executives must return monies that should belong to the shareholders.' '').

[38] 15 U.S.C. 78j–4.

[39] 17 CFR 240.10D–1.

[40] 15 U.S.C. 78f(b)(5).

[41] *See* Adopting Release, *supra* note 7, 87 FR at 73077. *See also* Amendment No. 1, *supra* note 5, at 12, agreeing with the Commission's statement on the benefits of the recovery policy.

[42] *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.*

[43] *See* Amendment No. 1, *supra* note 5, at 5.

[44] *See* Adopting Release, *supra* note 7, 87 FR 73104.

[45] *See* Amendment No. 1, *supra* note 5, amending proposed Rule 5.3–E(p)(B).

[46] 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 Rule 5.3–E(p)(E). *See also supra* notes 15–16 and accompanying text.

Listed Company Manual and Section 1007 of the NYSE American Company Guide.[47] The Commission believes that these procedures, as modified by Amendment No. 1, for listed issuers out of compliance with proposed Rule, which are consistent with the procedures for filing delinquencies as set forth in the NYSE Listed Company Manual and the NYSE American Company Guide, 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.[48] 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.

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–NYSEARCA–2023–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–20. 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–NYSEARCA–2023–20, and should be submitted on or before July 6, 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) propose that the effective date of proposed Rule 5.3–E(p) be October 2, 2023; (ii) allow the Exchange, in its sole discretion, to provide a listed issuer that fails to comply with any requirement of proposed Rule 5.3–E(p), an initial six-month cure period and an additional six-month cure period; and (iii) make additional conforming changes to the description of the proposal.[49] The changes in Amendment No. 1 provide greater clarity to the proposal. The change to the effective date of the listing standards is consistent with Rule 10D–1 and language in the Adopting Release. The changes to the delisting procedures and the cure periods for non-compliance being proposed by the Exchange are similar to those that exist under the rules of other national securities exchanges for the late filing of annual and quarterly reports that the Commission has previously approved as consistent with the Act.[50] The amended proposal also provides for a cure period for any violations of Rule 5.3–E(p) similar to the approach taken by Nasdaq in its proposal to adopt rules to comply with Rule 10D–1.[51] Nasdaq's proposal has also been approved by the Commission as consistent the Act.[52] Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Exchange Act,[53] 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,[54] that the proposed rule change (SR–NYSEARCA–2023–20), 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.[55]

Sherry R. Haywood,

Assistant Secretary.

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[47] *See supra* notes 19–27 and accompanying text.

[48] 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, 88 FR at 15478–79. 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 Rule 5.3–E(p), 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.

[49] *See* Amendment No. 1, *supra* note 5.

[50] *See* Section 802.01E of the NYSE Listed Company Manual and Section 1007 of the NYSE American Company Guide.

[51] *See* Securities Exchange Act Release No. 97060 (March 7, 2023), 88 FR 15500 (March 13, 2023) (SR–Nasdaq–2023–005).

[52] *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).

[53] 15 U.S.C. 78s(b)(2).

[54] 15 U.S.C. 78s(b)(2).

[55] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97679; File No. SR–CBOE–2023–020]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Make the Nonstandard Expirations Pilot Program Permanent

June 9, 2023.

On April 11, 2023, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent the operation of its pilot program that permits the Exchange to list broad-based index options with nonstandard expirations. The proposed rule change was published for comment in the **Federal Register** on May 1, 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 15, 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 30, 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–2023–020).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12753 Filed 6–14–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97694; File No. SR–NYSEAMER–2023–31]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the NYSE American Options Fee Schedule

June 9, 2023.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on June 1, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE American Options Fee Schedule (''Fee Schedule'') regarding a rebate for Qualified Contingent Cross (''QCC'') transactions. The Exchange proposes to implement the fee change effective June 1, 2023. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to offer Floor Brokers an additional incentive for executing QCC transactions.[4] The Exchange proposes to implement the rule change on June 1, 2023.

Section I.F. of the Fee Schedule sets forth fees and credits applicable to QCC transactions.[5] Currently, Floor Brokers may earn a credit of ($0.12) per contract for QCC transactions of a Customer or Professional Customer vs. a Market Maker, Firm, or Broker Dealer, and a credit of ($0.18) per contract for QCC transactions of a Market Maker, Firm, or Broker Dealer vs. a Market Maker, Firm, or Broker Dealer.

The Exchange proposes to modify Section I.F. to add a QCC Billable Bonus Rebate (the ''Rebate'') for Floor Brokers' QCC transactions. Specifically, the Exchange proposes that the Rebate would provide Floor Brokers that achieve (1) 1 million manual billable sides in a month and (2) 3 million QCC billable contracts in a month with a rebate of ($0.02) per two billable side QCC contract, payable on a monthly basis.

Although the Exchange cannot predict with certainty whether the proposed change would encourage Floor Brokers to increase their manual billable volume or QCC billable volume on the Exchange, the proposed change is designed to continue to incentivize Floor Brokers to do so in order to earn an additional rebate on QCC two billable side volume. All Floor Brokers would be eligible to qualify for the Rebate, as proposed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[7] in particular,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97371 (April 25, 2023), 88 FR 26621.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A QCC is defined as an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-options contracts, that is identified as being part of a qualified contingent trade (as that term is defined in Commentary .01 to Rule 900.3NY), coupled with a contra side order or orders totaling an equal number of contracts. *See* Rule 900.3NY(y).

[5] *See* Fee Schedule, Section I.F. (QCC Fees & Credits).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[9] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in April 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[10]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed Rebate is reasonable because it is designed to continue to incent Floor Brokers to increase their manual billable volume and QCC billable contracts executed on the Exchange. The Exchange notes that all market participants stand to benefit from any increase in volume, which could promote market depth, facilitate tighter spreads and enhance price discovery, particularly to the extent the proposed change encourages market participants to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants.

Finally, to the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as market participants can choose to direct their order flow to any of the 16 options exchanges, including those offering rebates on QCC transactions.[11] The Exchange believes that proposed rule change is designed to continue to incent Floor Brokers to direct liquidity to the Exchange, and, to the extent they continue to be incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for all market participants.

The Proposed Rule Change Is an Equitable Allocation of Fees and Credits

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange, and Floor Brokers can choose to execute manual billable transactions and QCC billable transactions to earn the proposed Rebate or not. The Exchange also believes that the proposed Rebate is an equitable allocation of fees and credits because it would be available to all Floor Brokers equally, and all Floor Brokers would be eligible to qualify for the Rebate based on achieving the same volume requirements. The Exchange further believes that the proposed change is equitable because it is intended to encourage the role performed by Floor Brokers in facilitating the execution of orders via open outcry, a function which the Exchange wishes to support for the benefit of all market participants.

To the extent that the proposed changes continue to incent ATP Holders to utilize the Exchange as a primary execution venue and attract more volume on the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed change is not unfairly discriminatory because the proposed Rebate is based on the amount and type of business transacted on the Exchange, and Floor Brokers are not obligated to execute billable manual or QCC volume. The Exchange also believes that the proposed change is not unfairly discriminatory to non-Floor Brokers because Floor Brokers serve an important function in facilitating the execution of orders on the Exchange, which the Exchange wishes to encourage and support to promote price improvement opportunities for all market participants.

Thus, the Exchange believes that, to the extent the proposed rule change would continue to improve market quality for all market participants on the Exchange by attracting more order flow to the Exchange, thereby improving market-wide quality and price discovery, the resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[9] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[10] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options was 8.14% for the month of April 2022 and 7.87% for the month of April 2023.

[11] *See, e.g.,* EDGX Options Exchange Fee Schedule, QCC Initiator/Solicitation Rebate Tiers (applying ($0.14) per contract rebate up to 999,999 contracts for QCC transactions when only one side of the transaction is a non-customer or ($0.22) per contract rebate up to 999,999 contracts for QCC transactions with non-customers on both sides); BOX Options Fee Schedule at Section IV.D.1. (QCC Rebate) (providing for ($0.14) per contract rebate up to 1,499,999 contracts for QCC transactions when only one side of the QCC transaction is a broker-dealer or market maker or ($0.22) per contract rebate up to 1,499,999 contracts for QCC transactions when both parties are a broker-dealer or market maker); Nasdaq ISE, Options 7, Section 6.B. (QCC Rebate) (offering rebates on QCC transactions of ($0.14) per contract when only one side of the QCC transaction is a non-customer or ($0.22) per contract when both sides of the QCC transaction are non-customers).

principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [12]

Intramarket Competition. The proposed change is designed to attract order flow to the Exchange. Specifically, the proposed change is intended to continue to incent Floor Brokers to direct manual billable volume and QCC billable volume to the Exchange by offering them a rebate on QCC billable volume, which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased manual billable and QCC billable transactions could increase opportunities for execution of other trading interest.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[13] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in April 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[14]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees and credits in a manner designed to continue to incent Floor Brokers to direct trading interest (particularly manual billable volume and QCC billable volume) to the Exchange, to provide liquidity, and to attract order flow. To the extent that Floor Brokers are encouraged to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues, including those that offer rebates on QCC transactions.[15] In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEAMER–2023–31 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–NYSEAMER–2023–31. 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

[12] *See* Reg NMS Adopting Release, *supra* note 8, at 37499.

[13] *See* note 9, *supra.*

[14] *See* note 10, *supra.*

[15] *See* note 11, *supra.*

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2023–31 and should be submitted on or before July 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12764 Filed 6–14–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97682; File No. SR–NYSEARCA–2023–41]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

June 9, 2023.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 1, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding credits for Qualified Contingent Cross (''QCC'') transactions. The Exchange proposes to implement the fee change effective June 1, 2023. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to modify a credit offered to qualifying Submitting Brokers for QCC transactions.[4] The Exchange proposes to implement the rule change on June 1, 2023.

Currently, the Exchange offers Submitting Brokers a credit of ($0.22) per contract for Non-Customer vs. Non-Customer QCC transactions or ($0.16) per contract for Customer vs. Non-Customer QCC transactions.[5] QCC executions in which a Customer is on both sides of the QCC trade are not eligible for a credit.[6] In addition, Submitting Brokers who achieve 3 million QCC contracts in a month currently receive an additional ($0.02) credit on Customer vs. Non-Customer QCC transactions, and an additional ($0.06) credit on Non-Customer vs. Non-Customer QCC transactions.

The Exchange now proposes to increase the credit on Non-Customer vs. Non-Customer QCC transactions for those Submitting Brokers that achieve the 3 million monthly QCC contract requirement from ($0.06) to ($0.08).[7] The proposed ($0.08) credit will continue to be applicable back to the first QCC contract executed by a Submitting Broker in a month and will not be cumulative across tiers.[8]

Although the Exchange cannot predict with certainty whether the proposed change would encourage Submitting Brokers to increase their QCC volume, the proposed change is intended to continue to incentivize additional QCC executions by Submitting Brokers by increasing the credits available on certain such orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [11]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[12] Therefore, no exchange possesses

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A QCC Order is defined as an originating order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade coupled with a contra-side order or orders totaling an equal number of contracts. *See* Rule 6.62P–O(g)(1)(A).

[5] *See* Fee Schedule, QUALIFIED CONTINGENT CROSS (''QCC'') TRANSACTION FEES AND CREDITS.

[6] *See id.*

[7] The Exchange notes that the proposed change does not impact the applicability of Endnote 17, which provides that Submitting Broker QCC credits and Floor Broker rebates earned through the Manual Billable Rebate Program may not combine to exceed $2,000,000 per month per firm. *See* Fee Schedule, Endnote 17.

[8] The Exchange currently offers an additional ($0.01) credit on Customer vs. Non-Customer QCC transactions and an additional ($0.03) credit on Non-Customer vs. Non-Customer QCC transactions to Submitting Brokers that achieve 1.5 million QCC contracts in a month. The Exchange does not propose any changes to these credits or qualifying requirements. As is currently the case, the additional QCC credits available to Submitting Brokers that achieve 1.5 million QCC contracts in a month and those available to Submitting Brokers that achieve 3 million QCC contracts in a month are not cumulative across qualifying tiers. For example, a Submitting Broker who transacts 3.1 million QCC contracts in a month would be eligible for an additional ($0.08) credit on Non-Customer vs. Non-Customer QCC transactions, as proposed, but would not also earn the additional credits offered to Submitting Brokers that achieve 1.5 million QCC contracts in a month.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[12] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in April 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[13]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed change is reasonable because it is designed to incent OTP Holders to increase the number of QCC transactions sent to the Exchange by offering an increased credit on QCC transactions for Submitting Brokers that meet a requisite volume threshold. In addition, the Exchange believes it is reasonable to offer a higher additional credit on Non-Customer vs. Non-Customer QCC transactions than on Customer vs. Non-Customer QCC transactions because Non-Customer vs. Non-Customer QCC transactions are billable on both sides, whereas Customer vs. Non-Customer QCC transactions are billable on one side only. To the extent that the proposed change attracts more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume entered by Submitting Brokers, which could promote market depth, facilitate tighter spreads and enhance price discovery, to the extent the proposed change encourages OTP Holders to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants.

Finally, to the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges, including those offering rebates on QCC transactions.[14] The proposed rule change is designed to continue to incent OTP Holders to direct liquidity and, in particular, QCC transactions to the Exchange. In addition, to the extent OTP Holders are incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed change is based on the amount and type of business transacted on the Exchange, and Submitting Brokers can attempt to submit QCC transactions to earn the additional credit or not. In addition, the proposed credit is equally available to all qualifying Submitting Brokers. To the extent the proposed change continues to incent Submitting Brokers to direct increased liquidity to the Exchange, all market participants would benefit from enhanced opportunities for price improvement and order execution. Moreover, the proposed credit is designed to incent Submitting Brokers to encourage OTP Holders to aggregate their executions—including QCC transactions—at the Exchange as a primary execution venue. To the extent that the proposed change achieves its purpose in attracting more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed change is not unfairly discriminatory because the proposed credit on QCC transactions would be available to all qualifying Submitting Brokers on an equal and non-discriminatory basis. The proposed change is based on the amount and type of business transacted on the Exchange, and Submitting Brokers are not obligated to execute QCC transactions. Rather, the proposal is designed to encourage Submitting Brokers to increase QCC volume sent to the Exchange and to utilize the Exchange as a primary trading venue for all transactions (if they have not done so previously). To the extent that the proposed change attracts more QCC transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would 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, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in

[13] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchange's market share in equity-based options decreased from 12.94% for the month of April 2022 to 12.54% for the month of April 2023.

[14] *See, e.g.,* EDGX Options Exchange Fee Schedule, QCC Initiator/Solicitation Rebate Tiers (applying ($0.14) per contract rebate up to 999,999 contracts for QCC transactions when only one side of the transaction is a non-customer or ($0.22) per contract rebate up to 999,999 contracts for QCC transactions with non-customers on both sides); BOX Options Fee Schedule at Section IV.D.1. (QCC Rebate) (providing for ($0.14) per contract rebate up to 1,499,999 contracts for QCC transactions when only one side of the QCC transaction is a broker-dealer or market maker or ($0.22) per contract rebate up to 1,499,999 contracts for QCC transactions when both parties are a broker-dealer or market maker); Nasdaq ISE, Options 7, Section 6.B. (QCC Rebate) (offering rebates on QCC transactions of ($0.14) per contract when only one side of the QCC transaction is a non-customer or ($0.22) per contract when both sides of the QCC transaction are non-customers).

furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [15]

Intramarket Competition. The proposed change is designed to attract additional QCC transactions to the Exchange, which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased QCC transactions could increase opportunities for execution of other trading interest. The proposed credit would be available to all similarly-situated Submitting Brokers that execute QCC trades and achieve the applicable volume threshold.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[16] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in April 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[17]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent OTP Holders to direct trading interest (particularly QCC transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that Submitting Brokers are incentivized to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

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 credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment. The Exchange further believes that the proposed changes could promote competition between the Exchange and other execution venues, including those that currently offer credits on QCC transactions, by encouraging additional orders (and, in particular, QCC transactions) to be sent to the Exchange for execution.[18]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A) [19] of the Act and subparagraph (f)(2) of Rule 19b–4 [20] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–41. 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

[15] *See* Reg NMS Adopting Release, *supra* note 11, at 37499.

[16] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[17] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchange's market share in equity-based options decreased from 12.94% for the month of April 2022 to 12.54% for the month of April 2023.

[18] *See* note 14, *supra.*

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(2).

[21] 15 U.S.C. 78s(b)(2)(B).

SR–NYSEARCA–2023–41 and should be submitted on or before July 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12755 Filed 6–14–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97691; File No. SR–NYSECHX–2023–09]

Self-Regulatory Organizations; NYSE Chicago, Inc.; 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 NYSE Chicago Rule 29 To Establish Listing Standards Related to Recovery of Erroneously Awarded Incentive-Based Executive Compensation

June 9, 2023.

I. Introduction

On February 22, 2023, NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Rule 29 to Article 22 of the NYSE Chicago Rules (''NYSE Chicago Rule 29'') 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 7, 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 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 NYSE Chicago Rule 29 entitled ''Erroneously Awarded Compensation.'' Proposed NYSE Chicago Rule 29 (the ''Rule'') mirrors the text of Rule 10D–1. Specifically, the Rule would require Exchange 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 NYSE Chicago Rule 29(f) 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 NYSE Chicago Rule 29(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

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97052 (March 7, 2023), 88 FR 15476 (''Notice''). No comments were received in response to this Notice.

[4] *See* Securities Exchange Act Release No. 97363, 88 FR 26374 (April 28, 2023).

[5] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysechx-2023-09/srnysechx202309-201319-402803.pdf*. In Amendment No. 1, the Exchange (i) amends proposed NYSE Chicago Rule 29(b) to provide that the effective date of proposed NYSE Chicago Rule 29 would be October 2, 2023; and (ii) amends proposed NYSE Chicago Rule 29(f) (Noncompliance with Rule 29 (Erroneously Awarded Compensation)) to provide that in the event of any failure by a listed issuer to comply with any requirement of proposed NYSE Chicago Rule 29, 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.

[8] *See* proposed NYSE Chicago Rule 29(b) and (c).

[9] *See* proposed NYSE Chicago Rule 29(f).

[10] *See* proposed NYSE Chicago Rule 29(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.

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 NYSE Chicago Rule 29(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 NYSE Chicago Rule 29(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-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 NYSE Chicago Rule 29(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 NYSE Chicago Rule 29(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

[11] *See* proposed NYSE Chicago Rule 29(c)(1)(ii).

[12] *See* proposed NYSE Chicago Rule 29(c)(1)(iii).

[13] *See* proposed NYSE Chicago Rule 29(c)(1)(iv).

[14] *See* proposed NYSE Chicago Rule 29(c)(1)(v).

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 NYSE Chicago Rule 29(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 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.[17]

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 the Rule, 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 the Rule is closely modeled on the compliance process for listed issuers delayed in submitting periodic reports to the Commission as set forth in Section 802.01E of the NYSE Listed Company Manual and Section 1007 of the NYSE American Company Guide.[18]

Specifically, the Exchange proposes to adopt proposed NYSE Chicago Rule 29(f) to provide that a listed issuer that is out of compliance with the Rule [19] 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 Exchange would immediately commence delisting procedures with respect to all such listed securities.[20] Proposed NYSE Chicago Rule 29(f)(iii) 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.[21] 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,[22] commence suspension and delisting procedures in accordance with Article 22, Rule 4 of the NYSE Chicago Rules.[23] 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 Exchange rules, 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.[24] 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.[25] 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.[26] 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.[27]

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.[28] In particular, the

[15] As described above, a 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.,* NYSE Chicago Rule 29). 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 the Rule, as required by Rule 10D–1. *See* Adopting Release, *supra* note 7, and also definitions of ''incentive based compensation'' and ''received'' in proposed NYSE Chicago Rule 29(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 10. The Exchange'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 the Rule. Amendment No. 1 revised these cure period provisions so that they are now applicable to all incidents of noncompliance with Rule 29 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.

[19] Proposed NYSE Chicago Rule 29(f)(ii) 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 NYSE Chicago Rule 29(f)(ii).

[20] *See* proposed NYSE Chicago Rule 29(f)(i) and (iv). Such listed issuer would not be eligible to follow the procedures outlined in Article 22, Rules 17A and 22 of the NYSE Chicago Rules with respect to such a delisting determination, and any such listed issuer would be subject to delisting procedures as set forth in Article 22, Rule 4 of the NYSE Chicago Rules. Article 22, Rule 4 (Removal of Securities) provides that an issuer subject to a delisting determination has a right to a hearing by a hearing officer, provided a written request for such a review is filed with the Secretary of the Exchange not later than 15 days following service of notice of the proposed delisting. *See* Article 22, Rule 4(c) of the NYSE Chicago Rules. Thereafter, an issuer may demand a review by the Executive Committee. *See* Article 22, Rule 4(e).

[21] 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 NYSE Chicago Rule 29(f)(iii).

[22] 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 NYSE Chicago Rule 29(f)(iv).

[23] An issuer would not be eligible to follow the procedures outlined in Article 22, Rules 17A and 22 of the NYSE Chicago Rules. *See* proposed NYSE Chicago Rule 29(f)(iii).

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] *See* proposed NYSE Chicago Rule 29(f)(iv).

[28] 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).

Commission finds that the proposed rule change is consistent with the requirements of section 6(b) of the Act.[29] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[30] 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,[31] 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 [32] and Rule 10D–1 thereunder, as further described below.[33]

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.[34] 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.[35]

In enacting section 10D of the Act,[36] 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.[37] In October 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 NYSE Chicago Rule 29 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 [38] and Rule 10D–1 thereunder,[39] and will therefore further the protection of investors consistent with section 6(b)(5) of the Act.[40] 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.[41] 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 NYSE Chicago Rule 29 require that a listed issuer recover the amount of erroneously awarded incentive-based compensation ''reasonably promptly.'' 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 . . .'' [42] 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, the Exchange 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

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78(b)(7).

[32] 15 U.S.C. 78j–4.

[33] 17 CFR 240.10D–1.

[34] *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).

[35] *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.).

[36] Public Law 111–203, 954, 124 Stat. 1376, 1904 (2010) (codified at 15 U.S.C. 78j–4).

[37] 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 legal expenses to recoup their losses' and that 'executives must return monies that should belong to the shareholders.' '').

[38] 15 U.S.C. 78j–4.

[39] 17 CFR 240.10D–1.

[40] 15 U.S.C. 78f(b)(5).

[41] *See* Adopting Release, *supra* note 7, 87 FR at 73077. *See also* Amendment No. 1, *supra* note 5, at 12, agreeing with the Commission's statement on the benefits of the recovery policy.

[42] *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.*

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.'' [43] 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.[44]

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 Exchange, in Amendment No. 1, is proposing that the effective date of the Rule be October 2, 2023.[45] 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.[46] This is consistent with language in Rule 10D–1 and the Adopting Release, while also ensuring prompt implementation of this proposed rule.

With respect to a listed issuer that fails to comply with the Rule, the Exchange has proposed delisting procedures that are closely modeled on the compliance process for listed issuers delayed in submitting periodic reports to the Commission as set forth in Section 802.01E of the NYSE Listed Company Manual and Section 1007 of the NYSE American Company Guide.[47] The Commission believes that these procedures, as modified by Amendment No. 1, for listed issuers out of compliance with the Rule, which are consistent with the procedures for filing delinquencies as set forth in the NYSE Listed Company Manual and the NYSE American Company Guide, 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.[48] 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.

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–NYSECHX–2023–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSECHX–2023–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSECHX–2023–09, and should be submitted on or before July 6, 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) propose that the effective date of the Rule would be October 2, 2023; and (ii) allow the Exchange, in its sole discretion, to provide a listed issuer that fails to comply with any requirement of the Rule, an initial six-month cure period and an additional six-month cure period.[49] The changes in Amendment No. 1 provide greater clarity to the proposal. The change to the effective date of the listing standards is consistent with Rule 10D–1 and language in the Adopting Release. The change to the delisting procedures and the cure periods for non-compliance being proposed by the Exchange are similar to those that exist under the rules of other national securities

[43] *See* Amendment No. 1, *supra* note 5, at 5.

[44] *See* Adopting Release, *supra* note 7, 87 FR 73104.

[45] *See* Amendment No. 1, *supra* note 5, amending proposed NYSE Chicago Rule 29(b).

[46] 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.

[47] *See supra* notes 18–26 and accompanying text.

[48] 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, 88 FR at 15478–79. 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 the Rule, 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.

[49] *See* Amendment No. 1, *supra* note 5.

exchanges for the late filing of annual and quarterly reports that the Commission has previously approved as consistent with the Act.[50] The amended proposal also provides for a cure period for any violations of the Rule similar to the approach taken by Nasdaq in its proposal to adopt rules to comply with Rule 10D–1.[51] Nasdaq's proposal has also been approved by the Commission as consistent the Act.[52] Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Exchange Act,[53] 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,[54] that the proposed rule change (SR–NYSECHX–2023–09), 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.[55]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12761 Filed 6–14–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17962 and #17963; IOWA Disaster Number IA–00123]

Administrative Declaration of a Disaster for the State of Iowa

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Iowa dated 06/08/2023.

Incident: The Hotel Davenport Apartments Building Collapse.

Incident Period: 05/28/2023.

DATES: Issued on 06/08/2023.

Physical Loan Application Deadline Date: 08/07/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 03/08/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Scott.

Contiguous Counties:

Iowa: Cedar, Clinton, Muscatine.

Illinois: Rock Island.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17962 U and for economic injury is 17963 0.

The States which received an EIDL Declaration # are Illinois, Iowa.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–12801 Filed 6–14–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17842 and #17843; California Disaster Number CA–00376]

Presidential Declaration Amendment of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–4699–DR), dated 04/03/2023.

Incident: Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 02/21/2023 and continuing.

DATES: Issued on 06/08/2023.

Physical Loan Application Deadline Date: 07/20/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of California, dated 04/03/2023, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): San Luis Obispo.

All contiguous counties have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–12805 Filed 6–14–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17852 and #17853; California Disaster Number CA–00380]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of California

AGENCY: Small Business Administration.

[50] *See* Section 802.01E of the NYSE Listed Company Manual and Section 1007 of the NYSE American Company Guide.

[51] *See* Securities Exchange Act Release No. 97060 (March 7, 2023), 88 FR 15500 (March 13, 2023) (SR–Nasdaq–2023–005).

[52] *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).

[53] 15 U.S.C. 78s(b)(2).

[54] 15 U.S.C. 78s(b)(2).

[55] 17 CFR 200.30–3(a)(12).

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA–4699–DR), dated 04/03/2023.

Incident: Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 02/21/2023 and continuing.

DATES: Issued on 06/08/2023.

Physical Loan Application Deadline Date: 06/05/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of California, dated 04/03/2023, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Plumas, Solano, Sonoma.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–12796 Filed 6–14–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12095]

Bureau of Political-Military Affairs; Statutory Debarment Under the Arms Export Control Act and the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment under the International Traffic in Arms Regulations (ITAR) on persons convicted of violating, or conspiracy to violate, the Arms Export Control Act (AECA).

DATES: Debarment imposed as of June 15, 2023.

FOR FURTHER INFORMATION CONTACT: Jae E. Shin, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State: *shinje@state.gov,* (202) 632–2107.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778(g)(4), restricts the Department of State from issuing licenses for the export of defense articles or defense services where the applicant, or any party to the export, has been convicted of violating the AECA or certain other statutes, enumerated in section 38 of the AECA, subject to a narrowly defined statutory exception. This provision establishes a presumption of denial for licenses or other approvals involving such persons. The Department refers to this restriction as a limitation on ''export privileges'' and implements this presumption of denial through section 127.11 of the ITAR.

In addition, section 127.7(b) of the ITAR provides for ''statutory debarment'' of any person who has been convicted of violating or conspiring to violate the AECA. Under this policy, persons subject to statutory debarment are prohibited from participating directly or indirectly in any activities that are regulated by the ITAR. Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States court, and as such the administrative debarment procedures outlined in part 128 of the ITAR are not applicable.

It is the policy of the Department of State that statutory debarment as described in section 127.7(b) of the ITAR lasts for a three-year period following the date of conviction and to prohibit that person from participating directly or indirectly in any activities that are regulated by the ITAR. Reinstatement from the policy of statutory debarment is not automatic, and in all cases the debarred person must submit a request to the Department of State and be approved for reinstatement from statutory debarment before engaging in any activities subject to the ITAR.

Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the statutory debarment. In response to a request for reinstatement from statutory debarment, the Department may determine either to rescind only the statutory debarment pursuant to section 127.7(b), or to both rescind the statutory debarment pursuant to section 127.7(b) of the ITAR and reinstate export privileges as described in section 127.11 of the ITAR. See 84 FR 7411 (March 4, 2019) for discussion of the Department's policy regarding actions to both rescind the statutory debarment and reinstate export privileges. The reinstatement of export privileges can be made only after the statutory requirements of section 38(g)(4) of the AECA have been satisfied.

Certain exceptions, known as transaction exceptions, may be made to this debarment determination on a case-by-case basis. However, such an exception may be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement from statutory debarment.

Pursuant to section 38(g)(4) of the AECA and section 127.7(b) and (c)(1) of the ITAR, the following persons, having been convicted in a U.S. District Court, are denied export privileges and are statutorily debarred as of the date of this notice (Name; Date of Judgment; Judicial District; Case No.; Month/Year of Birth):

Almendarez, Maria Guadalupe; May 10, 2022; Eastern District of Arkansas; 4:19–cr–00116; December 1980.

Bükey, Murat; a.k.a. Bukey, Murat; a.k.a. Murat, Recep; March 22, 2023; District of Columbia; 1:18–cr–00129; January 1971.

Cassidy, Kevin Jerome; September 13, 2022; District of Arizona; 2:18–cr–01236; December 1959.

Hamade, Usama Darwich; a.k.a. Hamade, Prince Sam; July 22, 2020; District of Minnesota; 0:15–cr–00237; December 1964.

Pierson, Andrew Scott; April 29, 2022; Eastern District of Arkansas; 4:19–cr–00116; May 1975.

Radionov, Ihor; August 27, 2021; Middle District of Florida; 8:20–cr–00308; January 1969.

Sery, Joe; September 19, 2022; Southern District of California; 3:21–cr–02898; June 1944.

Ugur, Arif; December 16, 2022; District of Massachusetts; 1:21–cr–10221; January 1969.

Veletanlic, Hany; January 27, 2020; Western District of Washington; 2:18–cr–00162; December 1983.

Wu, Tian Min; a.k.a. Wu, Bob; a.k.a. Wu, David; a.k.a. Sones, Graham; a.k.a. Wang, Edward; June 9, 2021; Central District of California; 2:17–cr–00081; April 1965.

At the end of the three-year period following the date of this notice, the above-named persons remain debarred unless a request for reinstatement from statutory debarment is approved by the Department of State.

Pursuant to section 120.1(c) of the ITAR, debarred persons are generally ineligible to participate in activities regulated under the ITAR. Also, under section 127.1(d) of the ITAR, any person who has knowledge that another person is ineligible pursuant to section 120.1(c)(2) of the ITAR may not, without disclosure to and written approval from the Directorate of Defense Trade Controls, participate, directly or indirectly, in any ITAR-controlled transaction where such ineligible person may obtain benefit therefrom or have a direct or indirect interest therein.

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in activities regulated by the ITAR, including any brokering activities and any export from or temporary import into the United States of defense articles, technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above and by citing the court case number where provided.

Jessica Lewis,

Assistant Secretary, Department of State.

[FR Doc. 2023–12789 Filed 6–14–23; 8:45 am]

BILLING CODE 4710–25–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36676]

New Jersey Transit Corporation—Acquisition Exemption—Norfolk Southern Railway Company in the Counties of Morris and Warren, N.J.

The New Jersey Transit Corporation (NJ Transit), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Norfolk Southern Railway Company (NSR) an approximately 9.15-mile portion of the property commonly known as the Washington Secondary Track in Morris and Warren Counties, N.J., from milepost 48.1 to milepost 57.25 (the Line). NJ Transit states that, under the proposed transaction, it would acquire ownership of the Line and NSR would retain an exclusive freight easement preserving NSR's ability to operate freight service on the entire Washington Secondary Track.[1]

NJ Transit states that usage of the Line will continue to be governed by the trackage rights agreement (the 1984 Agreement) between NJ Transit and NSR's predecessor, the Consolidated Rail Corporation.[2] According to NJ Transit, it is acquiring the property to support its commuter rail operations.

NJ Transit certifies that the proposed transaction does not involve a provision or agreement that would limit future interchange with a third-party connecting carrier. NJ Transit also certifies that, because it will not conduct any rail carrier operations on the Line, its projected annual revenues will not exceed $5 million and will not result in the creation of a Class I or Class II carrier.

NJ Transit states that it will consummate the proposed transaction following completion of the proceedings at the Board related to this notice and the related motion to dismiss. The earliest this transaction may be consummated is June 29, 2023, the effective date of the exemption (30 days after the verified notice of exemption was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than June 22, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36676, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on NJ Transit's representative, Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 450 7th Avenue, Suite 1401, New York, NY 10123.

According to NJ Transit, this action is categorically excluded from environmental reporting requirements under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: June 9, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2023–12807 Filed 6–14–23; 8:45 am]

BILLING CODE 4915–01–P

[1] NJ Transit also filed a motion to dismiss the notice of exemption on the grounds that the transaction does not require authorization from the Board. The motion to dismiss will be addressed in a subsequent Board decision.

[2] NJ Transit includes with its verified notice excerpts from the 1984 Agreement as well as documents implementing the current transaction.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0019]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 15 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on May 25, 2023. The exemptions expire on May 25, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2023–0019) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New

Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On April 18, 2023, FMCSA published a notice announcing receipt of applications from 15 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (88 FR 23724). The public comment period ended on May 18, 2023, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received one comment in this proceeding. However, the comment is outside the scope of this notice.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on relevant scientific information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety would likely be achieved by permitting each of these drivers to drive in interstate commerce, the Agency finds the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must report any crashes or accidents as defined in § 390.5T; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 15 exemption applications, FMCSA exempts the following drivers from the hearing standard; in § 391.41(b)(11), subject to the requirements cited above:

Kishawn Bordeau (IN)
Mark Brady (TN)
Brice Cunningham (OH)
Brett Garner (NC)
David Gonzalez (CT)
Donnie Hall (NC)
Charles Heitzman (OH)
Yisak Jemal (AZ)
Christopher Jones (MA)
Trent Lint (OH)
Julie Mackie (WA)
Robert Maxwell (OH)
Zenon Rodriquez (KY)
Maria Singleton (SC)
Brandon White (OH)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–12776 Filed 6–14–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0032]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 15 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on May 24, 2023. The exemptions expire on May 24, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, (FMCSA–2023–0032) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On April 19, 2023, FMCSA published a notice announcing receipt of applications from 15 individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (88 FR 24261). The public comment period ended on May 19, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel. The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. A summary of each applicant's seizure history was discussed in the April 19, 2023, **Federal Register** notice (88 FR 24261) and will not be repeated in this notice.

These 15 applicants have been seizure-free over a range of 27 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5T; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 15 exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition in § 391.41(b)(8), subject to the requirements cited above:

Jeffrey Baker (CA)
Robert Bennett (NY)
Karl Bohmuller (NC)
David Brown (FL)
John Carroll (HI)
Jean Daza (NJ)
Jerrid Hielscher (SD)
Brandon Kirby (CT)
Alexander Kumm (IL)
Armando Leandry (NJ)
Nicholas Liebe (WI)
Sheldon Martin (NY)
Robert Moseler (MI)
Tammy Snyder (NC)
Michael Urbshot (HI)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Number: DOT–OST–2023–0097]

Rural and Tribal Assistance Pilot Program

AGENCY: Build America Bureau, Department of Transportation.

ACTION: Notice of funding opportunity (NOFO), assistance listing #20.943.

SUMMARY: The Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law or BIL, created the Rural and Tribal Assistance Pilot Program (the Program) to provide early-stage development assistance for rural and tribal infrastructure projects. The Program will award grants for either the hiring of staff or the procurement of expert firms to provide financial, technical, and legal assistance; assistance with development-phase activities; and information regarding innovative financing best practices and case studies. Entities eligible for award include rural local governments or political subdivisions, states, Tribes, and the Department of Hawaiian Home Lands. The Build America Bureau (Bureau) will administer the Program. This Notice of Funding Opportunity (NOFO) makes $3.4 million available for awards under the Program. Assistance will be provided in the form of direct monetary grants for recipients to hire staff or procure advisory assistance. Procurements for and contracts with grantee-contracted advisors procured for this award must comply with the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as further described below.

SUPPLEMENTARY INFORMATION: Each section of this notice contains information and instructions relevant to the application process for the Program. All applicants should read this notice in its entirety so that they have the information they need to submit eligible applications.

Table of Contents

A. Program Description

The Infrastructure Investment and Jobs Act (Pub. L. 117–58) is a generational investment in the nation's transportation system. Section 21205 of Division B of the BIL (Rural and Tribal Infrastructure Advancement) creates a pilot program to provide grants to fund financial, technical, and legal assistance to states and rural and tribal communities. The grants are intended to augment organizational capacity in communities that may not have resources available to evaluate and develop projects that qualify for federal funding and financing programs.

This notice makes available a total of $3.4 million of funding for the first round of the Program, which is composed of funding appropriated for both Fiscal Years 2022 and 2023. Individual awards are expected to range from $150,000 up to the statutory limit of either $320,000 for FY 2022 funds or $360,000 for FY 2023 funds.[1] There is no local funding match required to participate in this Program.

The following is a sample list of tasks that would be eligible to be funded through the Program. This list is intended to serve as an example, and is not all-inclusive:

Financial services	Technical services	Legal services
Revenue forecasting	Project planning	Statutory and regulatory framework analysis
Economic assessments and cost-benefit analyses	Feasibility studies	Drafting and negotiation of concession agreements
Value for money analysis and procurement options	Environmental review and permitting	Drafting and negotiation of interagency agreements

[1] The BIL limits awards to any individual state to 20% of available funds for a single fiscal year. Therefore, the Department may make awards of up to $320,000 with FY 2022 funds and up to $360,000 with FY 2023 funds. See additional information in Section B below regarding the maximum award amount.

Financial services	Technical services	Legal services
Evaluating opportunities for private financing and project bundling Financial feasibility analysis; funding and financing options analysis Evaluation of costs to sustain the project (such as operations and maintenance costs)	Preliminary engineering and design Funding application assistance Public engagement Property development and land use feasibility analysis Public Benefit Studies Cost estimation	Procurement support

The intent of this Program is to advance transportation infrastructure projects in rural and tribal communities by supporting development-phase activities for projects reasonably expected to be eligible for certain USDOT credit and grant programs. However, there is no requirement for grantees to apply for other funding programs in the future.

The Department's Strategic Goals are Safety, Economic Strength and Global Competitiveness, Equity, Climate and Sustainability, Transformation, and Organizational Excellence.[2] The Bureau strongly encourages applicants to reflect these values in work funded under this Program and include consideration of the extent to which the proposed project may address the unique challenges rural and tribal communities face relative to these goals. Many projects may later be candidates for USDOT discretionary grants, which place considerable emphasis on these strategic goals. Considering the Strategic Goals early in project development will be very helpful in preparing for future discretionary grant applications.

B. Federal Award Information

This notice makes available a total of $3.4 million of funding for the first two years of the five-year Program (Fiscal Years 2022 and 2023). Individual awards are expected to range from $150,000 up to the program limit of $360,000. Actual amounts awarded will be based on the needs of each grantee and available funding. No more than twenty percent of available funds for a single fiscal year may be awarded for projects in a single state in this round of funding, capping the total award amount within any state—and, therefore, any single grant—at $320,000 for FY 2022 funds and $360,000 for FY 2023 funds. Therefore, grant requests greater than $320,000 will be considered only for FY 2023 funds; they will not be eligible to compete for FY 2022 funds. In order to be considered under the full funding amount available of $3.4 million, the grant request may not exceed $320,000.

Eligible applications will be reviewed, and grants will be provided, on a first-come, first-served basis as described in Section E. Application reviews will conclude once the full $3.4 million has been awarded. A non-Federal match is not required to participate in this Program.

Under this Program, it is anticipated that there will be a round of funding each fiscal year until FY 2026, with progressively more funding available each year. Each round of funding will be announced in a separate Notice of Funding Opportunity. Information about future funding opportunities will be available on the Bureau's website: *Transportation.gov/BuildAmerica/RuralandTribalGrants.*

The Department intends to issue grants to enable recipients to: (1) acquire the services of independent financial, technical, and legal advisors,[3] or (2) hire staff, in each case to provide development-phase assistance. A table providing examples of services for which recipients can hire staff or procure expert firms using awards under the Program is shown in Section A above.

Participation in this Program does not commit the recipient to apply for federal financial assistance programs in the future, nor does it confer extra consideration if the recipient applies in the future for additional funds for the same project.

Information on how to apply for the Program is found in Section D of this notice.

C. Eligibility Information

Applicants wishing to receive grants through this Program should submit applications to demonstrate:

- They are an eligible applicant under this Program, as described in Section C.1;
- The project(s) for which grant funding is being requested are otherwise eligible for funding or financing through the other USDOT programs described in Section C.3; and
- The proposed tasks are appropriate and stated cost(s) are adequate for the project(s) identified.

1. Eligible Applicants

Applicants for the Program must be one of the following:

i. a unit of local government or political subdivision that is located outside of an urbanized area [4] with a population of more than 150,000 residents as determined by the Bureau of the Census;

ii. a state seeking to advance a project in an area located outside of an urbanized area with a population of more than 150,000 residents as determined by the Bureau of the Census;

iii. a federally recognized Indian Tribe; or

iv. the Department of Hawaiian Home Lands.

2. Cost Sharing or Matching

There is no requirement for cost sharing or matching the grant funds in this Program.

3. Eligible Projects

Per the Program's requirements, projects receiving assistance under this Program must be reasonably expected to be eligible for any one or more of the Department's lending or grant programs described below. Because this Program provides assistance for development-phase activities, we anticipate that many projects may be in such early development phases that project costs, funding streams, delivery methods, and even the project descriptions themselves may not be fully formed. The Bureau will determine whether the project(s) proposed can reasonably be eligible for any of the programs discussed below to meet this funding Program's requirements. These applicable programs are TIFIA, RRIF, INFRA, RAISE, Mega, and the National Culvert Removal, Replacement, and Restoration Grant Program. Brief program descriptions, program links, and examples of projects eligible under each of these programs are shown below:

[2] FY 2022–26 USDOT Strategic Plan: *https://www.transportation.gov/dot-strategic-plan.*

[3] The procurement of, and contract for, advisors procured to provide services funded by this award must meet the requirements set forth in 2 CFR 200.317–327 and 2 CFR 200.459, including 2 CFR part 200 appendix II.

[4] Urbanized area listing should be drawn from the 2020 Census results. For 2020 Census results, visit: *https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html.*

TIFIA Credit Program: *http://www.transportation.gov/buildamerica/financing/tifia.*

The Transportation Infrastructure Finance and Innovation Act (TIFIA) Program provides credit assistance to finance up to 49 percent of eligible project costs for qualified projects, including:

- Highway and bridge projects;
- Public transportation projects;
- International bridges and tunnels;
- Intercity passenger bus or rail facilities and vehicles;
- Freight rail projects and intermodal freight transfer facilities;
- Certain projects located within the boundaries of a port terminal;
- Transit-oriented development projects; and
- Airport projects.

Minimum Anticipated Project Costs

- $10 million for transit-oriented development, local, and rural projects;
- $15 million for intelligent transportation system projects; and
- $50 million for all other eligible surface transportation projects.

RRIF Credit Program: *http://www.transportation.gov/buildamerica/financing/rrif.*

The Railroad Rehabilitation & Improvement Financing (RRIF) Program provides credit assistance to finance development of railroad infrastructure up to 100 percent of eligible project costs, including:

- Intermodal or railroad equipment or facilities;
- Landside port infrastructure for seaports serviced by rail;
- Refinancing of outstanding debt incurred for the above eligible projects;
- Planning, permitting, and design expenses relating to the above eligible projects; and
- Transit-oriented development projects.

Minimum Anticipated Project Costs

- There is no minimum project cost for the RRIF Program.

INFRA Grant Program: *www.transportation.gov/grants/infra-grants-program.*

INFRA (known statutorily as the Nationally Significant Freight & Highway Projects Program) awards competitive grants for multimodal freight and highway projects of national or regional significance to improve the safety, efficiency, and reliability of the movement of freight and people in and across rural and urban areas, including:

- Highway freight projects on the National Highway Freight Network (NHFN);
- Highway or bridge projects on the National Highway System;
- Freight intermodal project or freight rail projects;
- Freight projects that are within the boundaries of a public or private freight rail, water (including ports), or intermodal facility and are surface transportation infrastructure projects necessary to facilitate direct intermodal interchange, transfer, or access into or out of the facility;
- Highway-railway grade crossing or grade separation projects;
- Wildlife crossing projects;
- Surface transportation projects within the boundaries or functionally connected to an international border crossing that improves a facility owned by federal/state/local government and increases throughput efficiency; and
- Projects for a marine highway corridor that is functionally connected to the NHFN and is likely to reduce road mobile source emissions.

Minimum Anticipated Project Costs

- Small projects must have a total project cost of at least $6.25 million.

Mega Grant Program: *http://www.transportation.gov/grants/mega-grant-program.*

The Mega Program (known statutorily as the National Infrastructure Project Assistance Program) supports large, complex projects that are difficult to fund by other means and likely to generate national or regional economic, mobility, or safety benefits, including:

- Highway or bridge projects on the National Multimodal Freight Network;
- Highway or bridge projects on the NHFN;
- Highway or bridge projects on the National Highway System;
- Freight intermodal (including public ports) or freight rail projects that provide public benefit;
- Railway highway grade separation or elimination projects;
- Intercity passenger rail projects; and
- Public transportation projects that are eligible for assistance under 49 U.S.C. Chapter 53 and are a part of any of the project types described above.

Minimum Anticipated Project Costs

- $100 million.

RAISE Grant Program: *www.transportation.gov/RAISEgrants.*

The Rebuilding American Infrastructure with Sustainability and Equity, or RAISE, Discretionary Grant Program awards investments in surface transportation infrastructure that will have a significant local or regional impact. Eligible projects include:

- Capital projects including but not limited to:
  - Highway, bridge, or other road projects eligible under title 23, United States Code;
  - Public transportation projects eligible under chapter 53 of title 49, United States Code;
  - Passenger and freight rail transportation projects;
  - Port infrastructure investments (including inland port infrastructure and land ports of entry);
  - Surface transportation components of an airport;
  - Intermodal projects;
  - A project to replace or rehabilitate a culvert or prevent stormwater runoff for the purpose of improving habitat for aquatic species while advancing the goals of the RAISE program;
  - Projects investing in surface transportation facilities that are located on tribal land and for which title or maintenance responsibility is vested in the federal government; and
  - Any other surface transportation infrastructure project that the Secretary considers to be necessary to advance the goals of the program.
- Planning projects which include planning, preparation, or design (for example—environmental analysis, feasibility studies, and other pre-construction activities) of eligible surface transportation capital projects.

National Culvert Removal, Replacement, and Restoration Grant Program: *https://www.fhwa.dot.gov/engineering/hydraulics/culverthyd/aquatic/culvertaop.cfm.*

This program awards grants for the replacement, removal, and repair of culverts or weirs that meaningfully improve or restore fish passage for anadromous fish. Anadromous fish migrate upstream for breeding. Eligible project types include:

- Replacement, removal, or repair of culverts that would meaningfully improve or restore fish passage for anadromous fish.
- Replacement, removal, or repair of weirs that would meaningfully improve or restore fish passage for anadromous fish. With respect to weirs, the project may include—
- infrastructure to facilitate fish passage around or over the weir; and weir improvements

D. Application and Submission Information

1. Address To Request Application Package

Grant application materials, including the web-based application, can be accessed at *Transportation.gov/BuildAmerica/RuralandTribalGrants.* Applicants must use the web-based application form to submit their applications. Potential applicants may also request paper copies of materials for review at:

Telephone: (202) 366–4114.

Mail: U.S. Department of Transportation, 1200 New Jersey Avenue SE, W84–322, Washington, DC 20590.

General information for submitting applications can be found at *Transportation.gov/BuildAmerica/RuralandTribalGrants.*

2. Content and Form of Application Submission

i. Proposal Submission

Email, mail, and fax submissions will not be accepted. The web-based application form available at *Transportation.gov/BuildAmerica/RuralandTribalGrants* must be submitted electronically for grant funding consideration. Applicants should contact the Bureau in advance of the application deadline if they are experiencing issues submitting their application due to internet connectivity. Failure to submit the information as requested can disqualify the application.

The Rural and Tribal Assistance Pilot Program web-based application form includes guidance and provides a consistent format for applicants to respond to the criteria outlined in this notice. One web-based form must be submitted for each project being proposed under the Program. The maximum number of applications an applicant can submit is three. Unless indicated as optional, the application must include responses to all sections of the application form. The application will be used to determine applicant and project eligibility for the Program and the appropriateness of the proposed tasks and grant amount being requested by the applicant.

Applicants must fill in all fields unless stated otherwise on the form. Applicants should not place ''N/A'' in lieu of typing in responses in the field sections—except on questions where ''N/A'' is stated as an acceptable response. If information is copied into the web-based application form from another source, applicants should verify that the pasted text is fully captured and has not been truncated by the character limits built into the form. Complete instructions on the application process along with contact information for assistance with application submission and clarification on application questions can be found at *Transportation.gov/BuildAmerica/RuralandTribalGrants.* Compliance with all applicable federal laws and regulations must be accounted for.

ii. Application Content

The web-based application form will prompt applicants for required information, including, but not limited to, the following:

(a) Name of the applicant and type of applicant.

(b) Contact information including: Contact name, title, address, phone number, and email address.

(c) UEI (Unique Entity Identifier). If the applicant is not yet registered in *SAM.gov*, the applicant must be registered prior to submitting an application. A UEI will be issued free of charge upon registration. If the applicant is already registered in *SAM.gov* but has not received a UEI, the applicant can request one in *SAM.gov*.

(d) *Project Title:* Provide a brief, descriptive title of the project; *e.g.,* ''Widening of X Street from Avenue 1 to Avenue 7 in Y Community in Z State.''

(e) *Project Location:* Provide a description of the location of the project with enough identifiers that the Application Review Team can locate the project area using publicly-available map services.

(f) *Project Description:* Describe the overall project, including project type, features to be constructed, an estimate of the overall project cost, and a project schedule. If applicable, applicants should describe any anticipated overall project benefits such as increasing affordable transportation options, improving safety, connecting Americans to good-paying jobs, fighting climate change, or improving access to resources and quality of life.

(g) *Appropriateness of Requested Services:* (1) Describe in detail the task(s) to be completed with this Program funding, stating how these task(s)/services will materially advance the overall project. Include the estimated cost of the task(s) and the amount of Program funding requested. (2) Describe the project-related development activities already completed, and list data or information collected or activities conducted that are necessary for completing the task(s) funded through this Program.

(h) *Viability of Requested Services:* (1) If procuring advisory services, describe relevant experience procuring such services. For both the hiring of staff and procurement of advisory services, note if there will be additional funding committed to the project. Cite the source of the local funding commitment and the amount of local funding. (2) Confirm if a bid, quote, or estimate has been obtained for the proposed task(s).

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant must have completed the registration process on *SAM.gov* to establish its registration and obtain a valid Unique Entity Identifier (UEI) prior to submitting their application.

In addition, each applicant must continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. The Department may not make a grant to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Department is ready to make a grant, the Department may determine that the applicant is not qualified to receive a grant and use that determination as a basis for making a grant to another applicant.

4. Submission Dates and Timelines

After the application window opens, applications will be reviewed on a rolling (first-come, first-served) basis until available funding is expended or this notice is superseded by another notice. The application window will open on August 14, 2023, 60 days after publication of this notice. The link to the web-based application form on *Transportation.gov/BuildAmerica/RuralandTribalGrants* will open on August 14, 2023 and will remain open until July 31, 2023, a period of 45 days. As progress of completing the web-based application form cannot be saved and must be completed in a single session, a pdf version of the application form will be available at *Transportation.gov/BuildAmerica/RuralandTribalGrants* when this funding announcement is published. Funding may be fully committed before the application open period concludes. The Bureau will hold NOFO information session(s) before the application window opens. Information on these information sessions and other program updates will be available on *Transportation.gov/BuildAmerica/RuralandTribalGrants.*

5. Intergovernmental Review

Applications under this NOFO are not subject to the state review under E.O. 12372.

6. Funding Restrictions

Up to $3.4 million of funding is being made available during this round of funding. Funding for this Program come from funds made available to provide

credit assistance under the TIFIA program, but are limited to $1.6m for fiscal year 2022 and $1.8m for fiscal year 2023. No more than 20 percent of available funds may be awarded to projects in a single state in any one fiscal year. This requirement results in a capping of the total award amount within any state—and therefore, any single grant—at $320,000 for awards made from Fiscal Year 2022 funds and $360,000 for awards made from Fiscal Year 2023 funds. Therefore, grant requests greater than $320,000 will be considered only for FY 2023 funds; they will not be eligible to compete for FY 2022 funds. In order to be considered under the full funding amount available of $3.4 million, the grant request may not exceed $320,000.

$1.6 million of Program funds ($800,000 from each Fiscal Year) will be set aside for grants to tribal entities. Any of the funds set aside for this purpose that are not allocated within one month of the application close date will be allocated to any type of qualified applicant based on the order in which applications were received.

Expenses incurred prior to signature of the grant agreement are not eligible for reimbursement under this Program unless prior authorization is obtained from the Bureau in writing.

All procurements for, and contracts with, grantee-contracted advisors procured under this award must comply with the requirements set forth in 2 CFR 200.317–327 and 2 CFR 200.459, including 2 CFR part 200 appendix II.

7. Other Submission Requirements

To prepare for proposal submission, applicants should begin the process of registering with the System Award for Management (SAM) at *www.sam.gov* to obtain a valid Unique Entity Identifier (UEI). All registrations are free of charge. Please note that *SAM.gov*'s registration process can take multiple weeks to complete.

8. Consideration of Application

The Bureau will perform a compliance check of all received applications to ensure the application is complete and submitted in accordance with the NOFO instructions. Only eligible applicants who comply with all submission instructions described in this notice and submit applications through *Transportation.gov/BuildAmerica/RuralandTribalGrants* will be considered for award.

E. Application Review Information

The application review and selection process is outlined below. After the application window opens, grants will be made on a first-come, first-served basis. Eligible applicants are encouraged to submit applications as early as possible once the application period opens as applications will be reviewed in the order in which they are received.

1. Criteria

Applications deemed complete and eligible will be evaluated based on the two below criteria to determine the likelihood that the requested service(s) will materially advance the project and that the funds requested are likely to be sufficient to complete the task(s) and deliverable(s) identified in the application. Applications that are rated ''Meets'' in both criteria below will be recommended to the Under Secretary of Transportation for Policy for funding in the order they are received.

i. Criterion (1): Appropriateness of services requested: The Application Review Team will assess whether and to what extent the proposed tasks will materially advance the overall project identified in the application. The Application Review Team will consider:

- the current state of the project's development,
- whether the proposed tasks are appropriate for the current state of the project's development, and
- the likelihood that the requested services will materially advance the project's development.

The goal of this assessment is to ensure that the proposed tasks are appropriate for the project's current state of development and will have a material impact on the project's overall development. The rating categories are outlined in the table below.

Rating	Appropriateness criterion	Example
Does Not Meet	Requested services are either not helpful in advancing the project(s) or not appropriate for the project in its current state of development.	The services requested are not necessary or appropriate for the project's ultimate funding, financing, and delivery; The project description does not provide information on the overall project's need or specific challenges it will address; or The services requested would require information or data that is not yet available because other activities, such as cost estimating, design, or market studies would be needed prior to procuring the requested services, and the applicant has not described a reasonable plan to complete those activities before receiving services.
Meets	Likely to advance the project(s)	It is reasonably likely that the services requested will demonstrably advance the project; or It is probable that the necessary information or data needed for this task is available at this point in the project(s) development.

ii. Criterion (2): Viability of grant funds requested: The Application Review Team will assess whether and to what extent the funding package (made up of funding requested through this Program and local funding commitment, if any) is likely to result in fully funding and completing the specified task(s) while also providing the deliverable(s) necessary to materially advance the project(s). The Team will consider:

- for applicants seeking to procure advisory services: whether the applicant has obtained bids or quotes for the requested services, and the applicant's experience procuring advisory services in the past,
- for applicants seeking to hire staff for this task: their organization's hiring process (*i.e.* do they have a defined job description for this task, process for recruitment), and
- the source and amount of funding the applicant intends to commit (if any) as a contribution to the overall cost of the services being proposed. (The addition of local funding will not influence the rating of this criterion).

The goal of this assessment is to ensure that the funding plan, including the funding requested in the application, and the staffs' experience in procuring advisory services or efficiency in hiring staff are adequate to complete the task(s) proposed and to achieve the deliverable(s) necessary to advance the project.

Rating	Viability criterion	Example
Does Not Meet	It is either unclear or unlikely that the funding package[5] is appropriate for completing the task(s) and deliverable(s) identified in the application.	There is little or no evidence that the applicant has (a) either previous procurement experience or an efficient process for hiring staff, (b) the capacity to estimate the cost for the services identified in the application, or (c) obtained a reasonable estimate or quote for the services identified; or The funding package, to include any local funding contribution, will not produce a completed task(s) or deliverable(s) identified in the application.
Meets	It is likely that the funding package[5] is appropriate for completing the task(s) and deliverable(s) identified in the application.	The applicant has provided evidence sufficient to determine that it is likely that it has the experience or capacity to accurately estimate the services identified in the application; or The applicant has provided sufficient cost estimates or quotes to conclude that it is likely the funding requested will result in a completed task(s) or deliverable(s) identified in the application.

2. Review and Selection Process

An Application Review Team composed of Department staff will screen applications in the order they are received. This initial review will cover completeness (see Section D for more information), eligibility of the applicant (see Section C.1), and the eligibility of the project(s) being proposed (see Section C.3).

For those applications deemed complete and eligible, the Application Review Team will review them based on criteria shown in Section E.1 above. Applications that receive ''Meets'' for both scoring criteria will be recommended for award to the Under Secretary of Transportation for Policy, along with the recommended grant amount, which may be less than the requested grant amount. Recommended grant amounts could differ from the requested grant amount due to the availability of grant funding remaining. Among recommended applications, awards will be made on a first-come, first-served basis (implemented based on the day and time the application is received by USDOT) until available funding is exhausted. If multiple recommended applications are received on the same day, they will be reviewed in the order they were received, as noted by the timestamp given to applications when they are submitted.

3. Integrity and Performance System Reporting

USDOT, prior to making an award under this Program with a total amount of federal share greater than the simplified acquisition threshold of $250,000, is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (*see* 41 U.S.C. 2313).

An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM.

USDOT will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.206.

F. Federal Award Administration Information

1. Federal Award Notices

The Bureau will provide applicants that submitted a complete application for a grant under this Program with a notice describing whether the application is approved or disapproved no later than 60 days after the date on which a complete application was received.

Not later than 30 days after the above notification, if the application is disapproved, the Bureau will offer a written or telephonic debrief to provide an explanation of, and guidance regarding, the reasons why the application was not approved.

The Bureau will publish an online report, updated monthly, that includes information on applications received, entity type, location of the potential project, a brief description of the assistance requested, the date on which the application was received, and the date on which the applicant was provided the notice of approval or disapproval. Applicants to the Program must agree to publication of this information as a condition of applying.

Selected applications will be formalized through the development of a grant agreement between the grantee and the Bureau. Grants are reimbursable, meaning that the recipient will be reimbursed after-the-fact for agreed-upon eligible expenses as set forth in the grant agreement. The recipient may request reimbursement from the Government on a monthly basis for eligible expenses incurred. Expenses incurred prior to signature of the grant agreement are not eligible for reimbursement under this Program, unless prior authorization is obtained from the Bureau in writing.

2. Administration and National Policy Requirements

Performance under this Program will be governed by and in compliance with the following requirements as applicable to the type of organization of the recipient and any applicable sub-recipients.

It is the policy of USDOT to reflect Administration priorities and incorporate criteria related to climate change and sustainability, racial equity including environmental justice, critical infrastructure security and resilience, Title VI and other federal Civil Rights laws, and barriers to opportunity, labor, and workforce in its grant programs, to the extent possible and consistent with law. Considering the Strategic Goals early in project development will be very helpful in preparing for future discretionary grant applications. As such, in developing grant agreements with grantees, the Bureau will work to incorporate these Strategic Goals in project development activities under this Program.

All awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR part 200, as adopted by USDOT at 2 CFR part 1201.

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, recipients of funds must comply with all applicable requirements of federal law, including, without limitation, the Constitution of the United States statutory, regulatory, and public policy

[5] The funding package is made up of the funding requested through this Program and the local funding commitment, if any.

requirements, including without limitation, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination; the conditions of performance, non-discrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of the Department of Transportation; and applicable federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, recipients must ensure that no concession agreements are denied, or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If the Bureau determines that a recipient has failed to comply with applicable federal requirements, the Bureau may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds.

As a condition of grant award, grant recipients may be required to participate in an evaluation undertaken by DOT or another agency or partner. The evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. DOT may require applicants to collect data elements to aid the evaluation and/or use information available through other reporting. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor or DOT staff; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or DOT staff.

Recipients and subrecipients are also encouraged to incorporate program evaluation including associated data collection activities from the outset of their program design and implementation to meaningfully document and measure their progress towards meeting an agency priority goal(s). Title I of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), Public Law 115–435 (2019) urges Federal awarding agencies and Federal assistance recipients and subrecipients to use program evaluation as a critical tool to learn, to improve equitable delivery, and to elevate program service and delivery across the program lifecycle. Evaluation means ''an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency.'' 5 U.S.C. 311. Credible program evaluation activities are implemented with relevance and utility, rigor, independence and objectivity, transparency, and ethics (OMB Circular A–11, Part 6 Section 290).

For grant recipients receiving an award, evaluation costs are allowable costs (either as direct or indirect), unless prohibited by statute or regulation, and such costs may include the personnel and equipment needed for data infrastructure and expertise in data analysis, performance, and evaluation. (2 CFR part 200).

3. Reporting

Accepting an award commits the recipient to participation in reporting and oversight of the project. This section discusses reporting requirements of the Program.

i. Periodic Reporting

Grantees will be required to make regular reports to the Bureau contracting officer and technical representatives. Exact reporting requirements will be articulated in the grant agreement. Monthly progress meetings or calls are expected to be held, during which the Bureau will review project activities, schedule, and progress toward mutually agreed upon performance targets. Written reports are also expected, likely on a quarterly basis.

In addition to regular reporting, each grant recipient Program must submit a grant closeout report as set forth in the grant agreement to ensure accountability and financial transparency in the Program.

ii. Performance Reporting of Advisor Performance

Each applicant selected for grant funding must collect and report to the Bureau information on the status of the services funded with this grant award. The specific performance information and reporting period will be determined on an individual basis and will be reflected in each grant agreement.

iii. Advisor Approval

All procurements and contracts for grantee-contracted advisors procured for this award to must comply with the requirements set forth in 2 CFR 200.317–327 and 2 CFR 200.459, including 2 CFR part 200 appendix II. Failure to comply with the part 200 requirements regarding contractors and failure to obtain written approval prior to subcontracting may result in costs being deemed ineligible for reimbursement.

iv. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this federal award, then the applicant during that period of time must maintain the currency of information reported to the SAM that is made available in the designated integrity and performance system (currently FAPIIS) about civil, criminal, or administrative proceedings. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance review required for federal procurement contracts, will be publicly available.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact the Bureau via email at *RuralandTribalTA@dot.gov* or call Susan Wilson at 202–366–0765. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, the Bureau will post answers to questions and requests for clarifications on the Bureau's website at *Transportation.gov/BuildAmerica/RuralandTribalGrants.* To ensure applicants receive accurate information about eligibility or the Program in general, the applicant is encouraged to contact the Bureau directly, rather than through intermediaries or third parties, with questions. Bureau staff will also conduct briefings on the Program grant selection and award process upon request.

H. Other Information

1. Protection of Confidential Business Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible.

2. Publication/Sharing of Application Information

As noted previously, and required by statute, the Bureau will publish an online monthly report that includes, for

each application received, entity type, location of the potential project, a brief description of the assistance requested, the date on which the application was received, and the date on which the applicant was provided the notice of approval or disapproval.

Except for the information properly marked as described in Section H.1, the Bureau may make application information publicly available or share it within USDOT or with other federal agencies if USDOT determines that sharing is relevant to the respective Program's objectives.

Issued in Washington, DC on June 9th, 2023.

Morteza Farajian,

Executive Director.

[FR Doc. 2023–12774 Filed 6–14–23; 8:45 am]

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VETERANS AFFAIRS DEPARTMENT

National Research Advisory Council; Reestablishment

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent.

SUMMARY: We are giving notice that the Secretary of Veterans Affairs intends to reestablish the National Research Advisory Council for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Jeffrey Moragne, Committee Management Office, Department of Veterans Affairs, Advisory Committee Management Office (00AC), 810 Vermont Avenue NW, Washington, DC 20420; email at *Jeffrey.Moragne@va.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Secretary of Veterans Affairs intends to reestablish the National Research Advisory Council for two (2) years from the filing date of the charter's reestablishment. The Committee advises the Secretary of Veterans Affairs and the Under Secretary for Health (USH) and makes recommendations on the nature and scope of research and development sponsored and/or conducted by the Veterans Health Administration (VHA) to include: (1) the policies and projects of the Office of Research and Development (ORD); (2) the focus of research on the high priority health care needs of Veterans; (3) the balance of basic, applied, and outcomes research; (4) the scientific merit review process; (5) the appropriate mechanisms by which ORD can leverage its resources to enhance the research financial base; (6) the rapid response to changing health care needs, while maintaining the stability of the research infrastructure; and (7) the protection of human subjects of research.

Dated: June 9, 2023.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–12772 Filed 6–14–23; 8:45 am]

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